



HOUSE BILL No. 4750

May 11, 1993, Introduced by Reps. Schroer, Bennane, Leland, Clack, Berman, Jondahl, Wetters, Varga, Dobronski, Gire, Scott, Shepich, Wallace, Gubow, Olshove, Profit, Yokich, Saunders, Freeman, Emerson, Ciaramitaro, Baade, DeMars, Harder, Curtis, Harrison, Griffin, Brown, Porreca, Hood, Stallworth, Richard A. Young, Rivers, Mathieu, Byrum, Barns, Jacobetti, Gagliardi, Owen and Keith and referred to the Committee on Public Health.

A bill to amend sections 2619, 2637, 5413, 5715, 5721, 16221, 16226, 16644, 16648, 20155, 20165, 20175, 20201, 21025, 21743, and 22210 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 2619 as added by Act No. 82 of the Public Acts of 1984, section 5413 as amended by Act No. 25 of the Public Acts of 1992, section 5715 as added by Act No. 48 of the Public Acts of 1987, section 5721 as amended by Act No. 236 of the Public Acts of 1988, sections 16221 and 16226 as amended by Act No. 15 of the Public Acts of 1989, section 16644 as added by Act No. 482 of the Public Acts of 1982, section 16648 as added by Act No. 89 of the Public Acts of 1983, section 20155 as amended by Act No. 80 of the Public Acts of 1992, section 20165 as amended by Act No. 179

of the Public Acts of 1990, section 20175 as amended by Act No. 174 of the Public Acts of 1986, sections 20201 and 21025 as amended by Act No. 354 of the Public Acts of 1982, and section 22210 as amended by Act No. 260 of the Public Acts of 1990, being sections 333.2619, 333.2637, 333.5413, 333.5715, 333.5721, 333.16221, 333.16226, 333.16644, 333.16648, 333.20155, 333.20165, 333.20175, 333.20201, 333.21025, 333.21743, and 333.22210 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2619, 2637, 5413, 5715, 5721, 16221,
2 16226, 16644, 16648, 20155, 20165, 20175, 20201, 21025, 21743,
3 and 22210 of Act No. 368 of the Public Acts of 1978, section 2619
4 as added by Act No. 82 of the Public Acts of 1984, section 5413
5 as amended by Act No. 25 of the Public Acts of 1992, section 5715
6 as added by Act No. 48 of the Public Acts of 1987, section 5721
7 as amended by Act No. 236 of the Public Acts of 1988, sections
8 16221 and 16226 as amended by Act No. 15 of the Public Acts of
9 1989, section 16644 as added by Act No. 482 of the Public Acts of
10 1982, section 16648 as added by Act No. 89 of the Public Acts of
11 1983, section 20155 as amended by Act No. 80 of the Public Acts
12 of 1992, section 20165 as amended by Act No. 179 of the Public
13 Acts of 1990, section 20175 as amended by Act No. 174 of the
14 Public Acts of 1986, sections 20201 and 21025 as amended by Act
15 No. 354 of the Public Acts of 1982, and section 22210 as amended
16 by Act No. 260 of the Public Acts of 1990, being sections
17 333.2619, 333.2637, 333.5413, 333.5715, 333.5721, 333.16221,
18 333.16226, 333.16644, 333.16648, 333.20155, 333.20165, 333.20175,

1 333.20201, 333.21025, 333.21743, and 333.22210 of the Michigan
2 Compiled Laws, are amended to read as follows:

3 Sec. 2619. (1) The department shall establish a registry to
4 record cases of cancer and other specified tumorous and precancerous
5 diseases that occur in the state, and to record information
6 concerning these cases as the department considers necessary
7 and appropriate in order to conduct epidemiologic surveys of
8 cancer and cancer-related diseases in the state.

9 (2) Each diagnosed case of cancer and other specified tumorous
10 and precancerous diseases shall be reported to the department
11 pursuant to subsection (4), or reported to a cancer reporting
12 registry if the cancer reporting registry meets standards established
13 pursuant to subsection (4) to ensure the accuracy and completeness
14 of the reported information. A person or facility
15 required to report a diagnosis pursuant to subsection (4) may
16 elect to report the diagnosis to the state through an existing
17 cancer registry only if the registry meets minimum reporting
18 standards established by the department.

19 (3) The department shall maintain comprehensive records of
20 all reports submitted pursuant to this section. ~~These reports~~
21 ~~shall be~~ THE REPORTS MAINTAINED UNDER THIS SUBSECTION ARE
22 subject to the ~~same requirements of confidentiality as provided~~
23 ~~in section 2631 for data or records concerning medical research~~
24 ~~projects~~ HEALTH CARE INFORMATION ACT.

25 (4) The director shall promulgate rules ~~which~~ THAT provide
26 for all of the following:

1 (a) A list of tumorous and precancerous diseases other than
2 cancer to be reported pursuant to subsection (2).

3 (b) The quality and manner in which the cases and other
4 information described in subsection (1) are reported to the
5 department.

6 (c) ~~The~~ SUBJECT TO THE HEALTH CARE INFORMATION ACT, THE
7 terms and conditions under which records disclosing the name and
8 medical condition of a specific individual and kept pursuant to
9 this section are released by the department.

10 (5) This section does not compel an individual to submit to
11 medical or department examination or supervision.

12 (6) The department may contract for the collection and anal-
13 ysis of, and research related to, the epidemiologic data required
14 under this section.

15 (7) Within 2 years after the effective date of this section,
16 the department shall begin evaluating the reports collected pur-
17 suant to subsection (2). The department shall publish and make
18 available to the public reports summarizing the information
19 collected. The first summary report shall be published not later
20 than ~~+180 days after the end of the first 2 full calendar years~~
21 ~~after the effective date of this section~~ JANUARY 1, 1987.

22 Subsequent annual summary reports shall be made on a full calen-
23 dar year basis and published not later than 180 days after the
24 end of each calendar year.

25 (8) Reporting pursuant to subsection (2) shall begin ~~the~~
26 ~~next calendar year after the effective date of this section~~
27 JULY 1, 1985.

~~(9) This section shall take effect July 1, 1984.~~

Sec. 2637. (1) The department shall ~~establish procedures~~
PROMULGATE RULES pursuant to section 2678 to protect the confi-
dentiality ~~of,~~ and regulate the disclosure of ~~the~~ data and
records contained in a departmental data system or system of
records.

(2) The ~~procedures~~ RULES DESCRIBED IN SUBSECTION (1) shall
be consistent with the policy established under sections 2611 and
2613 AND WITH THE HEALTH CARE INFORMATION ACT.

(3) The ~~procedures~~ RULES DESCRIBED IN SUBSECTION (1) shall
specify the data contained in a departmental data system or
system of records ~~which~~ THAT shall not be disclosed unless
items identifying a person by name, address, number, symbol, or
any other identifying particular are deleted.

(4) The ~~procedures~~ RULES DESCRIBED IN SUBSECTION (1) shall
regulate the use and disclosure of data contained in a departmen-
tal data system or system of records released to researchers,
other persons, including designated medical research projects as
defined in section 2631, or governmental entities. A person who
receives data pursuant to this section shall not disclose an item
of information contained in the data except in conformance with
the authority granted by the department and with the purpose for
which the data was originally requested by the researcher. The
director may contract with researchers or other persons to imple-
ment and enforce this subsection. A contract made pursuant to
this subsection shall MEET AT LEAST BOTH OF THE FOLLOWING
REQUIREMENTS:

1 (a) Require the department to provide monitoring to assure
2 compliance with this section.

3 (b) Provide for termination if this section or the contract
4 is violated.

5 (5) An officer or employee of the department shall not dis-
6 close data contained in a departmental data system or system of
7 records except as authorized in the ~~procedures adopted pursuant~~
8 ~~to this section~~ RULES DESCRIBED IN SUBSECTION (1).

9 (6) The department periodically shall review the ~~procedures~~
10 ~~adopted under this section~~ RULES DESCRIBED IN SUBSECTION (1).

11 (7) A person whose contract is terminated pursuant to sub-
12 section (4)(b) is not eligible to make a subsequent contract with
13 the department.

14 Sec. 5413. (1) The department shall establish a registry to
15 record cases of spinal cord injury and traumatic brain injury
16 that occur in the state and ~~to record~~ information concerning
17 these cases. Subject to subsection (3), the department shall
18 supply the information to persons seeking to apply appropriate
19 preventive and control measures.

20 (2) The director shall require by rule the reporting by hos-
21 pitals of cases of spinal cord injury and traumatic brain injury
22 and the submission of specified additional information on
23 reported cases or control populations as the director considers
24 necessary and appropriate for the recognition, prevention, or
25 control of spinal cord injury and traumatic brain injury.

26 (3) The department shall maintain comprehensive records of
27 all reports submitted pursuant to this section. ~~These~~ THE

1 NONMEDICAL INFORMATION CONTAINED IN THE reports ~~are~~ IS
2 confidential and the department shall release ~~them~~ IT only upon
3 written request of the person who is the subject of the report,
4 or his or her guardian, executor, attorney, or other person des-
5 ignated in writing by the person who is the subject of the
6 report. The department may also release the ~~reports and records~~
7 ~~or~~ NONMEDICAL information contained in the reports to persons
8 authorized by the director to conduct research studies or to
9 other persons with whom the director enters into a contract for
10 data collection, data maintenance, data storage, data retrieval,
11 and quality control. THE MEDICAL INFORMATION CONTAINED IN THE
12 REPORTS MAINTAINED UNDER THIS SUBSECTION IS SUBJECT TO THE HEALTH
13 CARE INFORMATION ACT.

14 (4) This section does not compel an individual to submit to
15 medical or department examination or supervision.

16 (5) The director shall promulgate rules to implement this
17 section.

18 (6) As used in this section and section 5414, "traumatic
19 brain injury" means an insult to the brain not of a degenerative
20 or congenital nature that may produce a diminished or altered
21 state of consciousness and that results in impairment of cogni-
22 tive abilities or physical functioning.

23 (7) This section is repealed effective March 30, 1996.

24 Sec. 5715. (1) A departmental report under section 5703 or
25 5713, or other compilation of information collected under this
26 part, unless it discloses the identity of an individual who does
27 not consent to the disclosure, is public information, and shall

1 be made available in accordance with the freedom of information
2 act, Act No. 442 of the Public Acts of 1976, being sections
3 15.231 to 15.246 of the Michigan Compiled Laws.

4 (2) Medical information about an individual that is gathered
5 under this part is confidential and ~~shall be subject to the same~~
6 ~~requirements of confidentiality as provided in section 2631 for~~
7 ~~data or records concerning medical research projects~~ IS SUBJECT
8 TO THE HEALTH CARE INFORMATION ACT.

9 Sec. 5721. (1) Each diagnosed incidence of a birth defect,
10 including a congenital or structural malformation, or a biochemi-
11 cal or genetic disease, and any information relevant to incidents
12 of birth defects, shall be reported to the department. The
13 reporting shall begin not later than the next calendar year after
14 June 11, 1987.

15 (2) The department shall maintain comprehensive statewide
16 records of all information reported to the birth defects
17 registry. The NONMEDICAL information reported ~~shall be~~ IS
18 subject to the same requirements of confidentiality as provided
19 in section 2631 for data or records concerning medical research
20 projects. THE MEDICAL INFORMATION REPORTED IS SUBJECT TO THE
21 HEALTH CARE INFORMATION ACT.

22 (3) The director shall promulgate rules ~~which~~ THAT provide
23 for all of the following:

24 (a) A list of birth defects, including, but not limited to,
25 congenital and structural malformations, and biochemical or gene-
26 tic diseases, and other relevant information to be reported.

1 (b) The quality and manner in which the incidents of birth
2 defects and other information is to be reported.

3 (c) ~~The~~ SUBJECT TO THE HEALTH CARE INFORMATION ACT, THE
4 terms and conditions under which records maintained under this
5 section, including any records containing the name and medical
6 condition of a specific individual, may be released by the
7 department.

8 (4) This section does not compel an individual to submit to
9 medical examination or supervision by the department or
10 otherwise.

11 (5) The department may contract for the collection and anal-
12 ysis of, and research related to, the data required under this
13 section.

14 (6) Within 2 years after June 11, 1987, the department shall
15 begin evaluating the information reported to the birth defects
16 registry. The department shall publish and make available to the
17 public reports summarizing the information collected. The first
18 summary report shall be published not later than ~~180 days after~~
19 ~~the end of the first 2 full calendar years after June 11, 1987~~
20 JULY 1, 1990. Subsequent annual summary reports shall be made on
21 a full calendar year basis and published not later than 180 days
22 after the end of each calendar year.

23 Sec. 16221. The department may investigate activities
24 related to the practice of a health profession by a licensee, a
25 registrant, or an applicant for licensure or registration. The
26 department may hold hearings, administer oaths, and order
27 relevant testimony to be taken and shall report its findings to

1 the appropriate board or appropriate task force. ~~The~~ A board
2 shall proceed under section 16226 if the board finds that any of
3 the following grounds exist:

4 (a) A violation of general duty, consisting of negligence or
5 failure to exercise due care, including negligent delegation to
6 or supervision of employees or other individuals, whether or not
7 injury results, or any conduct, practice, or condition ~~which~~
8 THAT impairs, or may impair, the ability to safely and skillfully
9 practice the health profession.

10 (b) Personal disqualifications, consisting of any of the
11 following:

12 (i) Incompetence.

13 (ii) Substance abuse as defined in section 6107.

14 (iii) Mental or physical inability reasonably related to and
15 adversely affecting the licensee's ability to practice in a safe
16 and competent manner.

17 (iv) Declaration of mental incompetence by a court of compe-
18 tent jurisdiction.

19 (v) Conviction of a misdemeanor or felony reasonably related
20 to and adversely affecting the licensee's ability to practice in
21 a safe and competent manner. A certified copy of the court
22 record ~~shall be~~ IS conclusive evidence of the conviction.

23 (vi) Lack of good moral character.

24 (vii) Conviction of a criminal offense under sections ~~520a~~
25 ~~to 520f~~ 520B TO 520G of the Michigan penal code, Act No. 328 of
26 the Public Acts of 1931, being sections ~~750.520a to 750.520f~~
27 750.520B TO 750.520G of the Michigan Compiled Laws. A certified

1 copy of the court record ~~shall be~~ IS conclusive evidence of the
2 conviction.

3 (viii) Conviction of a violation of section 492a of the
4 Michigan penal code, Act No. 328 of the Public Acts of 1931,
5 being section 750.492a of the Michigan Compiled Laws. A certi-
6 fied copy of the court record ~~shall be~~ IS conclusive evidence
7 of the conviction.

8 (ix) Conviction of a misdemeanor or felony involving fraud
9 in obtaining or attempting to obtain fees related to the practice
10 of a health profession. A certified copy of the court record
11 ~~shall be~~ IS conclusive evidence of the conviction.

12 (c) Prohibited acts, consisting of any of the following:

13 (i) Fraud or deceit in obtaining or renewing a license.

14 (ii) Permitting the license to be used by an unauthorized
15 person.

16 (iii) Practice outside the scope of a license.

17 (iv) Obtaining, possessing, or attempting to obtain or pos-
18 sess a controlled substance as defined in section 7104 or a drug
19 as defined in section 7105 without lawful authority; or selling,
20 prescribing, giving away, or administering drugs for other than
21 lawful diagnostic or therapeutic purposes.

22 (d) Unethical business practices, consisting of any of the
23 following:

24 (i) False or misleading advertising.

25 (ii) Dividing fees for referral of patients or accepting
26 kickbacks on medical or surgical services, appliances, or
27 medications purchased by or ~~in~~ ON behalf of patients.

1 (iii) Fraud or deceit in obtaining or attempting to obtain
2 third party reimbursement.

3 (e) Unprofessional conduct, consisting of any of the
4 following:

5 (i) Misrepresentation to a consumer or patient or in obtain-
6 ing or attempting to obtain third party reimbursement in the
7 course of professional practice.

8 (ii) Betrayal of a professional confidence.

9 (iii) Promotion for personal gain of an unnecessary drug,
10 device, treatment, procedure, or service.

11 (iv) Directing or requiring an individual to purchase or
12 secure a drug, device, treatment, procedure, or service from
13 another person, place, facility, or business in which the
14 licensee has a financial interest.

15 (f) Failure to report a change of name or address within 30
16 days after the change occurs.

17 (g) A violation, or aiding or abetting in a violation, of
18 this article or of rules promulgated under this article.

19 (h) Failure to comply with a subpoena issued pursuant to
20 this part.

21 (i) Failure to pay an installment of an assessment levied
22 pursuant to section 2504 of the insurance code of 1956, Act
23 No. 218 of the Public Acts of 1956, as amended, being section
24 500.2504 of the Michigan Compiled Laws, within 60 days after
25 notice by the appropriate board.

26 (j) A violation of section 17013 or 17513.

1 (K) A VIOLATION OF ARTICLE 3 OR ARTICLE 5 OF THE HEALTH CARE
2 INFORMATION ACT.

3 Sec. 16226. (1) After finding the existence of 1 or more of
4 the grounds for board action listed in section 16221, a board
5 shall impose 1 or more of the following sanctions for each
6 violation:

7 <u>Violations of Section 16221</u>	<u>Sanctions</u>
8 Subdivision (a),	Probation, limitation, denial,
9 (b)(ii),	suspension, revocation,
10 (b)(iv),	restitution, or fine.
11 (b)(vi), or	
12 (b)(vii)	
13 Subdivision (b)(viii)	Revocation.
14 Subdivision (b)(i),	Limitation, suspension,
15 (b)(iii),	revocation, denial,
16 (b)(v), or (b)(ix)	probation, restitution, or
17	fine.
18 Subdivision (c)(i)	Denial, revocation, suspension,
19	probation, limitation, or
20	fine.
21 Subdivision (c)(ii)	Denial, suspension, revocation,
22	restitution, or fine.
23 Subdivision (c)(iii)	Probation, denial, suspension,
24	revocation, restitution, or
25	fine.

- 1 Subdivision (c)(iv) Fine, probation, denial,
 2 or (d)(iii) suspension, revocation,
 3 or restitution.
- 4 Subdivision (d)(i) Reprimand, fine, probation,
 5 or (d)(ii) or restitution.
- 6 Subdivision (e)(i) Reprimand, fine, probation,
 7 limitation, suspension, or
 8 restitution.
- 9 Subdivision (e)(ii) Reprimand, probation,
 10 or (h) suspension, restitution, or
 11 fine.
- 12 Subdivision (e)(iii) Reprimand, fine, probation,
 13 or (e)(iv) suspension, revocation, limita-
 14 tion, or restitution.
- 15 Subdivision (f) Reprimand or fine.
- 16 Subdivision (g) OR (K) Reprimand, probation, denial,
 17 suspension, revocation, limita-
 18 tion, restitution, or fine.
- 19 Subdivision (i) Suspension or fine.
- 20 Subdivision (j) Reprimand or fine.
- 21 (2) Determination of sanctions for violations under THIS
 22 section ~~+6226~~ shall be made by a board. If, during judicial
 23 review, a court holds that a sanction is unlawful under section
 24 106 of the administrative procedures act of 1969, Act No. 306 of
 25 the Public Acts of 1969, being section 24.306 of the Michigan
 26 Compiled Laws, the court shall state on the record the reasons

1 for the holding and may remand the case to the board for further
2 consideration.

3 (3) A board created under part 170 or 175 may impose a fine
4 of up to, but not exceeding, \$250,000.00 for a violation of
5 section 16221(a) or (b).

6 Sec. 16644. (1) A dentist shall make a record ~~of all~~ EACH
7 TIME dental treatment ~~which has been~~ IS performed upon a
8 patient, and shall retain that treatment record for ~~a~~ THE
9 period ~~of not less than 10 years after the performance of the~~
10 ~~last service upon the patient~~ PRESCRIBED IN THE HEALTH CARE
11 INFORMATION ACT.

12 (2) The board shall promulgate rules to prescribe the form
13 and content of the record required by subsection (1), so that the
14 record may be used for identification purposes.

15 Sec. 16648. ~~(1)~~ Information relative to the care and
16 treatment of a dental patient acquired as a result of providing
17 professional dental services ~~shall be~~ IS confidential and priv-
18 ileged AND IS SUBJECT TO THE HEALTH CARE INFORMATION ACT.

19 ~~Except with the written consent of the patient or the patient's~~
20 ~~attorney in fact or personal representative, a dentist or a~~
21 ~~person employed by the dentist shall not disclose or be required~~
22 ~~to disclose that information.~~

23 ~~(2) This section does not prohibit disclosure of the infor-~~
24 ~~mation described in subsection (1) in the following instances:~~

25 ~~(a) Disclosure as part of the defense to a claim in a court~~
26 ~~or administrative agency challenging the dentist's professional~~
27 ~~competence.~~

1 ~~(b) Disclosure pursuant to Act No. 270 of the Public Acts of~~
2 ~~1967, being sections 331.531 to 331.533 of the Michigan Compiled~~
3 ~~Laws.~~

4 ~~(c) Disclosure in relation to a claim for payment of fees.~~

5 ~~(d) Disclosure to a third party payer of information relat-~~
6 ~~ing to fees for services in the course of a good faith examina-~~
7 ~~tion of the dentist's records to determine the amount and cor-~~
8 ~~rectness of fees or the type and volume of services furnished~~
9 ~~pursuant to provisions for payment established by a third party~~
10 ~~payer, or information required for a third party payer's prede-~~
11 ~~terminations, post treatment reviews, or audits. For purposes of~~
12 ~~this subdivision, "third party payer" includes a nonprofit dental~~
13 ~~care corporation, nonprofit hospital service corporation, non-~~
14 ~~profit medical care corporation, nonprofit health care corpora-~~
15 ~~tion, insurer, benefit fund, health maintenance organization, and~~
16 ~~a dental capitation plan.~~

17 ~~(e) Disclosure, pursuant to a court order, to a police~~
18 ~~agency as part of a criminal investigation.~~

19 ~~(f) Disclosure as provided in section 2044a.~~

20 Sec. 20155. (1) Except as provided in this section, the
21 department shall make annual and other visits to each health
22 facility or agency licensed under this article for the purposes
23 of survey, evaluation, and consultation. Except for a health
24 facility or agency described in section 20106(1)(c), (f), or (h),
25 the department shall determine whether the visits shall be
26 announced or unannounced, except that a complaint investigation
27 shall not be announced and there shall be at least 1 unannounced

1 visit other than a complaint investigation annually to a health
2 facility or agency described in section 20106(1)(c) or (h).

3 (2) The department shall make at least a biennial visit to
4 each licensed clinical laboratory and each nursing home for the
5 purposes of survey, evaluation, and consultation. If a nursing
6 home is only partially certified under title XVIII or title XIX,
7 the department shall include all licensed parts of the nursing
8 home in a certification survey conducted by the department.

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

16 (a) Evidence that it is currently fully accredited by a body
17 with expertise in hospital accreditation whose hospital accredit-
18 ations are accepted by the United States department of health and
19 human services for purposes of section 1865 of title XVIII of the
20 social security act, chapter 531, 49 Stat. 620,
21 42 U.S.C. 1395bb.

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

25 (4) Except as provided in subsection (8), accreditation
26 information provided to the department under subsection (3) is
27 confidential, is not a public record, and is not subject to court

1 subpoena. The department shall use the accreditation information
2 only as provided in this section and shall return the accredit-
3 ation information to the hospital within a reasonable time after
4 a decision on the waiver request is made.

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

14 (a) Grant an extension of the hospital's current license
15 until the next accreditation survey is completed by the body
16 described in subsection (3)(a).

17 (b) Grant a waiver under subsection (3) based on the accred-
18 itation report that is 2 or more years old, on condition that the
19 hospital promptly submit the next accreditation report to the
20 department.

21 (c) Deny the waiver request and conduct the visits required
22 under subsection (3).

23 (6) The department shall not grant more than 2 consecutive
24 waivers under subsection (3). This section does not prohibit the
25 department from citing a violation of this part during a survey,
26 conducting investigations or inspections pursuant to
27 section 20156, or conducting surveys of health facilities or

1 agencies for the purpose of complaint investigations or federal
2 certification. This section does not prohibit the state fire
3 marshal from conducting annual surveys of hospitals, nursing
4 homes, and county medical care facilities.

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

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

22 (9) Investigations or inspections, other than inspections of
23 financial records, of a health facility or agency described in
24 section 20106(1)(c), (f), or (h) shall be conducted without prior
25 notice to the health facility or agency. An employee of a state
26 agency charged with inspecting the health facility or agency or
27 an employee of a local health department who directly or

1 indirectly gives prior notice regarding an inspection, other than
2 an inspection of the financial records, to the health facility or
3 agency or to an employee of the health facility or agency, is
4 guilty of a misdemeanor. Consultation visits that are not for
5 the purpose of annual or follow-up inspection or survey may be
6 announced.

7 (10) The department shall maintain a record indicating
8 whether visits are announced or unannounced. Information gath-
9 ered at all visits, announced or unannounced, shall be taken into
10 account in licensure decisions.

