

SENATE BILL No. 938

May 14, 2014, Introduced by Senator HANSEN and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20155 and 21734 (MCL 333.20155 and 333.21734),
section 20155 as amended by 2012 PA 322 and section 21734 as added
by 2000 PA 437.

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 **THE DEPARTMENT SHALL MAKE A** visit ~~made~~ according to a complaint
6 ~~shall be unannounced.~~ Except for a county medical care facility, a

1 home for the aged, a nursing home, or a hospice residence, the
2 department shall determine whether the visits that are not made
3 according to a complaint are announced or unannounced. ~~Beginning~~
4 ~~June 20, 2001, the~~ **THE** department shall ensure that each newly
5 hired nursing home surveyor, as part of his or her basic training,
6 is assigned full-time to a licensed nursing home for at least 10
7 days within a 14-day period to observe actual operations outside of
8 the survey process before the trainee begins oversight
9 responsibilities.

10 (2) The ~~state~~ **DEPARTMENT** shall establish a process that
11 ensures both of the following:

12 (a) A newly hired nursing home surveyor ~~shall~~ **DOES** not make
13 independent compliance decisions during his or her training period.

14 (b) A nursing home surveyor ~~shall~~ **IS** not ~~be~~ assigned as a
15 member of a survey team for a nursing home in which he or she
16 received training for 1 standard survey following the training
17 received in that nursing home.

18 (3) ~~Beginning November 1, 2012, the~~ **THE** department shall
19 perform a criminal history check on all nursing home surveyors in
20 the manner provided for in section 20173a.

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

1 (5) ~~Representatives~~ **THE DEPARTMENT SHALL INVITE**
2 **REPRESENTATIVES** from all nursing home provider organizations and
3 the state long-term care ombudsman or his or her designee ~~shall be~~
4 ~~invited~~ to participate in the planning process for the joint
5 provider and surveyor training sessions. The department shall
6 include at least 1 representative from nursing home provider
7 organizations that do not own or operate a nursing home
8 representing 30 or more nursing homes statewide in internal
9 surveyor group quality assurance training provided for the purpose
10 of general clarification and interpretation of existing or new
11 regulatory requirements and expectations.

12 (6) The department shall make available online the general
13 civil service position description related to the required
14 qualifications for individual surveyors. The department shall use
15 the required qualifications to hire, educate, develop, and evaluate
16 surveyors.

17 (7) The department shall ensure that each annual survey team
18 is composed of an interdisciplinary group of professionals, 1 of
19 whom must be a registered nurse. Other members may include social
20 workers, therapists, dietitians, pharmacists, administrators,
21 physicians, sanitarians, and others who may have the expertise
22 necessary to evaluate specific aspects of nursing home operation.

23 (8) Except as otherwise provided in this section and section
24 20155a, the department shall make at least a biennial visit to each
25 licensed clinical laboratory, each nursing home, and each hospice
26 residence for the purposes of survey, evaluation, and consultation.
27 The department shall semiannually provide for joint training with

1 nursing home surveyors and providers on at least 1 of the 10 most
2 frequently issued federal citations in this state during the past
3 calendar year. The department shall develop a protocol for the
4 review of citation patterns compared to regional outcomes and
5 standards and complaints regarding the nursing home survey process.
6 The **DEPARTMENT SHALL INCLUDE THE** review ~~will be included~~ **UNDER THIS**
7 **SUBSECTION** in the report required under subsection (20). Except as
8 otherwise provided in this subsection, ~~beginning with his or her~~
9 ~~first full relicensure period after June 20, 2000,~~ each member of a
10 department nursing home survey team who is a health professional
11 licensee under article 15 shall earn not less than 50% of his or
12 her required continuing education credits, if any, in geriatric
13 care. If a member of a nursing home survey team is a pharmacist
14 licensed under article 15, he or she shall earn not less than 30%
15 of his or her required continuing education credits in geriatric
16 care.

17 (9) The department shall make a biennial visit to each
18 hospital for survey and evaluation for the purpose of licensure.
19 Subject to subsection (12), the department may waive the biennial
20 visit required by this subsection if a hospital, as part of a
21 timely application for license renewal, requests a waiver and
22 submits both of the following and if all of the requirements of
23 subsection (11) are met:

24 (a) Evidence that it is currently fully accredited by a body
25 with expertise in hospital accreditation whose hospital
26 accreditations are accepted by the United States department of
27 health and human services for purposes of section 1865 of ~~part C of~~

1 ~~title XVIII of~~ the social security act, 42 USC 1395bb.

