

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senator VanderWall

ENROLLED SENATE BILL No. 669

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 20145, 22201, 22207, 22208, 22209, and 22221 (MCL 333.20145, 333.22201, 333.22207, 333.22208, 333.22209, and 333.22221), section 20145 as amended by 2015 PA 104, section 22201 as added by 1988 PA 332, sections 22207, 22209, and 22221 as amended by 2002 PA 619, section 22208 as amended by 2011 PA 51, and by adding section 22216.

The People of the State of Michigan enact:

Sec. 20145. (1) Before contracting for and initiating a construction project involving new construction, additions, modernizations, or conversions of a health facility or agency with a capital expenditure of \$1,000,000.00 or more, a person shall obtain a construction permit from the department. The department shall not issue the permit under this subsection unless the applicant holds a valid certificate of need if a certificate of need is required for the project under part 222.

(2) To protect the public health, safety, and welfare, the department may promulgate rules to require construction permits for projects other than those described in subsection (1) and the submission of plans for other construction projects to expand or change service areas and services provided.

(3) If a construction project requires a construction permit under subsection (1) or (2), but does not require a certificate of need under part 222, the department shall require the applicant to submit information considered necessary by the department to ensure that the capital expenditure for the project is not a covered capital expenditure as that term is defined in section 22203.

(4) If a construction project requires a construction permit under subsection (1), but does not require a certificate of need under part 222, the department shall require the applicant to submit information on a 1-page sheet, along with the application for a construction permit, consisting of all of the following:

- (a) A short description of the reason for the project and the funding source.
- (b) A contact person for further information, including address and telephone number.
- (c) The estimated resulting increase or decrease in annual operating costs.
- (d) The current governing board membership of the applicant.
- (e) The entity, if any, that owns the applicant.

(5) The department shall make the information filed under subsection (4) publicly available by the same methods used to make information about certificate of need applications publicly available.

(6) The review and approval of architectural plans and narrative must require that the proposed construction project is designed and constructed in accord with applicable statutory and other regulatory requirements. In performing a construction permit review for a health facility or agency under this section, the department shall, at a minimum, apply the standards contained in the document entitled "Minimum Design Standards for Health Care Facilities in Michigan" published by the department and dated July 2007. The standards are incorporated by reference for purposes of this subsection. The department may promulgate rules that are more stringent than the standards if necessary to protect the public health, safety, and welfare.

(7) The department shall promulgate rules to further prescribe the scope of construction projects and other alterations subject to review under this section.

(8) The department may waive the applicability of this section to a construction project or alteration if the waiver will not affect the public health, safety, and welfare.

(9) On request by the person initiating a construction project, the department may review and issue a construction permit to a construction project that is not subject to subsection (1) or (2) if the department determines that the review will promote the public health, safety, and welfare.

(10) The department shall assess a fee for each review conducted under this section. The fee is .5% of the first \$1,000,000.00 of capital expenditure and .85% of any amount over \$1,000,000.00 of capital expenditure, up to a maximum of \$60,000.00.

(11) As used in this section, "capital expenditure" means that term as defined in section 22203, except that capital expenditure does not include the cost of equipment that is not fixed equipment.

Sec. 22201. (1) For purposes of this part, the words and phrases defined in sections 22203 to 22208 have the meanings ascribed to them in those sections.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

(3) The definitions in part 201 do not apply to this part.

Sec. 22207. (1) "Medicaid" means the program for medical assistance administered by the department under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(2) "Modernization" means an upgrading, alteration, or change in function of a part or all of the physical plant of a health facility. Modernization includes, but is not limited to, the alteration, repair, remodeling, and renovation of an existing building and initial fixed equipment and the replacement of obsolete fixed equipment in an existing building. Modernization of the physical plant does not include normal maintenance and operational expenses.

(3) "New construction" means construction of a health facility where a health facility does not exist or construction replacing or expanding an existing health facility or a part of an existing health facility.

(4) "Person" means that term as defined in section 1106 and includes a governmental entity.

(5) "Planning area" means the area defined in a certificate of need review standard for determining the need for, and the resource allocation of, a specific health facility, service, or equipment. Planning area includes, but is not limited to, this state, a health facility service area, or a health service area or subarea within this state.

(6) "Proposed project" means a proposal to acquire an existing health facility or begin operation of a new health facility, make a change in bed capacity, initiate, replace, or expand a covered clinical service, or make a covered capital expenditure.

