

Act No. 267  
Public Acts of 1996  
Approved by the Governor  
June 12, 1996  
Filed with the Secretary of State  
June 12, 1996

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Reps. Law, Bankes, Hill, Fitzgerald, Dolan, Hammerstrom, Schroer, Agee, Anthony, Emerson, Bullard, Ryan, Jamian, Voorhees, Freeman, Bobier, DeHart, Griffin, Gire, Galloway and Perricone

# **ENROLLED HOUSE BILL No. 5491**

AN ACT to amend sections 20106, 20155, 20161, 21401, 21411, 21413, 21415, and 21417 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," section 20106 as amended by Act No. 179 of the Public Acts of 1990, section 20155 as amended by Act No. 80 of the Public Acts of 1992, section 20161 as amended by Act No. 252 of the Public Acts of 1990, sections 21401, 21413, 21415, and 21417 as added by Act No. 293 of the Public Acts of 1980, and section 21411 as amended by Act No. 16 of the Public Acts of 1984, being sections 333.20106, 333.20155, 333.20161, 333.21401, 333.21411, 333.21413, 333.21415, and 333.21417 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 20106, 20155, 20161, 21401, 21411, 21413, 21415, and 21417 of Act No. 368 of the Public Acts of 1978, section 20106 as amended by Act No. 179 of the Public Acts of 1990, section 20155 as amended by Act No. 80 of the Public Acts of 1992, section 20161 as amended by Act No. 252 of the Public Acts of 1990, sections 21401, 21413, 21415, and 21417 as added by Act No. 293 of the Public Acts of 1980, and section 21411 as amended by Act No. 16 of the Public Acts of 1984, being sections 333.20106, 333.20155, 333.20161, 333.21401, 333.21411, 333.21413, 333.21415, and 333.21417 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 20106. (1) "Health facility or agency", except as provided in section 20115, means:

(a) An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.

- (b) A clinical laboratory.
- (c) A county medical care facility.
- (d) A freestanding surgical outpatient facility.
- (e) A health maintenance organization.
- (f) A home for the aged.
- (g) A hospital.
- (h) A nursing home.
- (i) A hospice.
- (j) A hospice residence.
- (k) A facility or agency listed in subdivisions (a) to (h) located in a university, college, or other educational institution.

(2) "Health maintenance organization" means a health facility or agency that does all of the following:

(a) Delivers health maintenance services that are medically indicated to enrollees under the terms of its health maintenance contract, directly or through contracts with affiliated providers, in exchange for a fixed prepaid sum or per capita prepayment, without regard to the frequency, extent, or kind of health maintenance services.

(b) Is responsible for the availability, accessibility, and quality of the health maintenance services provided as described in subdivision (a).

(3) "Home for the aged" means a supervised personal care facility, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, nontransient, individuals 60 years of age or older. Home for the aged includes a supervised personal care facility for 20 or fewer individuals 60 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home.

(4) "Hospice" means a health care program that provides a coordinated set of services rendered at home or in outpatient or institutional settings for individuals suffering from a disease or condition with a terminal prognosis.

(5) "Hospital" means a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. Hospital does not include a mental health hospital licensed or operated by the department of community health or a hospital operated by the department of corrections.

(6) "Hospital long-term care unit" means a nursing care facility, owned and operated by and as part of a hospital, providing organized nursing care and medical treatment to 7 or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

Sec. 20155. (1) Except as provided in this section, the department shall make annual and other visits to each health facility or agency licensed under this article for the purposes of survey, evaluation, and consultation. Except for a health facility or agency described in section 20106(1)(c), (f), (h), or (j), the department shall determine whether the visits shall be announced or unannounced, except that a complaint investigation shall not be announced and there shall be at least 1 unannounced visit other than a complaint investigation annually to a health facility or agency described in section 20106(1)(c), (h), or (j).

(2) The department shall make at least a biennial visit to each licensed clinical laboratory, each nursing home, and each hospice residence for the purposes of survey, evaluation, and consultation. If a nursing home is only partially certified under title XVIII or title XIX, the department shall include all licensed parts of the nursing home in a certification survey conducted by the department.

