

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 884

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20155 (MCL 333.20155), as amended by 2006 PA
195, and by adding section 20155a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this section
2 **AND SECTION 20155A**, the department shall make annual and other
3 visits to each health facility or agency licensed under this
4 article for the purposes of survey, evaluation, and consultation. A
5 visit made ~~pursuant~~ **ACCORDING** to a complaint shall be unannounced.
6 Except for a county medical care facility, a home for the aged, a
7 nursing home, or a hospice residence, the department shall
8 determine whether the visits that are not made ~~pursuant~~ **ACCORDING**
9 to a complaint are announced or unannounced. Beginning June 20,

1 2001, the department shall ~~assure~~**ENSURE** that each newly hired
2 nursing home surveyor, as part of his or her basic training, is
3 assigned full-time to a licensed nursing home for at least 10 days
4 within a 14-day period to observe actual operations outside of the
5 survey process before the trainee begins oversight
6 responsibilities.

7 (2) THE STATE SHALL ESTABLISH A PROCESS THAT ENSURES BOTH OF
8 THE FOLLOWING:

9 (A) A NEWLY HIRED NURSING HOME SURVEYOR SHALL NOT MAKE
10 INDEPENDENT COMPLIANCE DECISIONS DURING HIS OR HER TRAINING PERIOD.

11 (B) A NURSING HOME SURVEYOR SHALL NOT BE ASSIGNED AS A MEMBER
12 OF A SURVEY TEAM FOR A NURSING HOME IN WHICH HE OR SHE RECEIVED
13 TRAINING FOR 1 STANDARD SURVEY FOLLOWING THE TRAINING RECEIVED IN
14 THAT NURSING HOME.

15 (3) BEGINNING NOVEMBER 1, 2012, THE DEPARTMENT SHALL PERFORM A
16 CRIMINAL HISTORY CHECK ON ALL NURSING HOME SURVEYORS IN THE MANNER
17 PROVIDED FOR IN SECTION 20173A.

18 (4) A member of a survey team shall not be employed by a
19 licensed nursing home or a nursing home management company doing
20 business in this state at the time of conducting a survey under
21 this section. The department shall not assign an individual to be a
22 member of a survey team for purposes of a survey, evaluation, or
23 consultation visit at a nursing home in which he or she was an
24 employee within the preceding 5—3 years.

25 (5) REPRESENTATIVES FROM ALL NURSING HOME PROVIDER
26 ORGANIZATIONS AND THE STATE LONG-TERM CARE OMBUDSMAN OR HIS OR HER
27 DESIGNEE SHALL BE INVITED TO PARTICIPATE IN THE PLANNING PROCESS

1 FOR THE JOINT PROVIDER AND SURVEYOR TRAINING SESSIONS. THE
2 DEPARTMENT SHALL INCLUDE AT LEAST 1 REPRESENTATIVE FROM NURSING
3 HOME PROVIDER ORGANIZATIONS THAT DO NOT OWN OR OPERATE A NURSING
4 HOME REPRESENTING 30 OR MORE NURSING HOMES STATEWIDE IN INTERNAL
5 SURVEYOR GROUP QUALITY ASSURANCE TRAINING PROVIDED FOR THE PURPOSE
6 OF GENERAL CLARIFICATION AND INTERPRETATION OF EXISTING OR NEW
7 REGULATORY REQUIREMENTS AND EXPECTATIONS.

8 (6) THE DEPARTMENT SHALL MAKE AVAILABLE ONLINE THE GENERAL
9 CIVIL SERVICE POSITION DESCRIPTION RELATED TO THE REQUIRED
10 QUALIFICATIONS FOR INDIVIDUAL SURVEYORS. THE DEPARTMENT SHALL USE
11 THE REQUIRED QUALIFICATIONS TO HIRE, EDUCATE, DEVELOP, AND EVALUATE
12 SURVEYORS.

13 (7) THE DEPARTMENT SHALL ENSURE THAT EACH ANNUAL SURVEY TEAM
14 IS COMPOSED OF AN INTERDISCIPLINARY GROUP OF PROFESSIONALS, 1 OF
15 WHOM MUST BE A REGISTERED NURSE. OTHER MEMBERS MAY INCLUDE SOCIAL
16 WORKERS, THERAPISTS, DIETITIANS, PHARMACISTS, ADMINISTRATORS,
17 PHYSICIANS, SANITARIANS, AND OTHERS WHO MAY HAVE THE EXPERTISE
18 NECESSARY TO EVALUATE SPECIFIC ASPECTS OF NURSING HOME OPERATION.

19 (8) ~~(2) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND
20 SECTION 20155A, THE department shall make at least a biennial visit
21 to each licensed clinical laboratory, each nursing home, and each
22 hospice residence for the purposes of survey, evaluation, and
23 consultation. The department shall semiannually provide for joint
24 training with nursing home surveyors and providers on at least 1 of
25 the 10 most frequently issued federal citations in this state
26 during the past calendar year. The department shall develop a
27 protocol for the review of citation patterns compared to regional

1 outcomes and standards and complaints regarding the nursing home
2 survey process. The review will ~~result in a report provided to the~~
3 ~~legislature.~~ **BE INCLUDED IN THE REPORT REQUIRED UNDER SUBSECTION**
4 **(20)**. Except as otherwise provided in this subsection, beginning
5 with his or her first full relicensure period after June 20, 2000,
6 each member of a department nursing home survey team who is a
7 health professional licensee under article 15 shall earn not less
8 than 50% of his or her required continuing education credits, if
9 any, in geriatric care. If a member of a nursing home survey team
10 is a pharmacist licensed under article 15, he or she shall earn not
11 less than 30% of his or her required continuing education credits
12 in geriatric care.

13 (9) ~~(3)~~—The department shall make a biennial visit to each
14 hospital for survey and evaluation for the purpose of licensure.
15 Subject to subsection ~~(6)~~ **(12)**, the department may waive the
16 biennial visit required by this subsection if a hospital, as part
17 of a timely application for license renewal, requests a waiver and
18 submits both of the following and if all of the requirements of
19 subsection ~~(5)~~ **(11)** are met:

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

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

1 (10) ~~(4)~~—Except as provided in subsection ~~(8)~~—(14),
2 accreditation information provided to the department under
3 subsection ~~(3)~~—(9) is confidential, is not a public record, and is
4 not subject to court subpoena. The department shall use the
5 accreditation information only as provided in this section and
6 shall return the accreditation information to the hospital within a
7 reasonable time after a decision on the waiver request is made.

8 (11) ~~(5)~~—The department shall grant a waiver under subsection
9 ~~(3)~~—(9) if the accreditation report submitted under subsection
10 ~~(3)(b)~~—(9) (B) is less than 2 years old and there is no indication
11 of substantial noncompliance with licensure standards or of
12 deficiencies that represent a threat to public safety or patient
13 care in the report, in complaints involving the hospital, or in any
14 other information available to the department. If the accreditation
15 report is 2 or more years old, the department may do 1 of the
16 following:

17 (a) Grant an extension of the hospital's current license until
18 the next accreditation survey is completed by the body described in
19 subsection ~~(3)(a)~~—(9) (A) .

20 (b) Grant a waiver under subsection ~~(3)~~—(9) based on the
21 accreditation report that is 2 or more years old, on condition that
22 the hospital promptly submit the next accreditation report to the
23 department.

24 (c) Deny the waiver request and conduct the visits required
25 under subsection ~~(3)~~—(9) .

26 (12) ~~(6)~~—This section does not prohibit the department from
27 citing a violation of this part during a survey, conducting

1 investigations or inspections ~~pursuant~~ **ACCORDING** to section 20156,
2 or conducting surveys of health facilities or agencies for the
3 purpose of complaint investigations or federal certification. This
4 section does not prohibit the bureau of fire services created in
5 section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b,
6 from conducting annual surveys of hospitals, nursing homes, and
7 county medical care facilities.

8 **(13)** ~~(7)~~—At the request of a health facility or agency, the
9 department may conduct a consultation engineering survey of a
10 health facility and provide professional advice and consultation
11 regarding health facility construction and design. A health
12 facility or agency may request a voluntary consultation survey
13 under this subsection at any time between licensure surveys. The
14 fees for a consultation engineering survey are the same as the fees
15 established for waivers under section 20161(10).

16 **(14)** ~~(8)~~—If the department determines that substantial
17 noncompliance with licensure standards exists or that deficiencies
18 that represent a threat to public safety or patient care exist
19 based on a review of an accreditation report submitted ~~pursuant to~~
20 **UNDER** subsection ~~(3)(b)~~ **(9) (B)**, the department shall prepare a
21 written summary of the substantial noncompliance or deficiencies
22 and the hospital's response to the department's determination. The
23 department's written summary and the hospital's response are public
24 documents.

25 **(15)** ~~(9)~~—The department or a local health department shall
26 conduct investigations or inspections, other than inspections of
27 financial records, of a county medical care facility, home for the

1 aged, nursing home, or hospice residence without prior notice to
2 the health facility or agency. An employee of a state agency
3 charged with investigating or inspecting the health facility or
4 agency or an employee of a local health department who directly or
5 indirectly gives prior notice regarding an investigation or an
6 inspection, other than an inspection of the financial records, to
7 the health facility or agency or to an employee of the health
8 facility or agency, is guilty of a misdemeanor. Consultation visits
9 that are not for the purpose of annual or follow-up inspection or
10 survey may be announced.