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

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

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

20 (a) Grant an extension of the hospital's current license until
21 the next accreditation survey is completed by the body described in
22 subsection (9)(a).

23 (b) Grant a waiver under subsection (9) based on the
24 accreditation report that is 2 or more years old, on condition that
25 the hospital promptly submit the next accreditation report to the
26 department.

27 (c) Deny the waiver request and conduct the visits required

1 under subsection (9).

2 (12) This section does not prohibit the department from citing
3 a violation of this part during a survey, conducting investigations
4 or inspections according to section 20156, or conducting surveys of
5 health facilities or agencies for the purpose of complaint
6 investigations or federal certification. This section does not
7 prohibit the bureau of fire services created in section 1b of the
8 fire prevention code, 1941 PA 207, MCL 29.1b, from conducting
9 annual surveys of hospitals, nursing homes, and county medical care
10 facilities.

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

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

27 (15) The department or a local health department shall conduct

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

13 (16) The department shall maintain a record indicating whether
14 a visit and inspection is announced or unannounced. Survey findings
15 gathered at each health facility or agency during each visit and
16 inspection, whether announced or unannounced, shall be taken into
17 account in licensure decisions.

18 (17) The department shall require periodic reports and a
19 health facility or agency shall give the department access to
20 books, records, and other documents maintained by a health facility
21 or agency to the extent necessary to carry out the purpose of this
22 article and the rules promulgated under this article. The
23 department shall not divulge or disclose the contents of the
24 patient's clinical records in a manner that identifies an
25 individual except under court order. The department may copy health
26 facility or agency records as required to document findings.
27 Surveyors shall use electronic resident information, whenever

1 available, as a source of survey-related data and shall request
2 facility assistance to access the system to maximize data export.

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

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

1 appropriate licensing agency.

2 (20) The department may consolidate all information provided
3 for any report required under this section and section 20155a into
4 a single report. The department shall report to the appropriations
5 subcommittees, the senate and house of representatives standing
6 committees having jurisdiction over issues involving senior
7 citizens, and the fiscal agencies on March 1 of each year on the
8 initial and follow-up surveys conducted on all nursing homes in
9 this state. The report shall include all of the following
10 information:

11 (a) The number of surveys conducted.

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

13 (c) The average number of citations per nursing home for the
14 most recent calendar year.

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

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

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

20 (g) The number and percentage of citations disputed through
21 informal dispute resolution and independent informal dispute
22 resolution.

23 (h) 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 (J) ~~(k)~~—Information regarding the progress made on
3 implementing the administrative and electronic support structure to
4 efficiently coordinate all nursing home licensing and certification
5 functions.

6 (K) ~~(l)~~—The number of annual standard surveys of nursing homes
7 that were conducted during a period of open survey or enforcement
8 cycle.

9 (L) ~~(m)~~—The number of abbreviated complaint surveys that were
10 not conducted on consecutive surveyor workdays.

11 (M) ~~(n)~~—The percent of all form CMS-2567 reports of findings
12 that were released to the nursing home within the 10-working-day
13 requirement.

14 (N) ~~(o)~~—The percent of provider notifications of acceptance or
15 rejection of a plan of correction that were released to the nursing
16 home within the 10-working-day requirement.

17 (O) ~~(p)~~—The percent of first revisits that were completed
18 within 60 days from the date of survey completion.

19 (P) ~~(q)~~—The percent of second revisits that were completed
20 within 85 days from the date of survey completion.

21 (Q) ~~(r)~~—The percent of letters of compliance notification to
22 the nursing home that were released within 10 working days of the
23 date of the completion of the revisit.

24 (R) ~~(s)~~—A summary of the discussions from the meetings
25 required in subsection (24).

26 (S) ~~(t)~~—The number of nursing homes that participated in a
27 recognized quality improvement program as described under section

1 20155a(3).