(3) The department shall make a biennial visit to each hospital for survey and evaluation for the purpose of licensure. Subject to subsection (6), the department may waive the biennial visit required by this subsection if a hospital, as part of a timely application for license renewal, requests a waiver and submits both of the following and if all of the requirements of subsection (5) are met:

(a) Evidence that it is currently fully accredited by a body with expertise in hospital accreditation whose hospital accreditations are accepted by the United States department of health and human services for purposes of section 1865 of title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395bb.

(b) A copy of the most recent accreditation report for the hospital issued by a body described in subdivision (a), and the hospital's responses to the accreditation report.

(4) Except as provided in subsection (8), accreditation information provided to the department under subsection (3) is confidential, is not a public record, and is not subject to court subpoena. The department shall use the accreditation information only as provided in this section and shall return the accreditation information to the hospital within a reasonable time after a decision on the waiver request is made.

(5) The department shall grant a waiver under subsection (3) if the accreditation report submitted under subsection (3)(b) is less than 2 years old and there is no indication of substantial noncompliance with licensure standards or of deficiencies that represent a threat to public safety or patient care in the report, in complaints involving the hospital, or in any other information available to the department. If the accreditation report is 2 or more years old, the department may do 1 of the following:

(a) Grant an extension of the hospital's current license until the next accreditation survey is completed by the body described in subsection (3)(a).

(b) Grant a waiver under subsection (3) based on the accreditation report that is 2 or more years old, on condition that the hospital promptly submit the next accreditation report to the department.

(c) Deny the waiver request and conduct the visits required under subsection (3).

(6) The department shall not grant more than 2 consecutive waivers under subsection (3). This section does not prohibit the department from citing a violation of this part during a survey, conducting investigations or inspections pursuant to section 20156, or conducting surveys of health facilities or agencies for the purpose of complaint investigations or federal certification. This section does not prohibit the state fire marshal from conducting annual surveys of hospitals, nursing homes, and county medical care facilities.

(7) At the request of a health facility or agency, the department may conduct a consultation engineering survey of a health facility and provide professional advice and consultation regarding health facility construction and design. A health facility or agency may request a voluntary consultation survey under this subsection at any time between licensure surveys. The fees for a consultation engineering survey are the same as the fees established for waivers under section 20161(10).

(8) If the department determines that substantial noncompliance with licensure standards exists or that deficiencies that represent a threat to public safety or patient care exist based on a review of an accreditation report submitted pursuant to subsection (3)(b), the department shall prepare a written summary of the substantial noncompliance or deficiencies and the hospital's response to the department's determination. The department's written summary and the hospital's response are public documents.

(9) Investigations or inspections, other than inspections of financial records, of a health facility or agency described in section 20106(1)(c), (f), (h), or (j) shall be conducted without prior notice to the health facility or agency. An employee of a state agency charged with inspecting the health facility or agency or an employee of a local health department who directly or indirectly gives prior notice regarding an inspection, other than an inspection of the financial records, to the health facility or agency or to an employee of the health facility or agency, is guilty of a misdemeanor. Consultation visits that are not for the purpose of annual or follow-up inspection or survey may be announced.

(10) The department shall maintain a record indicating whether visits are announced or unannounced. Information gathered at all visits, announced or unannounced, shall be taken into account in licensure decisions.

(11) The department shall require periodic reports and a health facility or agency shall give the department access to books, records, and other documents maintained by a health facility or agency to the extent necessary to carry out the purpose of this article and the rules promulgated under this article. The department shall respect the confidentiality of a patient's clinical record and shall not divulge or disclose the contents of the records in a manner that identifies an individual except under court order. The department may copy health facility or agency records as required to document findings.

(12) The department may delegate survey, evaluation, or consultation functions to another state agency or to a local health department qualified to perform those functions. However, the department shall not delegate survey, evaluation, or consultation functions to a local health department that owns or operates a hospice or hospice residence licensed under this article. The delegation shall be by cost reimbursement contract between the department and the state agency or local health department. Survey, evaluation, or consultation functions shall not be delegated to nongovernmental agencies, except as provided in this section. The department may accept voluntary inspections performed by an accrediting body with expertise in clinical laboratory accreditation under part 205 if the accrediting body utilizes forms acceptable to the department, applies the same licensing standards as applied to other clinical laboratories and provides the same information and data usually filed by the department's own employees when engaged in similar inspections or surveys. The voluntary inspection described in this subsection shall be agreed upon by both the licensee and the department.

(13) If, upon investigation, the department or a state agency determines that an individual licensed to practice a profession in this state has violated the applicable licensure statute or the rules promulgated under that statute, the department, state agency, or local health department shall forward the evidence it has to the appropriate licensing agency.

(14) As used in this section:

(a) "Title XVIII" means title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395c to 1395i, 1395i-2 to 1395i-4, 1395j to 1395t, 1395u to 1395w-2, 1395w-4 to 1395yy, and 1395bbb to 1395ccc.

(b) "Title XIX" means title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396v.

Sec. 20161. (1) Fees for health facility and agency licenses and certificates of need shall be assessed on an annual basis by the department as provided in this act. Except as otherwise provided in this article, fees shall be paid in accordance with the following fee schedule:

- (a) Freestanding surgical outpatient facilities .....\$ 238.00 per facility.
- (b) Hospitals .....\$ 8.28 per licensed bed.
- (c) Nursing homes, county medical care facilities, and hospital long-term care units.....\$ 2.20 per licensed bed.
- (d) Homes for the aged .....\$ 6.27 per licensed bed.
- (e) Health maintenance organizations .....\$ 1,000.00 for an initial license; 80 cents per subscriber for a renewal license (3-year); \$100.00 for a certificate of authority for planning.
- (f) Clinical laboratories .....\$ 475.00 per laboratory.
- (g) Health care delivery and financing system under section 21042 .....\$ 1,000.00 for an initial license; effective January 1, 1987, \$1,000.00 for 3-year renewal license for pre-paid institutional programs, \$5,000.00 for 3-year renewal license for organizations determined by the department to offer a single form of health care service, and 80 cents per subscriber for all other 3-year renewal licenses under section 21042.
- (h) Hospice residences.....\$ 200.00 per license survey; and \$20.00 per licensed bed.

(2) If a hospital requests the department to conduct a certification survey for purposes of title XVIII or title XIX of the social security act, the hospital shall pay a license fee surcharge of \$23.00 per bed.

(3) The base fee for a certificate of need is \$750.00 for each application. For a project requiring a projected capital expenditure of more than \$150,000.00 but less than \$1,500,000.00, an additional fee of \$2,000.00 shall be added to the base fee. For a project requiring a projected capital expenditure of \$1,500,000.00 or more, an additional fee of \$3,500.00 shall be added to the base fee.

(4) With the exception of health maintenance organizations, if licensure is for more than 1 year, the fees described in subsection (1) shall be multiplied by the number of years for which the license is issued, and the total amount of the fees shall be collected in the year in which the license is issued.

(5) Fees described in this section are payable to the department at the time an application for a license, permit, or certificate is submitted. If an application for a license, permit, or certificate is denied or if a license, permit, or certificate is revoked before its expiration date, the fees paid to the department shall not be refunded.

(6) The fee for a provisional license or temporary permit shall be the same as for a license. A license may be issued at the expiration date of a temporary permit without an additional fee for the balance of the period for which the fee was paid if the requirements for licensure are met.

(7) The department may charge a fee to recover the cost of purchase or production and distribution of proficiency evaluation samples that are supplied to clinical laboratories pursuant to section 20521(3).

(8) In addition to the fees imposed under subsection (1), a fee of \$25.00 shall be submitted to the department for each reissuance during the licensure period of a clinical laboratory license.

(9) Except for the licensure of clinical laboratories, not more than half the annual cost of licensure activities as determined by the department shall be provided by license fees.

(10) The application fee for a waiver under section 21564 shall be \$200.00 plus \$40.00 per hour for the professional services and travel expenses directly related to processing the application. The travel expenses shall be calculated in accordance with the state standardized travel regulations of the department of management and budget in effect at the time of the travel.

(11) An applicant for licensure or renewal of licensure under part 209 shall pay the applicable fees set forth in part 209.

(12) The fees collected under this section shall be deposited in the state treasury, to the credit of the general fund.

Sec. 21401. (1) As used in this part:

(a) "Home care" means a level of care provided to a patient that is consistent with the categories "routine home care" or "continuous home care" described in 42 C.F.R. 418.302(b)(1) and (2).

(b) "Hospice residence" means a facility that meets all of the following:

(i) Provides 24-hour hospice care to 2 or more patients at a single location.

(ii) Either provides inpatient care directly in compliance with this article and with the standards set forth in 42 C.F.R. 418.100 or provides home care as described in this article.

(iii) Is owned, operated, and governed by a hospice program that is licensed under this article and provides aggregate days of patient care on a biennial basis to not less than 51% of its hospice patients in their own homes. As used in this subparagraph, "home" does not include a residence established by a patient in a health facility or agency licensed under this article or a residence established by a patient in an adult foster care facility licensed under the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being sections 400.701 to 400.737 of the Michigan Compiled Laws.

(c) "Inpatient care" means a level of care provided to a patient that is consistent with the categories "inpatient respite care day" and "general inpatient care day" described in 42 C.F.R. 418.302(b)(3) and (4).

(2) Article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

Sec. 21411. (1) Except as provided in subsection (5), a hospice or hospice residence shall be licensed as required under this article.

(2) The term "hospice" shall not be used to describe or refer to a health program or agency unless that program or agency is licensed as a hospice by the department as required under this article or is exempted from licensure as provided in subsection (5).

(3) A person shall not represent itself as a hospice residence unless that person is licensed as a hospice residence by the department as required under this article.

(4) A hospital, nursing home, home for the aged, county medical care facility, or any other health facility or agency that operates a hospice or hospice residence shall be licensed as a hospice or hospice residence under this article.

(5) A hospice is exempt from licensure under this article if the hospice meets all of the following requirements:

(a) Provides services to not more than 7 patients per month on a yearly average.

(b) Does not charge or receive fees for goods or services provided.

(c) Does not receive third party reimbursement for goods or services provided.

(6) If a hospice provides inpatient services that meet the definition of a hospital, nursing home, home for the aged, county medical care facility, hospice residence, or other health facility or agency, the hospice or hospice residence shall obtain a separate license as required under this article for that hospital, nursing home, home for the aged, county medical care facility, hospice residence, or other health facility or agency.

(7) This part does not restrict an activity of a health facility or agency if the activity is permitted under the license held by that health facility or agency.

(8) If separate licensure is required under this section, the department may conduct inspections and issue the required licenses concurrently.

Sec. 21413. (1) The owner, operator, and governing body of a hospice or hospice residence licensed under this article:

(a) Are responsible for all phases of the operation of the hospice or hospice residence and for the quality of care and services rendered by the hospice or hospice residence.

(b) Shall cooperate with the department in the enforcement of this part, and require that the physicians and other personnel working in the hospice or hospice residence and for whom a license or registration is required be currently licensed or registered.

(c) Shall not discriminate because of race, religion, color, national origin, or sex, in the operation of the hospice or hospice residence including employment, patient admission and care, and room assignment.

(2) As a condition of licensure as a hospice residence, an applicant shall have been licensed under this article as a hospice and in compliance with the standards set forth in 42 C.F.R. part 418 for not less than the 2 years immediately preceding the date of application for licensure. A hospice residence licensed under this article may provide both home care and inpatient care at the same location. A hospice residence providing inpatient care shall comply with the standards in 42 C.F.R. 418.100.

(3) In addition to the requirements of subsections (1) and (2) and section 21415, the owner, operator, and governing body of a hospice residence that is licensed under this article and that provides care only at the home care level shall do all of the following:

(a) Provide 24-hour nursing services for each patient in accordance with the patient's hospice care plan as required under 42 C.F.R. part 418.