



# HOUSE BILL No. 4933

June 6, 1995, Introduced by Reps. Lowe, DeMars, Hammerstrom, Gnodtke, Gernaat, Jamian, DeLange, Hanley, Jersevic, Hill, Gustafson, Rhead, Llewellyn, Pitoniak, McBryde, Bush, Galloway and Green and referred to the Committee on Health Policy.

A bill to amend sections 20109, 21711, 22203, 22205, and 22225 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 20109 as amended by Act No. 39 of the Public Acts of 1991 and sections 22203, 22205, and 22225 as amended by Act No. 88 of the Public Acts of 1993, being sections 333.20109, 333.21711, 333.22203, 333.22205, and 333.22225 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 20109, 21711, 22203, 22205, and 22225  
2 of Act No. 368 of the Public Acts of 1978, section 20109 as  
3 amended by Act No. 39 of the Public Acts of 1991 and sections  
4 22203, 22205, and 22225 as amended by Act No. 88 of the Public  
5 Acts of 1993, being sections 333.20109, 333.21711, 333.22203,

1 333.22205, and 333.22225 of the Michigan Compiled Laws, are  
2 amended to read as follows:

3       Sec. 20109. (1) "Nursing home" means a nursing care facili-  
4 ty, including a county medical care facility, ~~but excluding a~~  
5 ~~hospital or a facility created by Act No. 152 of the Public Acts~~  
6 ~~of 1885, as amended, being sections 36.1 to 36.12 of the Michigan~~  
7 ~~Compiled Laws,~~ that provides organized nursing care and medical  
8 treatment to 7 or more unrelated individuals suffering or recov-  
9 ering from illness, injury, or infirmity. Nursing home does not  
10 include a unit in a correctional facility that is operated by the  
11 department of mental health.

12       (2) "Person" means a person as defined in section 1106 or a  
13 governmental entity.

14       (3) "Public member" means a member of the general public who  
15 is not a provider; who does not have an ownership interest in or  
16 contractual relationship with a nursing home other than a patient  
17 contract; who does not have a contractual relationship with a  
18 person who does substantial business with a nursing home; and who  
19 is not the spouse, parent, sibling, or child of an individual who  
20 has an ownership interest in or contractual relationship with a  
21 nursing home, other than a patient contract.

22       (4) "Skilled nursing facility" means a hospital long-term  
23 care unit, nursing home, county medical care facility, or other  
24 nursing care facility, or a distinct part thereof, certified by  
25 the department to provide skilled nursing care.

26       Sec. 21711. (1) A nursing home shall be licensed under  
27 this article.

1 (2) "Nursing home", "nursing center", "convalescent center",  
2 "extended care facility", or a similar term or abbreviation shall  
3 not be used to describe or refer to a health facility or agency  
4 unless the health facility or agency is licensed as a nursing  
5 home by the department under this article.

6 (3) A person shall not ~~purport to~~ provide formal or infor-  
7 mal nursing care services of the kind normally provided in a  
8 nursing home without obtaining a license as provided in this  
9 article. ~~This subsection does not apply to a hospital or a~~  
10 ~~facility created by Act No. 152 of the Public Acts of 1885, as~~  
11 ~~amended, being sections 36.1 to 36.12 of the Michigan Compiled~~  
12 ~~Laws.~~

13 Sec. 22203. (1) "Addition" means adding patient rooms,  
14 beds, and ancillary service areas, including, but not limited to,  
15 procedure rooms or fixed equipment, surgical operating rooms,  
16 therapy rooms or fixed equipment, or other accommodations to a  
17 health facility.

18 (2) "Capital expenditure" means an expenditure for a single  
19 project, including cost of construction, engineering, and equip-  
20 ment that under generally accepted accounting principles is not  
21 properly chargeable as an expense of operation. Capital expendi-  
22 ture includes a lease or comparable arrangement by or on behalf  
23 of a health facility by which a person obtains a health facility  
24 or licensed part of a health facility or equipment for a health  
25 facility, the expenditure for which would have been considered a  
26 capital expenditure under this part if the person had acquired it  
27 by purchase. Capital expenditure includes the cost of studies,

1 surveys, designs, plans, working drawings, specifications, and  
2 other activities essential to the acquisition, improvement,  
3 expansion, addition, conversion, modernization, new construction,  
4 or replacement of physical plant and equipment.

