

HOUSE BILL NO. 6117

August 17, 2020, Introduced by Reps. Whiteford and Hernandez and referred to the Committee on Appropriations.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16315 and 20161 (MCL 333.16315 and 333.20161), section 16315 as amended by 2013 PA 268 and section 20161 as amended by 2020 PA 35.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16315. (1) The health professions regulatory fund is
2 established in the state treasury. Except as otherwise provided in

1 this section, the state treasurer shall credit the fees collected
2 under sections 16319 to 16349 to the health professions regulatory
3 fund. ~~The~~ **Except as otherwise provided in this section, the** money
4 in the health professions regulatory fund shall be expended only as
5 provided in subsection (5).

6 (2) The state treasurer shall direct the investment of the
7 health professions regulatory fund. Interest and earnings from
8 health professions regulatory fund investment shall be credited to
9 the health professions regulatory fund.

10 (3) The unencumbered balance in the health professions
11 regulatory fund at the close of the fiscal year shall remain in the
12 health professions regulatory fund and shall not revert to the
13 general fund.

14 (4) The health professions regulatory fund may receive gifts
15 and devises and other money as provided by law.

16 (5) The department shall use the health professions regulatory
17 fund to carry out its powers and duties under this article, article
18 7, and article 8, including, but not limited to, reimbursing the
19 department of attorney general for the reasonable cost of services
20 provided to the department under this article, article 7, and
21 article 8.

22 (6) The nurse professional fund is established in the state
23 treasury. Of the money that is attributable to per-year license
24 fees collected under section 16327, the state treasurer shall
25 credit \$8.00 of each individual annual license fee collected to the
26 nurse professional fund. The money in the nurse professional fund
27 shall be expended only as provided in subsection (9).

28 (7) The state treasurer shall direct the investment of the
29 nurse professional fund, and shall credit interest and earnings

1 from the investment to the nurse professional fund. The nurse
2 professional fund may receive gifts and devises and other money as
3 provided by law.

4 (8) The unencumbered balance in the nurse professional fund at
5 the close of the fiscal year shall remain in the nurse professional
6 fund and shall not revert to the general fund.

7 (9) The department of ~~community~~ health **and human services**
8 shall use the nurse professional fund each fiscal year only as
9 follows:

10 (a) To promote safe patient care in all nursing practice
11 environments.

12 (b) To advance the safe practice of the nursing profession.

13 (c) To ~~assure~~ **ensure** a continuous supply of high-quality
14 direct care nurses, nursing faculty, and nursing education
15 programs.

16 (d) To operate a nursing scholarship program.

17 (10) The pain management education and controlled substances
18 electronic monitoring and antidiversion fund is established in the
19 state treasury.

20 (11) The state treasurer shall direct the investment of the
21 pain management education and controlled substances electronic
22 monitoring and antidiversion fund. Interest and earnings from
23 investment of the pain management education and controlled
24 substances electronic monitoring and antidiversion fund shall be
25 credited to the pain management education and controlled substances
26 electronic monitoring and antidiversion fund.

27 (12) The unencumbered balance in the pain management education
28 and controlled substances electronic monitoring and antidiversion
29 fund at the close of the fiscal year shall remain in the pain

1 management education and controlled substances electronic
 2 monitoring and antidiversion fund and shall not revert to the
 3 general fund. The pain management education and controlled
 4 substances electronic monitoring and antidiversion fund may receive
 5 gifts and devises and other money as provided by law. Twenty
 6 dollars of the license fee received by the department under section
 7 16319 shall be deposited with the state treasurer to the credit of
 8 the pain management education and controlled substances electronic
 9 monitoring and antidiversion fund. The department shall use the
 10 pain management education and controlled substances electronic
 11 monitoring and antidiversion fund only in connection with programs
 12 relating to pain management education for health professionals,
 13 preventing the diversion of controlled substances, and development
 14 and maintenance of the electronic monitoring system for controlled
 15 substances data required by section 7333a.

16 **(13) For the fiscal year ending September 30, 2020 only,**
 17 **\$10,000,000.00 of the money in the health professions regulatory**
 18 **fund is transferred to and must be deposited into the general fund.**

19 Sec. 20161. (1) The department shall assess fees and other
 20 assessments for health facility and agency licenses and
 21 certificates of need on an annual basis as provided in this
 22 article. Until October 1, 2023, except as otherwise provided in
 23 this article, fees and assessments must be paid as provided in the
 24 following schedule:

25 (a) Freestanding surgical
 26 outpatient facilities.....\$500.00 per facility license.

27 (b) Hospitals \$500.00 per facility license and
 28 \$10.00 per licensed bed.

1 (c) Nursing homes, county
 2 medical care facilities, and
 3 hospital long-term care units\$500.00 per facility license and
 4 \$3.00 per licensed bed over 100
 5 licensed beds.

6 (d) Homes for the aged \$6.27 per licensed bed.

7 (e) Hospice agencies \$500.00 per agency license.

8 (f) Hospice residences \$500.00 per facility license and
 9 \$5.00 per licensed bed.

10 (g) Subject to subsection
 11 (11), quality assurance assessment
 12 for nursing homes and hospital
 13 long-term care unitsan amount resulting in not more
 14 than 6% of total industry
 15 revenues.

16 (h) Subject to subsection
 17 (12), quality assurance assessment
 18 for hospitalsat a fixed or variable rate that
 19 generates funds not more than
 20 the maximum allowable under the
 21 federal matching requirements,
 22 after consideration for the
 23 amounts in subsection (12)(a)
 24 and (i).

25 (i) Initial licensure
 26 application fee for subdivisions
 27 (a), (b), (c), (e), and (f)\$2,000.00 per initial license.

28 (2) If a hospital requests the department to conduct a
 29 certification survey for purposes of title XVIII or title XIX, the

1 hospital shall pay a license fee surcharge of \$23.00 per bed. As
2 used in this subsection, "title XVIII" and "title XIX" mean those
3 terms as defined in section 20155.

4 (3) All of the following apply to the assessment under this
5 section for certificates of need:

6 (a) The base fee for a certificate of need is \$3,000.00 for
7 each application. For a project requiring a projected capital
8 expenditure of more than \$500,000.00 but less than \$4,000,000.00,
9 an additional fee of \$5,000.00 is added to the base fee. For a
10 project requiring a projected capital expenditure of \$4,000,000.00
11 or more but less than \$10,000,000.00, an additional fee of
12 \$8,000.00 is added to the base fee. For a project requiring a
13 projected capital expenditure of \$10,000,000.00 or more, an
14 additional fee of \$12,000.00 is added to the base fee.

15 (b) In addition to the fees under subdivision (a), the
16 applicant shall pay \$3,000.00 for any designated complex project
17 including a project scheduled for comparative review or for a
18 consolidated licensed health facility application for acquisition
19 or replacement.

20 (c) If required by the department, the applicant shall pay
21 \$1,000.00 for a certificate of need application that receives
22 expedited processing at the request of the applicant.

23 (d) The department shall charge a fee of \$500.00 to review any
24 letter of intent requesting or resulting in a waiver from
25 certificate of need review and any amendment request to an approved
26 certificate of need.

27 (e) A health facility or agency that offers certificate of
28 need covered clinical services shall pay \$100.00 for each
29 certificate of need approved covered clinical service as part of

1 the certificate of need annual survey at the time of submission of
2 the survey data.

3 (f) ~~The~~ **Except as otherwise provided in this section, the**
4 department shall use the fees collected under this subsection only
5 to fund the certificate of need program. Funds remaining in the
6 certificate of need program at the end of the fiscal year do not
7 lapse to the general fund but remain available to fund the
8 certificate of need program in subsequent years.

9 (4) A license issued under this part is effective for no
10 longer than 1 year after the date of issuance.

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

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

22 (7) The cost of licensure activities must be supported by
23 license fees.

24 (8) The application fee for a waiver under section 21564 is
25 \$200.00 plus \$40.00 per hour for the professional services and
26 travel expenses directly related to processing the application. The
27 travel expenses must be calculated in accordance with the state
28 standardized travel regulations of the department of technology,
29 management, and budget in effect at the time of the travel.

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

3 (10) Except as otherwise provided in this section, the fees
4 and assessments collected under this section must be deposited in
5 the state treasury, to the credit of the general fund. The
6 department may use the unreserved fund balance in fees and
7 assessments for the criminal history check program required under
8 this article.

9 (11) The quality assurance assessment collected under
10 subsection (1)(g) and all federal matching funds attributed to that
11 assessment must be used only for the following purposes and under
12 the following specific circumstances:

13 (a) The quality assurance assessment and all federal matching
14 funds attributed to that assessment must be used to finance
15 Medicaid nursing home reimbursement payments. Only licensed nursing
16 homes and hospital long-term care units that are assessed the
17 quality assurance assessment and participate in the Medicaid
18 program are eligible for increased per diem Medicaid reimbursement
19 rates under this subdivision. A nursing home or long-term care unit
20 that is assessed the quality assurance assessment and that does not
21 pay the assessment required under subsection (1)(g) in accordance
22 with subdivision (c)(i) or in accordance with a written payment
23 agreement with this state shall not receive the increased per diem
24 Medicaid reimbursement rates under this subdivision until all of
25 its outstanding quality assurance assessments and any penalties
26 assessed under subdivision (f) have been paid in full. This
27 subdivision does not authorize or require the department to
28 overspend tax revenue in violation of the management and budget
29 act, 1984 PA 431, MCL 18.1101 to 18.1594.

1 (b) Except as otherwise provided under subdivision (c),
2 beginning October 1, 2005, the quality assurance assessment is
3 based on the total number of patient days of care each nursing home
4 and hospital long-term care unit provided to non-Medicare patients
5 within the immediately preceding year, must be assessed at a
6 uniform rate on October 1, 2005 and subsequently on October 1 of
7 each following year, and is payable on a quarterly basis, with the
8 first payment due 90 days after the date the assessment is
9 assessed.

10 (c) Within 30 days after September 30, 2005, the department
11 shall submit an application to the federal Centers for Medicare and
12 Medicaid Services to request a waiver according to 42 CFR 433.68(e)
13 to implement this subdivision as follows:

14 (i) If the waiver is approved, the quality assurance assessment
15 rate for a nursing home or hospital long-term care unit with less
16 than 40 licensed beds or with the maximum number, or more than the
17 maximum number, of licensed beds necessary to secure federal
18 approval of the application is \$2.00 per non-Medicare patient day
19 of care provided within the immediately preceding year or a rate as
20 otherwise altered on the application for the waiver to obtain
21 federal approval. If the waiver is approved, for all other nursing
22 homes and long-term care units the quality assurance assessment
23 rate is to be calculated by dividing the total statewide maximum
24 allowable assessment permitted under subsection (1)(g) less the
25 total amount to be paid by the nursing homes and long-term care
26 units with less than 40 licensed beds or with the maximum number,
27 or more than the maximum number, of licensed beds necessary to
28 secure federal approval of the application by the total number of
29 non-Medicare patient days of care provided within the immediately

1 preceding year by those nursing homes and long-term care units with
2 more than 39 licensed beds, but less than the maximum number of
3 licensed beds necessary to secure federal approval. The quality
4 assurance assessment, as provided under this subparagraph, must be
5 assessed in the first quarter after federal approval of the waiver
6 and must be subsequently assessed on October 1 of each following
7 year, and is payable on a quarterly basis, with the first payment
8 due 90 days after the date the assessment is assessed.

9 (ii) If the waiver is approved, continuing care retirement
10 centers are exempt from the quality assurance assessment if the
11 continuing care retirement center requires each center resident to
12 provide an initial life interest payment of \$150,000.00, on
13 average, per resident to ensure payment for that resident's
14 residency and services and the continuing care retirement center
15 utilizes all of the initial life interest payment before the
16 resident becomes eligible for medical assistance under the state's
17 Medicaid plan. As used in this subparagraph, "continuing care
18 retirement center" means a nursing care facility that provides
19 independent living services, assisted living services, and nursing
20 care and medical treatment services, in a campus-like setting that
21 has shared facilities or common areas, or both.

22 (d) Beginning May 10, 2002, the department shall increase the
23 per diem nursing home Medicaid reimbursement rates for the balance
24 of that year. For each subsequent year in which the quality
25 assurance assessment is assessed and collected, the department
26 shall maintain the Medicaid nursing home reimbursement payment
27 increase financed by the quality assurance assessment.

28 (e) The department shall implement this section in a manner
29 that complies with federal requirements necessary to ensure that

1 the quality assurance assessment qualifies for federal matching
2 funds.

3 (f) If a nursing home or a hospital long-term care unit fails
4 to pay the assessment required by subsection (1)(g), the department
5 may assess the nursing home or hospital long-term care unit a
6 penalty of 5% of the assessment for each month that the assessment
7 and penalty are not paid up to a maximum of 50% of the assessment.
8 The department may also refer for collection to the department of
9 treasury past due amounts consistent with section 13 of 1941 PA
10 122, MCL 205.13.

11 (g) The Medicaid nursing home quality assurance assessment
12 fund is established in the state treasury. The department shall
13 deposit the revenue raised through the quality assurance assessment
14 with the state treasurer for deposit in the Medicaid nursing home
15 quality assurance assessment fund.

16 (h) The department shall not implement this subsection in a
17 manner that conflicts with 42 USC 1396b(w).

18 (i) The quality assurance assessment collected under
19 subsection (1)(g) must be prorated on a quarterly basis for any
20 licensed beds added to or subtracted from a nursing home or
21 hospital long-term care unit since the immediately preceding July
22 1. Any adjustments in payments are due on the next quarterly
23 installment due date.

24 (j) In each fiscal year governed by this subsection, Medicaid
25 reimbursement rates must not be reduced below the Medicaid
26 reimbursement rates in effect on April 1, 2002 as a direct result
27 of the quality assurance assessment collected under subsection
28 (1)(g).

29 (k) The state retention amount of the quality assurance

1 assessment collected under subsection (1)(g) must be equal to 13.2%
2 of the federal funds generated by the nursing homes and hospital
3 long-term care units quality assurance assessment, including the
4 state retention amount. The state retention amount must be
5 appropriated each fiscal year to the department to support Medicaid
6 expenditures for long-term care services. These funds must offset
7 an identical amount of general fund/general purpose revenue
8 originally appropriated for that purpose.

9 (l) Beginning October 1, 2023, the department shall not assess
10 or collect the quality assurance assessment or apply for federal
11 matching funds. The quality assurance assessment collected under
12 subsection (1)(g) must not be assessed or collected after September
13 30, 2011 if the quality assurance assessment is not eligible for
14 federal matching funds. Any portion of the quality assurance
15 assessment collected from a nursing home or hospital long-term care
16 unit that is not eligible for federal matching funds must be
17 returned to the nursing home or hospital long-term care unit.

18 (12) The quality assurance dedication is an earmarked
19 assessment collected under subsection (1)(h). That assessment and
20 all federal matching funds attributed to that assessment must be
21 used only for the following purpose and under the following
22 specific circumstances:

23 (a) To maintain the increased Medicaid reimbursement rate
24 increases as provided for in subdivision (c).

25 (b) The quality assurance assessment must be assessed on all
26 net patient revenue, before deduction of expenses, less Medicare
27 net revenue, as reported in the most recently available Medicare
28 cost report and is payable on a quarterly basis, with the first
29 payment due 90 days after the date the assessment is assessed. As

1 used in this subdivision, "Medicare net revenue" includes Medicare
2 payments and amounts collected for coinsurance and deductibles.

3 (c) Beginning October 1, 2002, the department shall increase
4 the hospital Medicaid reimbursement rates for the balance of that
5 year. For each subsequent year in which the quality assurance
6 assessment is assessed and collected, the department shall maintain
7 the hospital Medicaid reimbursement rate increase financed by the
8 quality assurance assessments.

9 (d) The department shall implement this section in a manner
10 that complies with federal requirements necessary to ensure that
11 the quality assurance assessment qualifies for federal matching
12 funds.

13 (e) If a hospital fails to pay the assessment required by
14 subsection (1)(h), the department may assess the hospital a penalty
15 of 5% of the assessment for each month that the assessment and
16 penalty are not paid up to a maximum of 50% of the assessment. The
17 department may also refer for collection to the department of
18 treasury past due amounts consistent with section 13 of 1941 PA
19 122, MCL 205.13.

20 (f) The hospital quality assurance assessment fund is
21 established in the state treasury. The department shall deposit the
22 revenue raised through the quality assurance assessment with the
23 state treasurer for deposit in the hospital quality assurance
24 assessment fund.

25 (g) In each fiscal year governed by this subsection, the
26 quality assurance assessment must only be collected and expended if
27 Medicaid hospital inpatient DRG and outpatient reimbursement rates
28 and disproportionate share hospital and graduate medical education
29 payments are not below the level of rates and payments in effect on

1 April 1, 2002 as a direct result of the quality assurance
2 assessment collected under subsection (1)(h), except as provided in
3 subdivision (h).

4 (h) The quality assurance assessment collected under
5 subsection (1)(h) must not be assessed or collected after September
6 30, 2011 if the quality assurance assessment is not eligible for
7 federal matching funds. Any portion of the quality assurance
8 assessment collected from a hospital that is not eligible for
9 federal matching funds must be returned to the hospital.

10 (i) The state retention amount of the quality assurance
11 assessment collected under subsection (1)(h) must be equal to 13.2%
12 of the federal funds generated by the hospital quality assurance
13 assessment, including the state retention amount. The 13.2% state
14 retention amount described in this subdivision does not apply to
15 the Healthy Michigan plan. In the fiscal year ending September 30,
16 2016, there is a 1-time additional retention amount of up to
17 \$92,856,100.00. In the fiscal year ending September 30, 2017, there
18 is a retention amount of \$105,000,000.00 for the Healthy Michigan
19 plan. Beginning in the fiscal year ending September 30, 2018, and
20 for each fiscal year thereafter, there is a retention amount of
21 \$118,420,600.00 for each fiscal year for the Healthy Michigan plan.
22 The state retention percentage must be applied proportionately to
23 each hospital quality assurance assessment program to determine the
24 retention amount for each program. The state retention amount must
25 be appropriated each fiscal year to the department to support
26 Medicaid expenditures for hospital services and therapy. These
27 funds must offset an identical amount of general fund/general
28 purpose revenue originally appropriated for that purpose. By May
29 31, 2019, the department, the state budget office, and the Michigan

1 Health and Hospital Association shall identify an appropriate
2 retention amount for the fiscal year ending September 30, 2020 and
3 each fiscal year thereafter.

4 (13) The department may establish a quality assurance
5 assessment to increase ambulance reimbursement as follows:

6 (a) The quality assurance assessment authorized under this
7 subsection must be used to provide reimbursement to Medicaid
8 ambulance providers. The department may promulgate rules to provide
9 the structure of the quality assurance assessment authorized under
10 this subsection and the level of the assessment.

11 (b) The department shall implement this subsection in a manner
12 that complies with federal requirements necessary to ensure that
13 the quality assurance assessment qualifies for federal matching
14 funds.

15 (c) The total annual collections by the department under this
16 subsection must not exceed \$20,000,000.00.

17 (d) The quality assurance assessment authorized under this
18 subsection must not be collected after October 1, 2023. The quality
19 assurance assessment authorized under this subsection must no
20 longer be collected or assessed if the quality assurance assessment
21 authorized under this subsection is not eligible for federal
22 matching funds.

23 (e) Beginning November 1, 2020, and by November 1 of each year
24 thereafter, the department shall send a notification to each
25 ambulance operation that will be assessed the quality assurance
26 assessment authorized under this subsection during the year in
27 which the notification is sent.

28 (14) The quality assurance assessment provided for under this
29 section is a tax that is levied on a health facility or agency.

1 (15) For the fiscal year ending September 30, 2020 only,
2 \$3,000,000.00 of the money in the certificate of need program is
3 transferred to and must be deposited into the general fund.

4 (16) ~~(15)~~—As used in this section:

5 (a) "Healthy Michigan plan" means the medical assistance
6 program described in section 105d of the social welfare act, 1939
7 PA 280, MCL 400.105d, that has a federal matching fund rate of not
8 less than 90%.

9 (b) "Medicaid" means that term as defined in section 22207.