11 (16) ~~(10)~~—The department shall maintain a record indicating
12 whether a visit and inspection is announced or unannounced.

13 ~~Information~~—**SURVEY FINDINGS** gathered at **EACH HEALTH FACILITY OR**
14 **AGENCY DURING** each visit and inspection, whether announced or
15 unannounced, shall be taken into account in licensure decisions.

16 (17) ~~(11)~~—The department shall require periodic reports and a
17 health facility or agency shall give the department access to
18 books, records, and other documents maintained by a health facility
19 or agency to the extent necessary to carry out the purpose of this
20 article and the rules promulgated under this article. The
21 department shall ~~respect the confidentiality of a patient's~~
22 ~~clinical record and shall not~~ divulge or disclose the contents of
23 the **PATIENT'S CLINICAL** records in a manner that identifies an
24 individual except under court order. The department may copy health
25 facility or agency records as required to document findings.

26 **SURVEYORS SHALL USE ELECTRONIC RESIDENT INFORMATION, WHENEVER**
27 **AVAILABLE, AS A SOURCE OF SURVEY-RELATED DATA AND SHALL REQUEST**

1 FACILITY ASSISTANCE TO ACCESS THE SYSTEM TO MAXIMIZE DATA EXPORT.

2 **(18)** ~~(12)~~—The department may delegate survey, evaluation, or
3 consultation functions to another state agency or to a local health
4 department qualified to perform those functions. However, the
5 department shall not delegate survey, evaluation, or consultation
6 functions to a local health department that owns or operates a
7 hospice or hospice residence licensed under this article. The
8 delegation shall be by cost reimbursement contract between the
9 department and the state agency or local health department. Survey,
10 evaluation, or consultation functions shall not be delegated to
11 nongovernmental agencies, except as provided in this section. The
12 department may accept voluntary inspections performed by an
13 accrediting body with expertise in clinical laboratory
14 accreditation under part 205 if the accrediting body utilizes forms
15 acceptable to the department, applies the same licensing standards
16 as applied to other clinical laboratories, and provides the same
17 information and data usually filed by the department's own
18 employees when engaged in similar inspections or surveys. The
19 voluntary inspection described in this subsection shall be agreed
20 upon by both the licensee and the department.

21 **(19)** ~~(13)~~—If, upon investigation, the department or a state
22 agency determines that an individual licensed to practice a
23 profession in this state has violated the applicable licensure
24 statute or the rules promulgated under that statute, the
25 department, state agency, or local health department shall forward
26 the evidence it has to the appropriate licensing agency.

27 **(20)** ~~(14)~~—**THE DEPARTMENT MAY CONSOLIDATE ALL INFORMATION**

1 **PROVIDED FOR ANY REPORT REQUIRED UNDER THIS SECTION AND SECTION**
 2 **20155A INTO A SINGLE REPORT.** The department shall report to the
 3 appropriations subcommittees, the senate and house of
 4 representatives standing committees having jurisdiction over issues
 5 involving senior citizens, and the fiscal agencies on March 1 of
 6 each year on the initial and follow-up surveys conducted on all
 7 nursing homes in this state. The report shall include all of the
 8 following information:

9 (a) The number of surveys conducted.

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

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

13 (C) ~~(d)~~ The **AVERAGE** number of citations per nursing home **FOR**
 14 **THE MOST RECENT CALENDAR YEAR.**

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

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

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

20 (G) ~~(h)~~ The number and percentage of citations ~~appealed.~~
 21 **DISPUTED THROUGH INFORMAL DISPUTE RESOLUTION AND INDEPENDENT**
 22 **INFORMAL DISPUTE RESOLUTION.**

23 (H) ~~(i)~~ The number and percentage of citations overturned or
 24 modified, or both.

25 (I) **THE REVIEW OF CITATION PATTERNS DEVELOPED UNDER SUBSECTION**
 26 **(8).**

27 (J) **IMPLEMENTATION OF THE CLINICAL PROCESS GUIDELINES AND THE**

1 IMPACT OF THE GUIDELINES ON RESIDENT CARE.

2 (K) INFORMATION REGARDING THE PROGRESS MADE ON IMPLEMENTING
3 THE ADMINISTRATIVE AND ELECTRONIC SUPPORT STRUCTURE TO EFFICIENTLY
4 COORDINATE ALL NURSING HOME LICENSING AND CERTIFICATION FUNCTIONS.

5 (L) THE NUMBER OF ANNUAL STANDARD SURVEYS OF NURSING HOMES THAT
6 WERE CONDUCTED DURING A PERIOD OF OPEN SURVEY OR ENFORCEMENT CYCLE.

7 (M) THE NUMBER OF ABBREVIATED COMPLAINT SURVEYS THAT WERE NOT
8 CONDUCTED ON CONSECUTIVE SURVEYOR WORKDAYS.

9 (N) THE PERCENT OF ALL FORM CMS-2567 REPORTS OF FINDINGS THAT
10 WERE RELEASED TO THE NURSING HOME WITHIN THE 10-WORKING-DAY
11 REQUIREMENT.

12 (O) THE PERCENT OF PROVIDER NOTIFICATIONS OF ACCEPTANCE OR
13 REJECTION OF A PLAN OF CORRECTION THAT WERE RELEASED TO THE NURSING
14 HOME WITHIN THE 10-WORKING-DAY REQUIREMENT.

15 (P) THE PERCENT OF FIRST REVISITS THAT WERE COMPLETED WITHIN
16 60 DAYS FROM THE DATE OF SURVEY COMPLETION.

17 (Q) THE PERCENT OF SECOND REVISITS THAT WERE COMPLETED WITHIN
18 85 DAYS FROM THE DATE OF SURVEY COMPLETION.

19 (R) THE PERCENT OF LETTERS OF COMPLIANCE NOTIFICATION TO THE
20 NURSING HOME THAT WERE RELEASED WITHIN 10 WORKING DAYS OF THE DATE
21 OF THE COMPLETION OF THE REVISIT.

22 (S) A SUMMARY OF THE DISCUSSIONS FROM THE MEETINGS REQUIRED IN
23 SUBSECTION (24).

24 (T) THE NUMBER OF NURSING HOMES THAT PARTICIPATED IN A
25 RECOGNIZED QUALITY IMPROVEMENT PROGRAM AS DESCRIBED UNDER SECTION
26 20155A(3).

27 (21) ~~(15)~~ The department shall report annually ~~MARCH 1 OF EACH~~

1 **YEAR** to the standing committees on appropriations and the standing
 2 committees having jurisdiction over issues involving senior
 3 citizens in the senate and the house of representatives on ~~the~~ **ALL**
 4 **OF THE FOLLOWING:**

5 (A) **THE** percentage of nursing home citations that are appealed
 6 ~~and the~~ **THROUGH THE INFORMAL DISPUTE RESOLUTION PROCESS.**

7 (B) **THE NUMBER AND** percentage of nursing home citations that
 8 are appealed and **SUPPORTED, amended, OR DELETED** through the
 9 informal ~~deficiency~~ dispute resolution process.

10 (C) **A SUMMARY OF THE QUALITY ASSURANCE REVIEW OF THE AMENDED**
 11 **CITATIONS AND RELATED SURVEY RETRAINING EFFORTS TO IMPROVE**
 12 **CONSISTENCY AMONG SURVEYORS AND ACROSS THE SURVEY ADMINISTRATIVE**
 13 **UNIT THAT OCCURRED IN THE YEAR BEING REPORTED.**

14 (22) ~~(16)~~ Subject to subsection ~~(17)~~, **(23)**, a clarification
 15 work group comprised of the department in consultation with a
 16 nursing home resident or a member of a nursing home resident's
 17 family, nursing home provider groups, the American medical
 18 directors association, the state long-term care ombudsman, and the
 19 federal centers for medicare and medicaid services shall clarify
 20 the following terms as those terms are used in title XVIII and
 21 title XIX and applied by the department to provide more consistent
 22 regulation of nursing homes in ~~Michigan~~ **THIS STATE:**

23 (a) Immediate jeopardy.

24 (b) Harm.

25 (c) Potential harm.

26 (d) Avoidable.

27 (e) Unavoidable.

1 (23) ~~(17)~~—All of the following clarifications developed under
2 subsection ~~(16)~~—(22) apply for purposes of subsection ~~(16)~~÷(22):

3 (a) Specifically, the term "immediate jeopardy" means a
4 situation in which immediate corrective action is necessary because
5 the nursing home's noncompliance with 1 or more requirements of
6 participation has caused or is likely to cause serious injury,
7 harm, impairment, or death to a resident receiving care in a
8 nursing home.

9 (b) The likelihood of immediate jeopardy is reasonably higher
10 if there is evidence of a flagrant failure by the nursing home to
11 comply with a clinical process guideline adopted under subsection
12 ~~(18)~~—(25) than if the nursing home has substantially and
13 continuously complied with those guidelines. If federal regulations
14 and guidelines are not clear, and if the clinical process
15 guidelines have been recognized, a process failure giving rise to
16 an immediate jeopardy may involve an egregious widespread or
17 repeated process failure and the absence of reasonable efforts to
18 detect and prevent the process failure.

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

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

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

27 (iii) Whether the nursing home could reasonably have been

1 expected to anticipate that serious injury, serious harm,
2 impairment, or death might result from continuing the deficient
3 practice, but did not so anticipate.

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

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

10 (d) The existence of 1 or more of the factors described in
11 subdivision (c), and especially the existence of 3 or more of those
12 factors simultaneously, may lead to a conclusion that the situation
13 is one in which the nursing home's practice makes adverse events
14 likely to occur if immediate intervention is not undertaken, and
15 therefore constitutes immediate jeopardy. If none of the factors
16 described in subdivision (c) is present, the situation may involve
17 harm or potential harm that is not immediate jeopardy.

18 (e) Specifically, "actual harm" means a negative outcome to a
19 resident that has compromised the resident's ability to maintain or
20 reach, or both, his or her highest practicable physical, mental,
21 and psychosocial well-being as defined by an accurate and
22 comprehensive resident assessment, plan of care, and provision of
23 services. Harm does not include a deficient practice that only may
24 cause or has caused limited consequences to the resident.

25 (f) For purposes of subdivision (e), in determining whether a
26 negative outcome is of limited consequence, if the "state
27 operations manual" or "the guidance to surveyors" published by the

1 federal centers for medicare and medicaid services does not provide
2 specific guidance, the department may consider whether most people
3 in similar circumstances would feel that the damage was of such
4 short duration or impact as to be inconsequential or trivial. In
5 such a case, the consequence of a negative outcome may be
6 considered more limited if it occurs in the context of overall
7 procedural consistency with an accepted clinical process guideline
8 adopted ~~pursuant to~~ **UNDER** subsection ~~(18)~~, **(25)**, as compared to a
9 substantial inconsistency with or variance from the guideline.

10 (g) For purposes of subdivision (e), if the publications
11 described in subdivision (f) do not provide specific guidance, the
12 department may consider the degree of a nursing home's adherence to
13 a clinical process guideline adopted ~~pursuant to~~ **UNDER** subsection
14 ~~(18)~~ **(25)** in considering whether the degree of compromise and
15 future risk to the resident constitutes actual harm. The risk of
16 significant compromise to the resident may be considered greater in
17 the context of substantial deviation from the guidelines than in
18 the case of overall adherence.

19 (h) To improve consistency and to avoid disputes over
20 avoidable and unavoidable negative outcomes, nursing homes and
21 survey agencies must have a common understanding of accepted
22 process guidelines and of the circumstances under which it can
23 reasonably be said that certain actions or inactions will lead to
24 avoidable negative outcomes. If the "state operations manual" or
25 "the guidance to surveyors" published by the federal centers for
26 medicare and medicaid services is not specific, a nursing home's
27 overall documentation of adherence to a clinical process guideline

1 with a process indicator adopted pursuant to ~~UNDER~~ subsection ~~(18)~~
2 (25) is relevant information in considering whether a negative
3 outcome was avoidable or unavoidable and may be considered in the
4 application of that term.

5 (24) THE DEPARTMENT SHALL CONDUCT A QUARTERLY MEETING AND
6 INVITE APPROPRIATE STAKEHOLDERS. APPROPRIATE STAKEHOLDERS SHALL
7 INCLUDE AT LEAST 1 REPRESENTATIVE FROM EACH NURSING HOME PROVIDER
8 ORGANIZATION THAT DOES NOT OWN OR OPERATE A NURSING HOME
9 REPRESENTING 30 OR MORE NURSING HOMES STATEWIDE, THE STATE LONG-
10 TERM CARE OMBUDSMAN OR HIS OR HER DESIGNEE, AND ANY OTHER CLINICAL
11 EXPERTS. INDIVIDUALS WHO PARTICIPATE IN THESE QUARTERLY MEETINGS,
12 IN CONJUNCTION WITH THE DEPARTMENT, MAY DESIGNATE ADVISORY
13 WORKGROUPS TO DEVELOP RECOMMENDATIONS ON THE DISCUSSION TOPICS THAT
14 SHOULD INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

15 (A) OPPORTUNITIES FOR ENHANCED PROMOTION OF NURSING HOME
16 PERFORMANCE, INCLUDING, BUT NOT LIMITED TO, PROGRAMS THAT ENCOURAGE
17 AND REWARD PROVIDERS THAT STRIVE FOR EXCELLENCE.

18 (B) SEEKING QUALITY IMPROVEMENT TO THE SURVEY AND ENFORCEMENT
19 PROCESS, INCLUDING CLARIFICATIONS TO PROCESS-RELATED POLICIES AND
20 PROTOCOLS THAT INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE
21 FOLLOWING:

22 (i) IMPROVING THE SURVEYORS' QUALITY AND PREPAREDNESS.

23 (ii) ENHANCED COMMUNICATION BETWEEN REGULATORS, SURVEYORS,
24 PROVIDERS, AND CONSUMERS.

25 (iii) ENSURING FAIR ENFORCEMENT AND DISPUTE RESOLUTION BY
26 IDENTIFYING METHODS OR STRATEGIES THAT MAY RESOLVE IDENTIFIED
27 PROBLEMS OR CONCERNS.

1 (C) PROMOTING TRANSPARENCY ACROSS PROVIDER AND SURVEYOR
2 COMMUNITIES, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

3 (i) APPLYING REGULATIONS IN A CONSISTENT MANNER AND EVALUATING
4 CHANGES THAT HAVE BEEN IMPLEMENTED TO RESOLVE IDENTIFIED PROBLEMS
5 AND CONCERNS.

6 (ii) PROVIDING CONSUMERS WITH INFORMATION REGARDING CHANGES IN
7 POLICY AND INTERPRETATION.

8 (iii) IDENTIFYING POSITIVE AND NEGATIVE TRENDS AND FACTORS
9 CONTRIBUTING TO THOSE TRENDS IN THE AREAS OF RESIDENT CARE,
10 DEFICIENT PRACTICES, AND ENFORCEMENT.

11 (D) CLINICAL PROCESS GUIDELINES.

12 (25) ~~(18)~~ Subject to subsection ~~(19)~~ (27), the department ~~, in~~
13 ~~consultation with the clarification work group appointed under~~
14 ~~subsection (16),~~ shall develop and adopt clinical process
15 guidelines. ~~that shall be used in applying the terms set forth in~~
16 ~~subsection (16).~~ The department shall establish and adopt clinical
17 process guidelines and compliance protocols with outcome measures
18 for all of the following areas and for other topics where the
19 department determines that clarification will benefit providers and
20 consumers of long-term care:

21 (a) Bed rails.

22 (b) Adverse drug effects.

23 (c) Falls.

24 (d) Pressure sores.

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

27 (f) Pain management.

1 (g) Depression and depression pharmacotherapy.

2 (h) Heart failure.

3 (i) Urinary incontinence.

4 (j) Dementia.

5 (k) Osteoporosis.

6 (l) Altered mental states.

7 (m) Physical and chemical restraints.

8 (N) CULTURE-CHANGE PRINCIPLES, PERSON-CENTERED CARING, AND
9 SELF-DIRECTED CARE.

10 (26) THE DEPARTMENT SHALL BIENNIALLY REVIEW AND UPDATE ALL
11 CLINICAL PROCESS GUIDELINES AS NEEDED AND SHALL CONTINUE TO DEVELOP
12 AND IMPLEMENT CLINICAL PROCESS GUIDELINES FOR TOPICS THAT HAVE NOT
13 BEEN DEVELOPED FROM THE LIST IN SUBSECTION (25) AND OTHER TOPICS
14 IDENTIFIED AS A RESULT OF THE MEETINGS REQUIRED IN SUBSECTION (24).
15 THE DEPARTMENT SHALL CONSIDER RECOMMENDATIONS FROM AN ADVISORY
16 WORKGROUP CREATED UNDER SUBSECTION (24) ON CLINICAL PROCESS
17 GUIDELINES. THE DEPARTMENT SHALL INCLUDE TRAINING ON NEW AND
18 REVISED CLINICAL PROCESS GUIDELINES IN THE JOINT PROVIDER AND
19 SURVEYOR TRAINING SESSIONS AS THOSE CLINICAL PROCESS GUIDELINES ARE
20 DEVELOPED AND REVISED.

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

~~care facilities. The clarification work group created under~~
~~subsection (16) shall review the clinical process guidelines and~~
~~outcome measures after the clinical advisory committee and shall~~
~~make the final recommendations to the department before the~~
~~clinical process guidelines are adopted.~~ **BEGINNING NOVEMBER 1, 2012,**
REPRESENTATIVES FROM EACH NURSING HOME PROVIDER ORGANIZATION THAT
DOES NOT OWN OR OPERATE A NURSING HOME REPRESENTING 30 OR MORE
NURSING HOMES STATEWIDE AND THE STATE LONG-TERM CARE OMBUDSMAN OR
HIS OR HER DESIGNEE SHALL BE PERMANENT MEMBERS OF ANY CLINICAL
ADVISORY WORKGROUP CREATED UNDER SUBSECTION (24). THE DEPARTMENT
SHALL ISSUE SURVEY CERTIFICATION MEMORANDUMS TO PROVIDERS TO
ANNOUNCE OR CLARIFY CHANGES IN THE INTERPRETATION OF REGULATIONS.

(28) ~~(20)~~ The department shall ~~create a~~ **MAINTAIN THE** process
 by which the director of the division of nursing home monitoring or
 his or her designee or the director of the division of operations
 or his or her designee reviews and authorizes the issuance of a
 citation for immediate jeopardy or substandard quality of care
 before the statement of deficiencies is made final. The review
 shall be to assure that the applicable concepts, clinical process
 guidelines, and other tools contained in subsections ~~(17) to (19)~~
(25) TO (27) are being used consistently, accurately, and
 effectively. As used in this subsection, "immediate jeopardy" and
 "substandard quality of care" mean those terms as defined by the
 federal centers for medicare and medicaid services.

(29) ~~(21)~~ **THE UPON AVAILABILITY OF FUNDS, THE** department may
SHALL give grants, awards, or other recognition to nursing homes to
 encourage the rapid implementation **OR MAINTENANCE** of the clinical

process guidelines adopted under subsection ~~(18)~~ **(25)**.

~~— (22) The department shall assess the effectiveness of 2001 PA 218. The department shall file an annual report on the implementation of the clinical process guidelines and the impact of the guidelines on resident care with the standing committee in the legislature with jurisdiction over matters pertaining to nursing homes. The first report shall be filed on July 1, 2002.~~

(30) ~~(23)~~ The department shall instruct and train the surveyors in the use of the clarifications described in subsection ~~(17)~~ and the clinical process guidelines adopted under subsection ~~(18)~~ **(25)** in citing deficiencies.

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

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

(33) ~~(26)~~ As used in this section:

(A) "CONSECUTIVE DAYS" MEANS CALENDAR DAYS, BUT DOES NOT INCLUDE SATURDAY, SUNDAY, OR STATE- OR FEDERALLY-RECOGNIZED HOLIDAYS.

(B) "FORM CMS-2567" MEANS THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES' FORM FOR THE STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION OR A SUCCESSOR FORM SERVING THE SAME PURPOSE.

(C) ~~(a)~~ "Title XVIII" means title XVIII of the social security act, 42 USC 1395 to ~~1395hhh~~ **1395KKK**.

(D) ~~(b)~~ "Title XIX" means title XIX of the social security act, ~~chapter 531,~~ 42 USC 1396 to ~~1396v~~ **1396W-5**.

1 SEC. 20155A. (1) NURSING HOME HEALTH SURVEY TASKS SHALL BE
2 FACILITATED BY THE LICENSING AND REGULATORY AFFAIRS BUREAU OF
3 HEALTH SYSTEMS TO ENSURE CONSISTENT AND EFFICIENT COORDINATION OF
4 THE NURSING HOME LICENSING AND CERTIFICATION FUNCTIONS FOR STANDARD
5 AND ABBREVIATED SURVEYS. THE DEPARTMENT SHALL DEVELOP AN ELECTRONIC
6 SYSTEM TO SUPPORT THE COORDINATION OF THESE ACTIVITIES AND SHALL
7 SUBMIT A REPORT ON THE DEVELOPMENT OF AN ELECTRONIC SYSTEM,
8 INCLUDING A PROPOSED BUDGET FOR IMPLEMENTATION, TO THE SENATE AND
9 HOUSE APPROPRIATIONS SUBCOMMITTEES FOR THE DEPARTMENT, THE SENATE
10 AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES HAVING
11 JURISDICTION OVER ISSUES INVOLVING SENIOR CITIZENS, AND THE SENATE
12 AND HOUSE FISCAL AGENCIES BY NOVEMBER 1, 2012. IF FUNDS ARE
13 APPROPRIATED FOR THE SYSTEM, THE DEPARTMENT SHALL IMPLEMENT THE
14 SYSTEM WITHIN 120 DAYS OF THAT APPROPRIATION.

15 (2) WHEN PREPARING TO CONDUCT AN ANNUAL STANDARD SURVEY, THE
16 DEPARTMENT SHALL DETERMINE IF THERE IS AN OPEN SURVEY CYCLE AND
17 MAKE EVERY REASONABLE EFFORT TO CONFIRM THAT SUBSTANTIAL COMPLIANCE
18 HAS BEEN ACHIEVED BY IMPLEMENTATION OF THE NURSING HOME'S ACCEPTED
19 PLAN OF CORRECTION BEFORE INITIATING THE ANNUAL STANDARD SURVEY
20 WHILE MAINTAINING THE FEDERAL REQUIREMENT FOR STANDARD ANNUAL
21 SURVEY INTERVAL AND STATE SURVEY AVERAGE OF 12 MONTHS.

22 (3) THE DEPARTMENT SHALL SEEK APPROVAL FROM THE CENTERS FOR
23 MEDICARE AND MEDICAID SERVICES TO DEVELOP A PROGRAM TO PROVIDE
24 GRANTS TO NURSING HOMES THAT HAVE ACHIEVED A 5-STAR QUALITY RATING
25 FROM THE CENTERS FOR MEDICARE AND MEDICAID SERVICES. THE DEPARTMENT
26 SHALL SEEK APPROVAL FROM THE CENTERS FOR MEDICARE AND MEDICAID
27 SERVICES FOR NURSING HOMES TO BE ELIGIBLE TO RECEIVE A GRANT, UP TO

1 \$5,000.00 PER NURSING HOME FROM THE CIVIL MONETARY FUND FOR NURSING
2 HOMES THAT MEET THE CENTERS FOR MEDICARE AND MEDICAID SERVICES
3 STANDARDS FOR THE 5-STAR QUALITY RATING. GRANTS TO NURSING HOMES
4 SHALL BE USED TO IMPLEMENT EVIDENCE-BASED QUALITY IMPROVEMENT
5 PROGRAMS WITHIN THE NURSING HOME. EACH NURSING HOME THAT RECEIVES A
6 GRANT SHALL SUBMIT A REPORT TO THE DEPARTMENT THAT DESCRIBES THE
7 FINAL OUTCOME FROM IMPLEMENTING THE PROGRAM.

8 (4) ALL ABBREVIATED COMPLAINT SURVEYS SHALL BE CONDUCTED ON
9 CONSECUTIVE DAYS UNTIL COMPLETE. ALL FORM CMS-2567 REPORTS OF
10 SURVEY FINDINGS SHALL BE RELEASED TO THE NURSING HOME WITHIN 10
11 CONSECUTIVE DAYS AFTER COMPLETION OF THE SURVEY.

12 (5) DEPARTMENTAL NOTIFICATIONS OF ACCEPTANCE OR REJECTION OF A
13 NURSING HOME'S PLAN OF CORRECTION SHALL BE REVIEWED AND RELEASED TO
14 THE NURSING HOME WITHIN 10 CONSECUTIVE DAYS OF RECEIPT OF THAT PLAN
15 OF CORRECTION.

16 (6) A NURSING-HOME-SUBMITTED PLAN OF CORRECTION IN RESPONSE TO
17 ANY SURVEY MUST HAVE A COMPLETION DATE NOT TO EXCEED 40 DAYS FROM
18 THE EXIT DATE OF SURVEY. IF A NURSING HOME HAS NOT RECEIVED
19 ADDITIONAL CITATIONS BEFORE A REVISIT OCCURS, THE DEPARTMENT SHALL
20 CONDUCT THE FIRST REVISIT NOT MORE THAN 60 DAYS FROM THE EXIT DATE
21 OF THE SURVEY.

22 (7) LETTERS OF COMPLIANCE NOTIFICATION TO NURSING HOMES SHALL
23 BE RELEASED TO THE NURSING HOME WITHIN 10 CONSECUTIVE DAYS OF ALL
24 SURVEY REVISIT COMPLETION DATES.

25 (8) THE DEPARTMENT MAY ACCEPT A NURSING HOME'S EVIDENCE OF
26 SUBSTANTIAL COMPLIANCE INSTEAD OF REQUIRING A POST SURVEY ON-SITE
27 FIRST OR SECOND REVISIT AS THE DEPARTMENT CONSIDERS APPROPRIATE IN

1 ACCORDANCE WITH THE CENTERS FOR MEDICARE AND MEDICAID SERVICES
2 SURVEY PROTOCOLS. A NURSING HOME REQUESTING CONSIDERATION OF
3 EVIDENCE OF SUBSTANTIAL COMPLIANCE IN LIEU OF AN ON-SITE REVISIT
4 MUST INCLUDE AN AFFIDAVIT THAT ASSERTS THE NURSING HOME IS IN
5 SUBSTANTIAL COMPLIANCE AS SHOWN BY THE SUBMITTED EVIDENCE FOR THAT
6 SPECIFIC SURVEY EVENT. THERE MAY BE NO DEFICIENCIES WITH A SCOPE
7 AND SEVERITY ORIGINATING HIGHER THAN LEVEL D. IF THERE IS NO
8 ENFORCEMENT ACTION, THE NURSING HOME'S EVIDENCE OF SUBSTANTIAL
9 COMPLIANCE MAY BE REVIEWED ADMINISTRATIVELY AND ACCEPTED AS
10 EVIDENCE OF DEFICIENCY CORRECTION.

11 (9) INFORMAL DISPUTE RESOLUTION CONDUCTED BY THE MICHIGAN PEER
12 REVIEW ORGANIZATION SHALL BE GIVEN STRONG CONSIDERATION UPON FINAL
13 REVIEW BY THE DEPARTMENT. IN THE ANNUAL REPORT TO THE LEGISLATURE,
14 THE DEPARTMENT SHALL INCLUDE THE NUMBER OF MICHIGAN PEER REVIEW
15 ORGANIZATION-REFERRED REVIEWS AND, OF THOSE REVIEWS, THE NUMBER OF
16 CITATIONS THAT WERE OVERTURNED BY THE DEPARTMENT.

17 (10) CITATION LEVELS USED IN THIS SECTION MEAN CITATION LEVELS
18 AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES'
19 SURVEY PROTOCOL GRID DEFINING SCOPE AND SEVERITY ASSESSMENT OF
20 DEFICIENCY.