5 (3) "Certificate of need" means a certificate issued pursu-  
6 ant to this part authorizing a new health facility, a change in  
7 bed capacity, the initiation, replacement, or expansion of a cov-  
8 ered clinical service, or a covered capital expenditure that is  
9 issued in accordance with this part.

10 (4) "Certificate of need review standard" or "review  
11 standard" means a standard approved by the commission or the  
12 statewide health coordinating council under section 22215.

13 (5) "Change in bed capacity" means 1 or more of the  
14 following:

15 (a) An increase in licensed hospital beds.

16 (b) An increase in licensed nursing home beds or hospital  
17 beds certified for long-term care. CHANGE IN BED CAPACITY DOES  
18 NOT INCLUDE AN INCREASE IN BEDS IN A VETERANS' FACILITY OWNED AND  
19 OPERATED BY THE STATE AND LICENSED AS A NURSING HOME UNDER PART  
20 217.

21 (c) An increase in licensed psychiatric beds.

22 (d) A change from 1 licensed use to a different licensed  
23 use.

24 (e) The physical relocation of beds from a licensed site to  
25 another geographic location.

26 (6) "Clinical" means directly pertaining to the diagnosis,  
27 treatment, or rehabilitation of an individual.

1 (7) "Clinical service area" means an area of a health  
2 facility, including related corridors, equipment rooms, ancillary  
3 service and support areas that house medical equipment, patient  
4 rooms, patient beds, diagnostic, operating, therapy, or treatment  
5 rooms or other accommodations related to the diagnosis, treat-  
6 ment, or rehabilitation of individuals receiving services from  
7 the health facility.

8 (8) "Commission" means the certificate of need commission  
9 created under section 22211.

10 (9) "Covered capital expenditure" means a capital expendi-  
11 ture of \$2,000,000.00 or more, as adjusted by the department  
12 under section 22221(g), by a person for a health facility for a  
13 single project, excluding the cost of nonfixed medical equipment,  
14 that includes or involves the acquisition, improvement, expan-  
15 sion, addition, conversion, modernization, new construction, or  
16 replacement of a clinical service area or a capital expenditure  
17 of \$3,000,000.00 or more, as adjusted by the department under  
18 section 22221(g), by a person for a health facility for a single  
19 project that involves the acquisition, improvement, expansion,  
20 addition, conversion, modernization, new construction, or  
21 replacement of nonclinical service areas only.

22 (10) "Covered clinical service", except as modified by the  
23 commission pursuant to section 22215 after ~~the effective date of~~  
24 ~~the 1993 amendatory act that amended this subsection~~ JULY 9,  
25 1993, means 1 or more of the following:

26 (a) Initiation or expansion of 1 or more of the following  
27 services:

1 (i) Neonatal intensive care services or special newborn  
2 nursing services.

3 (ii) Open heart surgery.

4 (iii) Extrarenal organ transplantation.

5 (b) Initiation, replacement, or expansion of 1 or more of  
6 the following services:

7 (i) Extracorporeal shock wave lithotripsy.

8 (ii) Megavoltage radiation therapy.

9 (iii) Positron emission tomography.

10 (iv) Surgical services provided in a freestanding surgical  
11 outpatient facility, an ambulatory surgery center certified under  
12 title XVIII, or a surgical department of a hospital licensed  
13 under part 215 and offering inpatient or outpatient surgical  
14 services.

15 (v) Cardiac catheterization.

16 (vi) Fixed and mobile magnetic resonance imager services.

17 (vii) Fixed and mobile computerized tomography scanner  
18 services.

19 (viii) Air ambulance services.

20 (c) Initiation, replacement, or expansion of a partial hos-  
21 pitalization psychiatric program service.

22 (d) Initiation or expansion of a specialized psychiatric  
23 program for children and adolescent patients utilizing licensed  
24 psychiatric beds.

25 (e) Initiation, replacement, or expansion of a service not  
26 listed in this subsection, but designated as a covered clinical  
27 service by the commission under section 22215(1)(a).

1 (11) "Fixed equipment" means equipment that is affixed to  
2 and constitutes a structural component of a health facility,  
3 including, but not limited to, mechanical or electrical systems,  
4 elevators, generators, pumps, boilers, and refrigeration  
5 equipment.

6 Sec. 22205. (1) "Health facility", except as otherwise pro-  
7 vided in subsection (2), means:

8 (a) A hospital licensed under part 215.

9 (b) A psychiatric hospital, psychiatric unit, or partial  
10 hospitalization psychiatric program licensed under the mental  
11 health code, Act No. 258 of the Public Acts of 1974, being sec-  
12 tions 330.1001 to 330.2106 of the Michigan Compiled Laws.

13 (c) A nursing home licensed under part 217 or a hospital  
14 long-term care unit as defined in section 20106(6).

15 (d) A freestanding surgical outpatient facility licensed  
16 under part 208.

17 (e) A health maintenance organization licensed under part  
18 210.

19 (2) "Health facility" does not include the following:

20 (a) An institution conducted by and for the adherents of a  
21 church or religious denomination for the purpose of providing  
22 facilities for the care and treatment of the sick who depend  
23 solely upon spiritual means through prayer for healing.

24 (b) A health facility or agency located in a correctional  
25 institution.

26 (C) A VETERANS' FACILITY OWNED AND OPERATED BY THE STATE AND  
27 LICENSED AS A NURSING HOME UNDER PART 217.

1 (D) ~~(c)~~ A ~~veterans~~ VETERANS' facility operated by the  
2 ~~state or~~ federal government.

3 (E) ~~(d)~~ A facility owned and operated by the department of  
4 mental health.

5 (3) "Initiate" means the initiation of a covered clinical  
6 service by a person if the covered clinical service has not been  
7 offered in compliance with this part or former part 221 on a reg-  
8 ular basis by that person at the location where the covered clin-  
9 ical service is to be offered within the 12-month period immedi-  
10 ately preceding the date the covered clinical service will be  
11 offered.

12 (4) "Medical equipment" means a single equipment component  
13 or a related system of components that is used for clinical  
14 purposes.

15 Sec. 22225. (1) In order to be approved under this part, an  
16 applicant for a certificate of need shall demonstrate to the sat-  
17 isfaction of the department that the proposed project will meet  
18 an unmet need in the area proposed to be served. An applicant  
19 shall demonstrate the need for a proposed project by credible  
20 documentation of compliance with the applicable certificate of  
21 need review standards. If no certificate of need review stan-  
22 dards are applicable to the proposed project or to a portion of a  
23 proposed project that is otherwise governed by this part, the  
24 applicant shall demonstrate to the satisfaction of the department  
25 that an unmet need for the proposed project or portion of the  
26 proposed project exists by credible documentation that the  
27 proposed project will be geographically accessible and



1 efficiently and appropriately utilized, in light of the type of  
2 project and the existing health care system. Whether or not  
3 there are applicable certificate of need review standards, in  
4 determining compliance with this subsection, the department shall  
5 consider approved projects that are not yet operational, proposed  
6 projects under appeal from a final decision of the department, or  
7 proposed projects that are pending final department decision.

8       (2) If, and only if, the requirements of subsection (1) are  
9 met, in order for an application to be approved under this part,  
10 an applicant shall also demonstrate to the reasonable satisfac-  
11 tion of the department all of the following:

12       (a) With respect to the method proposed to meet the unmet  
13 need identified under subsection (1), that the applicant has con-  
14 sidered alternatives to the proposed project and that, in light  
15 of the alternatives available for consideration, the chosen  
16 alternative is the most efficient and effective method of meeting  
17 that unmet need.