(7) "Rural county" means a county not located in a metropolitan statistical area or micropolitan statistical areas as those terms are defined under the "standards for defining metropolitan and micropolitan statistical areas" by the Statistical and Science Policy Office of the Office of Information and Regulatory Affairs of the United States Office of Management and Budget, 65 FR 82227 p 82238 (December 27, 2000).

(8) “Stipulation” means a requirement that is germane to the proposed project and has been agreed to by an applicant as a condition of certificate of need approval.

Sec. 22208. (1) “Title XVIII” means title XVIII of the social security act, 42 USC 1395 to 1395III.

(2) “Title XIX” means title XIX of the social security act, 42 USC 1396 to 1396w-5.

Sec. 22209. (1) Except as otherwise provided in this part, a person shall not do any of the following without first obtaining a certificate of need:

(a) Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility. This subdivision does not apply if the health facility being acquired or operated is located in a county with a population of 40,000 or less according to the most recent federal decennial census and meets any of the following:

(i) The health facility is a psychiatric hospital licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(ii) The health facility operates a specialized psychiatric program for children and adolescent patients within the health facility.

(b) Make a change in the bed capacity of a health facility.

(c) Initiate, replace, or expand a covered clinical service.

(d) Make a covered capital expenditure.

(2) A certificate of need is not required for a reduction in licensed bed capacity or services at a licensed site.

(3) Subject to subsection (9) and if the relocation does not result in an increase of licensed beds within that health service area, a certificate of need is not required for any of the following:

(a) The physical relocation of licensed beds from a hospital site licensed under part 215 to another hospital site licensed under the same license as the hospital seeking to transfer the beds if both hospitals are located within a 2-mile radius of each other.

(b) Subject to subsections (7) and (8), the physical relocation of licensed beds from a hospital licensed under part 215 to a freestanding surgical outpatient facility licensed under part 208 if that freestanding surgical outpatient facility satisfies each of the following criteria on December 2, 2002:

(i) Is owned by, is under common control of, or has as a common parent the hospital seeking to relocate its licensed beds.

(ii) Was licensed before January 1, 2002.

(iii) Provides 24-hour emergency care services at that site.

(iv) Provides at least 4 different covered clinical services at that site.

(c) Subject to subsection (8), the physical relocation of licensed beds from a hospital licensed under part 215 to another hospital licensed under part 215 within the same health service area if the hospital receiving the licensed beds is owned by, is under common control of, or has as a common parent the hospital seeking to relocate its licensed beds.

(4) Subject to subsection (5), a hospital licensed under part 215 is not required to obtain a certificate of need to provide 1 or more of the covered clinical services listed in section 22203(10) in a federal veterans’ health care facility or to use long-term care unit beds or acute care beds that are owned and located in a federal veterans’ health care facility if the hospital satisfies each of the following criteria:

(a) The hospital has an active affiliation or sharing agreement with the federal veterans’ health care facility.

(b) The hospital has physicians who have faculty appointments at the federal veterans’ health care facility or has an affiliation with a medical school that is affiliated with a federal veterans’ health care facility and has physicians who have faculty appointments at the federal veterans’ health care facility.

(c) The hospital has an active grant or agreement with the state or federal government to provide 1 or more of the following functions relating to bioterrorism:

(i) Education.

(ii) Patient care.

(iii) Research.

(iv) Training.

(5) A hospital that provides 1 or more covered clinical services in a federal veterans’ health care facility or uses long-term care unit beds or acute care beds located in a federal veterans’ health care facility under subsection (4) may not utilize procedures performed at the federal veterans’ health care facility to demonstrate need or to satisfy

a certificate of need review standard unless the covered clinical service provided at the federal veterans' health care facility was provided under a certificate of need.

(6) If a hospital licensed under part 215 had fewer than 70 licensed beds on December 1, 2002, that hospital is not required to satisfy the minimum volume requirements under the certificate of need review standards for its existing operating rooms as long as those operating rooms continue to exist at that licensed hospital site.

(7) Before relocating beds under subsection (3)(b), the hospital seeking to relocate its beds shall provide the information requested by the department of licensing and regulatory affairs that will allow the department of licensing and regulatory affairs to verify the number of licensed beds that were staffed and available for patient care at that hospital as of December 2, 2002.