2 (21) The department shall report March 1 of each year to the
3 standing committees on appropriations and the standing committees
4 having jurisdiction over issues involving senior citizens in the
5 senate and the house of representatives on all of the following:

6 (a) The percentage of nursing home citations that are appealed
7 through the informal dispute resolution process.

8 (b) The number and percentage of nursing home citations that
9 are appealed and supported, amended, or deleted through the
10 informal dispute resolution process.

11 (c) A summary of the quality assurance review of the amended
12 citations and related survey retraining efforts to improve
13 consistency among surveyors and across the survey administrative
14 unit that occurred in the year being reported.

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

24 (a) Immediate jeopardy.

25 (b) Harm.

26 (c) Potential harm.

27 (d) Avoidable.

1 (e) Unavoidable.

2 (23) All of the following clarifications developed under
3 subsection (22) apply for purposes of subsection (22):

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

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

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

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

26 (ii) Whether the nursing home could reasonably have been
27 expected to identify the deficient practice and to correct it, but

1 did not correct the deficient practice.

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

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

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

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

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

1 (f) For purposes of subdivision (e), in determining whether a
2 negative outcome is of limited consequence, if the "state
3 operations manual" or "the guidance to surveyors" published by the
4 federal centers for medicare and medicaid services does not provide
5 specific guidance, the department may consider whether most people
6 in similar circumstances would feel that the damage was of such
7 short duration or impact as to be inconsequential or trivial. In
8 such a case, the consequence of a negative outcome may be
9 considered more limited if it occurs in the context of overall
10 procedural consistency with ~~an accepted~~ **A NATIONALLY RECOGNIZED**
11 clinical process guideline, ~~adopted under subsection (25)~~, as
12 compared to a substantial inconsistency with or variance from the
13 guideline.

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

23 (h) To improve consistency and to avoid disputes over
24 avoidable and unavoidable negative outcomes, nursing homes and
25 survey agencies must have a common understanding of accepted
26 process guidelines and of the circumstances under which it can
27 reasonably be said that certain actions or inactions will lead to

1 avoidable negative outcomes. If the "state operations manual" or
2 "the guidance to surveyors" published by the federal centers for
3 medicare and medicaid services is not specific, a nursing home's
4 overall documentation of adherence to a **NATIONALLY RECOGNIZED**
5 clinical process guideline with a process indicator ~~adopted under~~
6 ~~subsection (25)~~ is relevant information in considering whether a
7 negative outcome was avoidable or unavoidable and may be considered
8 in the application of that term.

9 (24) The department shall conduct a quarterly meeting and
10 invite appropriate stakeholders. ~~Appropriate stakeholders~~ **THE**
11 **DEPARTMENT** shall ~~include~~ **INVITE AS APPROPRIATE STAKEHOLDERS UNDER**
12 **THIS SUBSECTION** at least 1 representative from each nursing home
13 provider organization that does not own or operate a nursing home
14 representing 30 or more nursing homes statewide, the state long-
15 term care ombudsman or his or her designee, and any other clinical
16 experts. Individuals who participate in these quarterly meetings,
17 ~~in conjunction~~ **JOINTLY** with the department, may designate advisory
18 workgroups to develop recommendations on the discussion topics that
19 should include, at a minimum, all of the following:

20 (a) Opportunities for enhanced promotion of nursing home
21 performance, including, but not limited to, programs that encourage
22 and reward providers that strive for excellence.

23 (b) Seeking quality improvement to the survey and enforcement
24 process, including clarifications to process-related policies and
25 protocols that include, but are not limited to, all of the
26 following:

27 (i) Improving the surveyors' quality and preparedness.

1 (ii) Enhanced communication between regulators, surveyors,
2 providers, and consumers.

3 (iii) Ensuring fair enforcement and dispute resolution by
4 identifying methods or strategies that may resolve identified
5 problems or concerns.

6 (c) Promoting transparency across provider and surveyor
7 communities, including, but not limited to, all of the following:

8 (i) Applying regulations in a consistent manner and evaluating
9 changes that have been implemented to resolve identified problems
10 and concerns.

11 (ii) Providing consumers with information regarding changes in
12 policy and interpretation.

13 (iii) Identifying positive and negative trends and factors
14 contributing to those trends in the areas of ~~resident~~**PATIENT** care,
15 deficient practices, and enforcement.

16 (d) Clinical process guidelines.