18       (b) With respect to the financial aspects of the proposed  
19 project, that each of the following is met:

20       (i) The capital costs of the proposed project will result in  
21 the least costly total annual operating costs.

22       (ii) Funds are available to meet the capital and operating  
23 needs of the proposed project.

24       (iii) The proposed project utilizes the least costly method  
25 of financing, in light of available alternatives.

26       (iv) In the case of a construction project, the applicant  
27 stipulates that the applicant will competitively bid capital

1 expenditures among qualified contractors or alternatively, the  
2 applicant is proposing an alternative to competitive bidding that  
3 will achieve substantially the same results as competitive  
4 bidding.

5 (c) The proposed project will be delivered in compliance  
6 with applicable operating standards and quality assurance stan-  
7 dards approved under section 22215(1)(b), including 1 or more of  
8 the following:

9 (i) Mechanisms for assuring appropriate utilization of the  
10 project.

11 (ii) Methods for evaluating the effectiveness of the  
12 project.

13 (iii) Means of assuring delivery of the project by qualified  
14 personnel and in compliance with applicable safety and operating  
15 standards.

16 (iv) Evidence of the current and historical compliance with  
17 federal and state licensing and certification requirements in  
18 this state by the applicant or the applicant's owner, or both, to  
19 the degree determined appropriate by the commission in light of  
20 the subject of the review standard.

21 (v) Other criteria approved by the commission as appropriate  
22 to evaluate the quality of the project.

23 (d) The health services proposed in the project will be  
24 delivered in a health facility that meets the criteria, if any,  
25 established by the commission for determining health facility  
26 viability, pursuant to this subdivision. The criteria shall be  
27 proposed by the department and the office, and approved or

1 disapproved by the commission. At a minimum, the criteria shall  
2 specify, to the extent applicable to the applicant, that an  
3 applicant shall be considered viable by demonstrating at least 1  
4 of the following:

5 (i) A minimum percentage occupancy of licensed beds.

6 (ii) A minimum percentage of combined uncompensated dis-  
7 charges and discharges under title XIX in the health facility's  
8 planning area.

9 (iii) A minimum percentage of the total discharges in the  
10 health facility's planning area.

11 (iv) Evidence that the health facility is the only provider  
12 in the health facility's planning area of a service that is con-  
13 sidered essential by the commission.

14 (v) An operating margin in an amount determined by the  
15 commission.

16 (vi) Other criteria approved by the commission as appropri-  
17 ate for statewide application to determine health facility  
18 viability.

19 (e) In the case of a nonprofit health facility, the health  
20 facility is in fact governed by a body composed of a majority  
21 consumer membership broadly representative of the population  
22 served. In the case of a health facility sponsored by a reli-  
23 gious organization, or if the nature of the nonprofit health  
24 facility is such that the legal rights of its owners or sponsors  
25 might be impaired by a requirement as to the composition of its  
26 governing body, an advisory board with majority consumer  
27 membership broadly representative of the population served may be

1 construed by the department to be equivalent to the governing  
2 board described in this subdivision, if the advisory board meets  
3 all of the following requirements:

4       (i) The role assigned to the advisory board is meaningful,  
5 as determined by the department.

6       (ii) The functions of the advisory board are clearly  
7 prescribed.

8       (iii) The advisory board is given an opportunity to influ-  
9 ence policy formulation by the legally recognized governing body,  
10 as determined by the department.

11       (3) IN DETERMINING THE NEED UNDER SUBSECTION (1) FOR A  
12 PROJECT INVOLVING NURSING HOME BEDS, THE DEPARTMENT SHALL, IN ITS  
13 INVENTORY OF BEDS, EXCLUDE NURSING HOME BEDS IN A VETERANS'  
14 FACILITY OWNED AND OPERATED BY THE STATE AND LICENSED AS A NURS-  
15 ING HOME UNDER PART 217.