(8) The licensed beds relocated under subsection (3)(b) or (c) must not be included as new beds in a hospital or as a new hospital under the certificate of need review standards for hospital beds. One of every 2 beds transferred under subsection (3)(b) up to a maximum of 100 must be beds that were staffed and available for patient care as of December 2, 2002. A hospital relocating beds under subsection (3)(b) shall not reactivate licensed beds within that hospital that were unstaffed or unavailable for patient care on December 2, 2002 for a period of 5 years after the date of the relocation of the licensed beds under subsection (3)(b).

(9) Licensed beds must not be physically relocated under subsection (3) if 7 or more members of the commission, after the appointment and confirmation of the 6 additional commission members under section 22211 but before June 15, 2003, determine that relocation of licensed beds under subsection (3) may cause great harm and detriment to the access and delivery of health care to the public and the relocation of beds should not occur without a certificate of need.

(10) An applicant seeking a certificate of need for the acquisition of an existing health facility may file a single, consolidated application for the certificate of need if the project results in the acquisition of an existing health facility but does not result in an increase or relocation of licensed beds or the initiation, expansion, or replacement of a covered clinical service. Except as otherwise provided in this subsection, a person acquiring an existing health facility is subject to the applicable certificate of need review standards in effect on the date of the transfer for the covered clinical services provided by the acquired health facility. The department may except 1 or more of the covered clinical services listed in section 22203(10)(b), except the covered clinical service listed in section 22203(10)(b)(iv), from the minimum volume requirements in the applicable certificate of need review standards in effect on the date of the transfer, if the equipment used in the covered clinical service is unable to meet the minimum volume requirements due to the technological incapacity of the equipment. A covered clinical service excepted by the department under this subsection is subject to all the other provisions in the applicable certificate of need review standards in effect on the date of the transfer, except minimum volume requirements.

(11) An applicant seeking a certificate of need for the relocation or replacement of an existing health facility may file a single, consolidated application for the certificate of need if the project does not result in an increase of licensed beds or the initiation, expansion, or replacement of a covered clinical service. A person relocating or replacing an existing health facility is subject to the applicable certificate of need review standards in effect on the date of the relocation or replacement of the health facility.

(12) As used in this section, "sharing agreement" means a written agreement between a federal veterans' health care facility and a hospital licensed under part 215 for the use of the federal veterans' health care facility's beds or equipment, or both, to provide covered clinical services.

Sec. 22216. A health facility seeking to increase licensed psychiatric beds or a person that operates a specialized psychiatric program for children and adolescent patients shall give notice to the department before it initiates, expands, relocates, or acquires any psychiatric beds, if the health facility or psychiatric program is located within a county with a population of 40,000 or less according to the most recent federal decennial census. The notice required under this section must be provided in a form and manner required by the department.

Sec. 22221. The department shall do all of the following:

(a) Subject to approval by the commission, promulgate rules to implement its powers and duties under this part.

(b) Report to the commission at least annually on the performance of the department's duties under this part.

(c) Develop proposed certificate of need review standards for submission to the commission.

(d) Administer and apply certificate of need review standards. In the review of certificate of need applications, the department shall consider relevant written communications from any person.

(e) Designate adequate staff or other resources to directly assist hospitals and nursing homes with less than 100 beds in the preparation of applications for certificates of need.

(f) By October 1 of each year, report to the commission regarding the costs to the department of implementing this part and the certificate of need application fees collected under section 20161 in the immediately preceding state fiscal year.

(g) Annually adjust the threshold set forth in section 22203(9) by an amount determined by the state treasurer to reflect the annual percentage change in the Consumer Price Index, using data from the immediately preceding period of July 1 to June 30. As used in this subdivision, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

(h) Annually review the application process, including all forms, reports, and other materials that are required to be submitted with the application. If needed to promote administrative efficiency, revise the forms, reports, and any other materials required with the application.

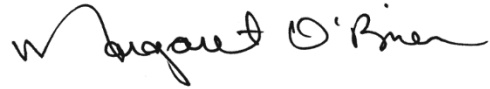
(i) By September 30, 2003, create a consolidated application for a certificate of need for the relocation or replacement of an existing health facility.

(j) In consultation with the commission, define single project as it applies to capital expenditures.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

(a) Senate Bill No. 671.

(b) Senate Bill No. 672.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor