

# HOUSE BILL No. 5072

August 3, 2005, Introduced by Reps. Williams, Phillips, Gonzales and Alma Smith and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 20155 (MCL 333.20155), as amended by 2001 PA  
218.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 20155. (1) Except as otherwise provided in this section,  
2 the department ~~of consumer and industry services~~ shall make  
3 annual and other visits to each health facility or agency licensed  
4 under this article for the purposes of survey, evaluation, and  
5 consultation. A visit made pursuant to a complaint shall be  
6 unannounced. Except for a county medical care facility, a home for  
7 the aged, a nursing home, or a hospice residence, the department  
8 shall determine whether the visits that are not made pursuant to a

1 complaint are announced or unannounced. **IN ADDITION TO VISITS MADE**  
2 **PURSUANT TO A COMPLAINT INVESTIGATION, THE DEPARTMENT SHALL**  
3 **ANNUALLY MAKE AT LEAST 2 UNANNOUNCED VISITS TO EACH COUNTY MEDICAL**  
4 **CARE FACILITY AND HOSPICE RESIDENCE.** Beginning June 20, 2001, the  
5 department shall assure that each newly hired nursing home  
6 surveyor, as part of his or her basic training, is assigned full-  
7 time to a licensed nursing home for at least 10 days within a 14-  
8 day period to observe actual operations outside of the survey  
9 process before the trainee begins oversight responsibilities. A  
10 member of a survey team shall not be employed by a licensed nursing  
11 home or a nursing home management company doing business in this  
12 state at the time of conducting a survey under this section. The  
13 department shall not assign an individual to be a member of a  
14 survey team for purposes of a survey, evaluation, or consultation  
15 visit at a nursing home in which he or she was an employee within  
16 the preceding 5 years.

17 (2) The department ~~of consumer and industry services~~ shall  
18 make at least a biennial visit to each licensed clinical laboratory  
19 ~~each nursing home,~~ and each hospice residence for the purposes  
20 of survey, evaluation, and consultation. **IN ADDITION TO VISITS MADE**  
21 **PURSUANT TO COMPLAINT INVESTIGATIONS, THE DEPARTMENT SHALL ANNUALLY**  
22 **MAKE AT LEAST 2 UNANNOUNCED VISITS AND INSPECT EACH NURSING HOME**  
23 **LICENSED UNDER THIS ARTICLE, REGARDLESS OF WHETHER THE NURSING HOME**  
24 **IS CERTIFIED UNDER TITLE XVIII OR TITLE XIX.** The department ~~of~~  
25 ~~consumer and industry services~~ shall semiannually provide for  
26 joint training with nursing home surveyors and providers on at  
27 least 1 of the 10 most frequently issued federal citations in this

1 state during the past calendar year. The department ~~of consumer~~  
2 ~~and industry services~~ shall develop a protocol for the review of  
3 citation patterns compared to regional outcomes and standards and  
4 complaints regarding the nursing home survey process. The review  
5 will result in a report provided to the legislature. Except as  
6 otherwise provided in this subsection, beginning with his or her  
7 first full relicensure period after June 20, ~~2000~~ **2001**, each  
8 member of a department ~~of consumer and industry services~~ nursing  
9 home survey team who is a health professional licensee under  
10 article 15 shall earn not less than 50% of his or her required  
11 continuing education credits, if any, in geriatric care. If a  
12 member of a nursing home survey team is a pharmacist licensed under  
13 article 15, he or she shall earn not less than 30% of his or her  
14 required continuing education credits in geriatric care.

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

22 (a) Evidence that it is currently fully accredited by a body  
23 with expertise in hospital accreditation whose hospital  
24 accreditations are accepted by the United States department of  
25 health and human services for purposes of section 1865 of part ~~E~~  
26 **D** of title XVIII of the social security act, 42 ~~U.S.C.~~ **USC**  
27 1395bb.

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

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

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

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

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

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

3 (6) This section does not prohibit the department from citing  
4 a violation of this part during a survey, conducting investigations  
5 or inspections pursuant to section 20156, or conducting surveys of  
6 health facilities or agencies for the purpose of complaint  
7 investigations or federal certification. This section does not  
8 prohibit the state fire marshal from conducting annual surveys of  
9 hospitals, nursing homes, and county medical care facilities.

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

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

1           (9) The department ~~of consumer and industry services~~ or a  
2 local health department shall conduct investigations or  
3 inspections, other than ~~inspections~~ **AN INSPECTION** of financial  
4 records, of a county medical care facility, home for the aged,  
5 nursing home, or hospice residence without prior notice to the  
6 health facility or agency. An employee of a state agency charged  
7 with investigating or inspecting the health facility or agency or  
8 an employee of a local health department who directly or indirectly  
9 gives prior notice regarding an investigation or an inspection,  
10 other than an inspection of the financial records, to the health  
11 facility or agency or to an employee of the health facility or  
12 agency, is guilty of a misdemeanor. ~~Consultation visits that are~~  
13 **A CONSULTATION VISIT THAT IS** not for the purpose of annual or  
14 follow-up inspection or survey may be announced.

15           (10) The department ~~of consumer and industry services~~ shall  
16 maintain a record indicating whether a visit and inspection is  
17 announced or unannounced. Information gathered at each visit and  
18 inspection, whether announced or unannounced, shall be taken into  
19 account in licensure decisions.

20           (11) The department ~~of consumer and industry services~~ shall  
21 require periodic reports and a health facility or agency shall give  
22 the department access to books, records, and other documents  
23 maintained by a health facility or agency to the extent necessary  
24 to carry out the purpose of this article and the rules promulgated  
25 under this article. The department shall respect the  
26 confidentiality of a patient's clinical record and shall not  
27 divulge or disclose the contents of the records in a manner that

1 identifies an individual except under court order. The department  
2 may copy health facility or agency records as required to document  
3 findings.

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

23 (13) If, upon investigation, the department ~~of consumer and~~  
24 ~~industry services~~ or a state agency determines that an individual  
25 licensed to practice a profession in this state has violated the  
26 applicable licensure statute or the rules promulgated under that  
27 statute, the department, state agency, or local health department

1 shall forward the evidence it has to the appropriate licensing  
2 agency.

3 (14) The department ~~of consumer and industry services~~ shall  
4 report to the appropriations subcommittees, the senate and house of  
5 representatives standing committees having jurisdiction over issues  
6 involving senior citizens, and the fiscal agencies on March 1 of  
7 each year on the initial and follow-up surveys conducted on all  
8 nursing homes in this state. The report shall include all of the  
9 following information:

10 (a) The number of surveys conducted.

11 (b) The number requiring follow-up surveys.

12 (c) The number referred to the Michigan public health  
13 institute for remediation.

14 (d) The number of citations per nursing home.

15 (e) The number of night and weekend complaints filed.

16 (f) The number of night and weekend responses to complaints  
17 conducted by the department.

18 (g) The average length of time for the department to respond  
19 to a complaint filed against a nursing home.

20 (h) The number and percentage of citations appealed.

21 (i) The number and percentage of citations overturned or  
22 modified, or both.

23 (15) The department ~~of consumer and industry services~~ shall  
24 report annually to the standing committees on appropriations and  
25 the standing committees having jurisdiction over issues involving  
26 senior citizens in the senate and the house of representatives on  
27 the percentage of nursing home citations that are appealed and the



1 percentage of nursing home citations that are appealed and amended  
2 through the informal deficiency dispute resolution process.

3 (16) Subject to subsection (17), a clarification work group  
4 comprised of the department ~~of consumer and industry services~~ in  
5 consultation with a nursing home resident or a member of a nursing  
6 home resident's family, nursing home provider groups, the American  
7 medical directors association, the department of community health,  
8 the state long-term care ombudsman, and the federal centers for  
9 medicare and medicaid services shall clarify the following terms as  
10 those terms are used in title XVIII and title XIX and applied by  
11 the department to provide more consistent regulation of nursing  
12 homes in Michigan:

13 (a) Immediate jeopardy.

14 (b) Harm.

15 (c) Potential harm.

16 (d) Avoidable.

17 (e) Unavoidable.

18 (17) All of the following clarifications developed under  
19 subsection (16) apply for purposes of subsection (16):

20 (a) Specifically, the term "immediate jeopardy" means ~~—~~ a  
21 situation in which immediate corrective action is necessary because  
22 the nursing home's noncompliance with 1 or more requirements of  
23 participation has caused or is likely to cause serious injury,  
24 harm, impairment, or death to a resident receiving care in a  
25 nursing home. ~~—~~.

26 (b) The likelihood of immediate jeopardy is reasonably higher  
27 if there is evidence of a flagrant failure by the nursing home to

1 comply with a clinical process guideline adopted under subsection  
2 (18) than if the nursing home has substantially and continuously  
3 complied with those guidelines. If federal regulations and  
4 guidelines are not clear, and if the clinical process guidelines  
5 have been recognized, a process failure giving rise to an immediate  
6 jeopardy may involve an egregious widespread or repeated process  
7 failure and the absence of reasonable efforts to detect and prevent  
8 the process failure.

9 (c) In determining whether or not there is immediate jeopardy,  
10 the survey agency should consider at least all of the following:

11 (i) Whether the nursing home could reasonably have been  
12 expected to know about the deficient practice and to stop it, but  
13 did not stop the deficient practice.

14 (ii) Whether the nursing home could reasonably have been  
15 expected to identify the deficient practice and to correct it, but  
16 did not correct the deficient practice.

17 (iii) Whether the nursing home could reasonably have been  
18 expected to anticipate that serious injury, serious harm,  
19 impairment, or death might result from continuing the deficient  
20 practice, but did not so anticipate.

21 (iv) Whether the nursing home could reasonably have been  
22 expected to know that a widely accepted high-risk practice is or  
23 could be problematic, but did not know.

24 (v) Whether the nursing home could reasonably have been  
25 expected to detect the process problem in a more timely fashion,  
26 but did not so detect.

27 (d) The existence of 1 or more of the factors described in

1 subdivision (c), and especially the existence of 3 or more of those  
2 factors simultaneously, may lead to a conclusion that the situation  
3 is one in which the nursing home's practice makes adverse events  
4 likely to occur if immediate intervention is not undertaken, and  
5 therefore constitutes immediate jeopardy. If none of the factors  
6 described in subdivision (c) is present, the situation may involve  
7 harm or potential harm that is not immediate jeopardy.

8 (e) Specifically, "actual harm" means — a negative outcome  
9 to a resident that has compromised the resident's ability to  
10 maintain or reach, or both, his or her highest practicable  
11 physical, mental, and psychosocial well-being as defined by an  
12 accurate and comprehensive resident assessment, plan of care, and  
13 provision of services. — Harm does not include a deficient  
14 practice that only may cause or has caused limited consequences to  
15 the resident.

16 (f) For purposes of subdivision (e), in determining whether a  
17 negative outcome is of limited consequence, if the "state  
18 operations manual" or "the guidance to surveyors" published by the  
19 federal centers for medicare and medicaid services does not provide  
20 specific guidance, the department may consider whether most people  
21 in similar circumstances would feel that the damage was of such  
22 short duration or impact as to be inconsequential or trivial. In  
23 such a case, the consequence of a negative outcome may be  
24 considered more limited if it occurs in the context of overall  
25 procedural consistency with an accepted clinical process guideline  
26 adopted pursuant to subsection (18), as compared to a substantial  
27 inconsistency with or variance from the guideline.

1 (g) For purposes of subdivision (e), if the publications  
2 described in subdivision (f) do not provide specific guidance, the  
3 department may consider the degree of a nursing home's adherence to  
4 a clinical process guideline adopted pursuant to subsection (18) in  
5 considering whether the degree of compromise and future risk to the  
6 resident constitutes actual harm. The risk of significant  
7 compromise to the resident may be considered greater in the context  
8 of substantial deviation from the guidelines than in the case of  
9 overall adherence.

10 (h) To improve consistency and to avoid disputes over  
11 "avoidable" and "unavoidable" negative outcomes, nursing homes and  
12 survey agencies must have a common understanding of accepted  
13 process guidelines and of the circumstances under which it can  
14 reasonably be said that certain actions or inactions will lead to  
15 avoidable negative outcomes. If the "state operations manual" or  
16 "the guidance to surveyors" published by the federal centers for  
17 medicare and medicaid services is not specific, a nursing home's  
18 overall documentation of adherence to a clinical process guideline  
19 with a process indicator adopted pursuant to subsection (18) is  
20 relevant information in considering whether a negative outcome was  
21 "avoidable" or "unavoidable" and may be considered in the  
22 application of that term.

23 (18) Subject to subsection (19), the department, in  
24 consultation with the clarification work group appointed under  
25 subsection (16), shall develop and adopt clinical process  
26 guidelines that shall be used in applying the terms set forth in  
27 subsection (16). The department shall establish and adopt clinical

1 process guidelines and compliance protocols with outcome measures  
2 for all of the following areas and for other topics where the  
3 department determines that clarification will benefit providers and  
4 consumers of long-term care:

5 (a) Bed rails.

6 (b) Adverse drug effects.

7 (c) Falls.

8 (d) Pressure sores.

9 (e) Nutrition and hydration including, but not limited to,  
10 heat-related stress.

11 (f) Pain management.

12 (g) Depression and depression pharmacotherapy.

13 (h) Heart failure.

14 (i) Urinary incontinence.

15 (j) Dementia.

16 (k) Osteoporosis.

17 (l) Altered mental states.

18 (m) Physical and chemical restraints.

19 (19) The department shall create a clinical advisory committee  
20 to review and make recommendations regarding the clinical process  
21 guidelines with outcome measures adopted under subsection (18). The  
22 department shall appoint physicians, registered professional  
23 nurses, and licensed practical nurses to the clinical advisory  
24 committee, along with professionals who have expertise in long-term  
25 care services, some of whom may be employed by long-term care  
26 facilities. The clarification work group created under subsection  
27 (16) shall review the clinical process guidelines and outcome

1 measures after the clinical advisory committee and shall make the  
2 final recommendations to the department before the clinical process  
3 guidelines are adopted.

4 (20) The department shall create a process by which the  
5 director of the division of nursing home monitoring or his or her  
6 designee or the director of the division of operations or his or  
7 her designee reviews and authorizes the issuance of a citation for  
8 immediate jeopardy or substandard quality of care before the  
9 statement of deficiencies is made final. The review shall be to  
10 assure that the applicable concepts, clinical process guidelines,  
11 and other tools contained in subsections (17) to (19) are being  
12 used consistently, accurately, and effectively. As used in this  
13 subsection, "immediate jeopardy" and "substandard quality of care"  
14 mean those terms as defined by the federal centers for medicare and  
15 medicaid services.

16 (21) The department may give grants, awards, or other  
17 recognition to nursing homes to encourage the rapid implementation  
18 of the clinical process guidelines adopted under subsection (18).

19 (22) The department shall assess the effectiveness of the  
20 amendatory act that added this subsection. The department shall  
21 file an annual report on the implementation of the clinical process  
22 guidelines and the impact of the guidelines on resident care with  
23 the standing committee in the legislature with jurisdiction over  
24 matters pertaining to nursing homes. The first report shall be  
25 filed on July 1, 2002. ~~of the year following the year in which the~~  
26 ~~amendatory act that added this subsection takes effect.~~

27 (23) The department ~~of consumer and industry services~~ shall

1 instruct and train the surveyors in the use of the clarifications  
2 described in subsection (17) and the clinical process guidelines  
3 adopted under subsection (18) in citing deficiencies.

4 (24) A nursing home shall post the nursing home's survey  
5 report in a conspicuous place within the nursing home for public  
6 review.

7 (25) Nothing in this amendatory act shall be construed to  
8 limit the requirements of related state and federal law.

9 (26) As used in this section:

10 (a) "Title XVIII" means title XVIII of the social security  
11 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,~~  
12 ~~1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to~~  
13 ~~1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28,~~  
14 ~~1395x to 1395yy, and 1395bbb to 1395ggg~~ **42 USC 1395 TO 1395HHH.**

15 (b) "Title XIX" means title XIX of the social security act,  
16 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to~~  
17 ~~1396r-6, and 1396r-8~~ **42 USC 1396 to 1396v.**