17 (25) ~~Subject to subsection (27), the department~~**A NURSING HOME**
18 ~~shall develop and adopt clinical process guidelines. The department~~
19 ~~shall establish and adopt~~**USE EVIDENCE-BASED, NATIONALLY RECOGNIZED**
20 ~~clinical process guidelines~~**OR BEST-PRACTICE RESOURCES TO DEVELOP**
21 **AND IMPLEMENT PATIENT CARE POLICIES** and compliance protocols with
22 ~~outcome measures for all of the following areas and for other~~
23 ~~topics where the department determines that clarification will~~
24 ~~benefit providers and consumers of long term care~~**MEASURABLE**
25 **OUTCOMES SPECIFICALLY IN THE FOLLOWING CLINICAL PRACTICE AREAS:**

26 (a) ~~Bed~~**USE OF BED** rails.

27 (b) Adverse drug effects.

1 (c) ~~Falls.~~ **PREVENTION OF FALLS.**

2 (d) ~~Pressure sores.~~ **PREVENTION OF PRESSURE ULCERS.**

3 (e) Nutrition and hydration. ~~including, but not limited to,~~
4 ~~heat related stress.~~

5 (f) Pain management.

6 (g) Depression and depression pharmacotherapy.

7 (h) Heart failure.

8 (i) Urinary incontinence.

9 (j) Dementia **CARE.**

10 (k) Osteoporosis.

11 (l) Altered mental states.

12 (m) Physical and chemical restraints.

13 (n) ~~Culture change~~ **PERSON-CENTERED CARE** principles. ~~, person-~~
14 ~~centered caring, and self directed care.~~

15 (26) **IN AN AREA OF CLINICAL PRACTICE THAT IS NOT LISTED IN**
16 **SUBSECTION (25), A NURSING HOME MAY USE EVIDENCE-BASED, NATIONALLY**
17 **RECOGNIZED CLINICAL PROCESS GUIDELINES OR BEST-PRACTICE RESOURCES**
18 **TO DEVELOP AND IMPLEMENT PATIENT CARE POLICIES AND COMPLIANCE**
19 **PROTOCOLS WITH MEASURABLE OUTCOMES TO PROMOTE PERFORMANCE**
20 **EXCELLENCE.**

21 (27) ~~(26) The department shall biennially review and update~~
22 ~~all clinical process guidelines as needed and shall continue to~~
23 ~~develop and implement clinical process guidelines for topics that~~
24 ~~have not been developed from the list in subsection (25) and other~~
25 ~~topics identified as a result of the meetings required in~~
26 ~~subsection (24).~~ The department shall consider recommendations from
27 an advisory workgroup created under subsection (24). ~~on clinical~~

1 ~~process guidelines.~~ The department shall ~~shall~~ **MAY** include training on
2 new and revised **EVIDENCE-BASED, NATIONALLY RECOGNIZED** clinical
3 process guidelines **OR BEST-PRACTICE RESOURCES, WHICH CONTAIN**
4 **MEASURABLE OUTCOMES,** in the joint provider and surveyor training
5 sessions ~~as these clinical process guidelines are developed and~~
6 ~~revised.~~ **TO ASSIST PROVIDER EFFORTS TOWARD IMPROVED REGULATORY**
7 **COMPLIANCE AND PERFORMANCE EXCELLENCE AND TO FOSTER A COMMON**
8 **UNDERSTANDING OF ACCEPTED BEST-PRACTICE STANDARDS BETWEEN PROVIDERS**
9 **AND THE SURVEY AGENCY. THE DEPARTMENT SHALL POST ON ITS WEBSITE ALL**
10 **EVIDENCE-BASED, NATIONALLY RECOGNIZED CLINICAL PROCESS GUIDELINES**
11 **AND BEST-PRACTICE RESOURCES USED IN A TRAINING SESSION UNDER THIS**
12 **SUBSECTION FOR PROVIDER, SURVEYOR, AND PUBLIC REFERENCE.**

13 (28) ~~(27) Beginning November 1, 2012, representatives~~
14 **REPRESENTATIVES** from each nursing home provider organization that
15 does not own or operate a nursing home representing 30 or more
16 nursing homes statewide and the state long-term care ombudsman or
17 his or her designee ~~shall be~~ **ARE** permanent members of ~~any~~ **A**
18 clinical advisory workgroup created under subsection (24). The
19 department shall issue survey certification memorandums to
20 providers to announce or clarify changes in the interpretation of
21 regulations.

22 (29) ~~(28) The department shall maintain the process by which~~
23 the director of the **LONG-TERM CARE** division ~~of nursing home~~
24 ~~monitoring~~ or his or her designee ~~or the director of the division~~
25 ~~of operations~~ or his or her designee reviews and authorizes the
26 issuance of a citation for immediate jeopardy or substandard
27 quality of care before the statement of deficiencies is made final.

1 The review shall be to ~~to~~ **MUST** assure that the applicable concepts,
2 clinical process guidelines, and other tools contained in
3 subsections ~~(25) to (27)~~ are being used consistently, accurately,
4 and effectively. **THE CONSISTENT AND ACCURATE APPLICATION OF FEDERAL**
5 **AND STATE SURVEY PROTOCOLS AND DEFINED REGULATORY STANDARDS.** As
6 used in this subsection, "immediate jeopardy" and "substandard
7 quality of care" mean those terms as defined by the federal centers
8 for medicare and medicaid services.

9 **(30)** ~~(29)~~ Upon availability of funds, the department shall
10 give grants, awards, or other recognition to nursing homes to
11 encourage the rapid **DEVELOPMENT AND** implementation ~~or maintenance~~
12 of ~~the~~ **PATIENT CARE POLICIES AND COMPLIANCE PROTOCOLS THAT ARE**
13 **CREATED FROM EVIDENCE-BASED, NATIONALLY RECOGNIZED** clinical process
14 guidelines ~~adopted under subsection (25)~~. **OR BEST-PRACTICE RESOURCES**
15 **WITH MEASURABLE OUTCOMES TO PROMOTE PERFORMANCE EXCELLENCE.**

16 **(31)** ~~(30)~~ The department shall instruct and train the
17 surveyors in the **SURVEYORS SHALL CONSIDER EVIDENCE-BASED,**
18 **NATIONALLY RECOGNIZED** clinical process guidelines ~~adopted under~~
19 subsection ~~(25)~~ in citing deficiencies. **OR BEST-PRACTICE RESOURCES**
20 **WITH MEASURABLE OUTCOMES THAT ARE USED BY A NURSING HOME TO DEVELOP**
21 **AND IMPLEMENT PATIENT CARE POLICIES AND COMPLIANCE PROTOCOLS WHEN**
22 **MAKING COMPLIANCE DECISIONS UNDER THIS SECTION.**

23 **(32)** ~~(31)~~ A nursing home shall post the nursing home's survey
24 report in a conspicuous place within the nursing home for public
25 review.

26 **(33)** ~~(32)~~ Nothing in this amendatory act shall be construed to
27 **2001 PA 218 DOES NOT** limit the requirements of related state and

1 federal law.

2 (34) ~~(33)~~ As used in this section:

3 (a) "Consecutive days" means calendar days, but does not
4 include Saturday, Sunday, or state- or federally-recognized
5 holidays.

6 (b) "Form CMS-2567" means the federal centers for medicare and
7 medicaid services' form for the statement of deficiencies and plan
8 of correction or a successor form serving the same purpose.

9 (c) "Title XVIII" means title XVIII of the social security
10 act, 42 USC 1395 to 1395kkk.

11 (d) "Title XIX" means title XIX of the social security act, 42
12 USC 1396 to 1396w-5.

13 Sec. 21734. (1) Notwithstanding section 20201(2) (l), a nursing
14 home shall give each ~~resident~~**PATIENT** who uses a hospital-type bed
15 or the ~~resident's~~**PATIENT'S** legal guardian, patient advocate, or
16 other legal representative the option of having bed rails. A
17 nursing home shall offer the option to new ~~residents~~**PATIENTS** upon
18 admission and to other ~~residents~~**PATIENTS** upon request. Upon
19 receipt of a request for bed rails, the nursing home shall inform
20 the ~~resident~~**PATIENT** or the ~~resident's~~**PATIENT'S** legal guardian,
21 patient advocate, or other legal representative of alternatives to
22 and the risks involved in using bed rails. A ~~resident~~**PATIENT** or
23 the ~~resident's~~**PATIENT'S** legal guardian, patient advocate, or other
24 legal representative has the right to request and consent to bed
25 rails for the ~~resident~~**PATIENT**. A nursing home shall provide bed
26 rails to a ~~resident~~**PATIENT** only upon receipt of a signed consent
27 form authorizing bed rail use and a written order from the

1 ~~resident's~~ **PATIENT'S** attending physician that contains statements
2 and determinations regarding medical symptoms and that specifies
3 the circumstances under which bed rails are to be used. For
4 purposes of this subsection, "medical symptoms" includes the
5 following:

6 (a) A concern for the physical safety of the ~~resident.~~ **PATIENT.**

7 (b) Physical or psychological need expressed by a ~~resident.~~
8 **PATIENT.** A ~~resident's~~ **PATIENT'S** fear of falling may be the basis of
9 a medical symptom.

10 (2) A nursing home that provides bed rails under subsection
11 (1) shall do all of the following:

12 (a) Document that the requirements of subsection (1) have been
13 met.

14 (b) Monitor the ~~resident's~~ **PATIENT'S** use of the bed rails.

15 (c) In consultation with the ~~resident,~~ ~~resident's~~ **PATIENT,**
16 **PATIENT'S** family, ~~resident's~~ **PATIENT'S** attending physician, and
17 individual who consented to the bed rails, periodically reevaluate
18 the ~~resident's~~ **PATIENT'S** need for the bed rails.

19 (3) The department ~~of consumer and industry services~~ shall
20 ~~develop~~ **MAINTAIN** clear and uniform ~~guidelines~~ **BEST-PRACTICE**
21 **PROTOCOLS** to be used in determining what constitutes each of the
22 following:

23 (a) Acceptable bed rails for use in a nursing home in this
24 state. The department shall consider the recommendations of the
25 hospital bed safety work group established by the United States
26 food and drug administration, if those are available, in
27 determining what constitutes an acceptable bed rail.

1 (b) Proper maintenance of bed rails.

2 (c) Properly fitted mattresses.

3 (d) Other hazards created by improperly positioned bed rails,
4 mattresses, or beds.

5 (4) The department ~~of consumer and industry services~~ shall
6 ~~develop the guidelines~~ **MAINTAIN THE BEST-PRACTICE PROTOCOLS** under
7 subsection (3) in consultation with the long-term care **STAKEHOLDERS**
8 work group **ESTABLISHED UNDER SECTION 20155(24)**. ~~An individual~~
9 ~~representing manufacturers of bed rails, 2 residents or family~~
10 ~~members, and an individual with expertise in bed rail installation~~
11 ~~and use shall be added to the long term care work group for~~
12 ~~purposes of this subsection. The department shall consider as part~~
13 ~~of its report to the legislature the recommendations of the~~
14 ~~hospital bed safety work group established by the United States~~
15 ~~food and drug administration, if those recommendations are~~
16 ~~available at the time of the submission of the report. Not later~~
17 ~~than 6 months after the effective date of the amendatory act that~~
18 ~~added this section, the department of consumer and industry~~
19 ~~services shall submit its report to the legislature. The department~~
20 ~~may delay submission of its report by up to 3 months so that its~~
21 ~~report may reflect the recommendations of the hospital bed safety~~
22 ~~work group established by the United States food and drug~~
23 ~~administration.~~

24 (5) A nursing home that complies with subsections (1) and (2)
25 and the ~~guidelines developed~~ **PROTOCOLS MAINTAINED** under this
26 section in providing bed rails to a ~~resident~~ **PATIENT** is not subject
27 to administrative penalties imposed by the department based solely

1 on providing the bed rails. ~~Nothing in this~~ **THIS** subsection
2 ~~precludes~~ **DOES NOT PRECLUDE** the department from citing specific
3 state or federal deficiencies for improperly maintained bed rails,
4 improperly fitted mattresses, or other hazards created by
5 improperly positioned bed rails, mattresses, or beds.

6 ~~—— (6) The department of consumer and industry services shall~~
7 ~~consult with representatives of the nursing home industry to~~
8 ~~expeditiously develop interim guidelines on bed rail usage that are~~
9 ~~to be used until the department develops the guidelines required~~
10 ~~under subsection (4).~~