11 (11) The department shall require periodic reports and a
12 health facility or agency shall give the department access to
13 books, records, and other documents maintained by a health facil-
14 ity or agency to the extent necessary to carry out the purpose of
15 this article and the rules promulgated under this article. ~~The~~
16 ~~department shall~~ WITH respect TO the confidentiality of a
17 patient's clinical record, ~~and shall not divulge or disclose the~~
18 ~~contents of the records in a manner that identifies an individual~~
19 ~~except under court order~~ THE DEPARTMENT SHALL COMPLY WITH THE
20 HEALTH CARE INFORMATION ACT. The department may copy health
21 facility or agency records as required to document findings.

22 (12) The department may delegate survey, evaluation, or con-
23 sultation functions to another state agency or to a local health
24 department qualified to perform those functions. The delegation
25 shall be by cost reimbursement contract between the department
26 and the state agency or local health department. Survey,
27 evaluation, or consultation functions shall not be delegated to

1 nongovernmental agencies, except as provided in this section.
2 The department may accept voluntary inspections performed by an
3 accrediting body with expertise in clinical laboratory accredit-
4 ation under part 205 if the accrediting body utilizes forms
5 acceptable to the department, applies the same licensing stan-
6 dards as applied to other clinical laboratories and provides the
7 same information and data usually filed by the department's own
8 employees when engaged in similar inspections or surveys. The
9 voluntary inspection described in this subsection shall be agreed
10 upon by both the licensee and the department.

11 (13) If, upon investigation, the department or a state
12 agency determines that an individual licensed to practice a pro-
13 fession in this state has violated the applicable licensure stat-
14 ute or the rules promulgated under that statute, the department,
15 state agency, or local health department shall forward the evi-
16 dence it has to the appropriate licensing agency.

17 (14) As used in this section:

18 (a) "Title XVIII" means title XVIII of the social security
19 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
20 1395c to 1395i, 1395i-2 to 1395i-4, 1395j to 1395t, 1395u to
21 1395w-2, 1395w-4 to 1395zz, and 1395bbb to 1395ccc.

22 (b) "Title XIX" means title XIX of the social security act,
23 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f and 1396i to
24 1396u.

25 Sec. 20165. (1) Except as otherwise provided in this sec-
26 tion, after notice of intent to an applicant or licensee to deny,
27 limit, suspend, or revoke a license or certification and an

1 opportunity for a hearing, the department may deny, limit,
2 suspend, or revoke the license or certification if any of the
3 following exist:

4 (a) Fraud or deceit in obtaining or attempting to obtain a
5 license or certification or in operation of the licensed health
6 facility or agency.

7 (b) A violation of this article or the rules promulgated
8 under this article.

9 (c) False or misleading advertising.

10 (d) Negligence or failure to exercise due care, including
11 negligent supervision of employees and subordinates.

12 (e) Permitting a license or certificate to be used by an
13 unauthorized health facility or agency.

14 (f) Evidence of abuse regarding patient health, welfare, or
15 safety or a denial of rights.

16 (g) Failure to comply with section 10102a(7).

17 (h) Failure to comply with part 222 or a term, condition, or
18 stipulation of a certificate of need issued under part 222, or
19 both.

20 (I) A VIOLATION OF ARTICLE 3 OR ARTICLE 5 OF THE HEALTH CARE
21 INFORMATION ACT.

22 (2) An application for a license or certification may be
23 denied on a finding of any condition or practice ~~which~~ THAT
24 would constitute a violation of this article if the applicant
25 were a licensee.

1 (3) Denial, suspension, or revocation of an individual
2 emergency medical services personnel license under part 209 is
3 governed by section 20958.

4 Sec. 20175. (1) A health facility or agency shall keep and
5 maintain a record for each patient including a full and complete
6 record of tests and examinations performed, observations made,
7 treatments provided, and in the case of a hospital, the purpose
8 of hospitalization. In addition to the sanctions set forth in
9 section 20165, a hospital ~~which~~ THAT fails to comply with this
10 subsection ~~shall be~~ IS subject to a civil fine of \$10,000.00.

11 (2) A hospital shall take precautions to assure that the
12 records required by subsection (1) are not wrongfully altered or
13 destroyed. A hospital ~~which~~ THAT fails to comply with this
14 subsection ~~shall be~~ IS subject to a civil fine of \$10,000.00.

15 (3) Unless otherwise provided by law, the licensing and cer-
16 tification records required by this article are public records.

17 (4) Departmental officers and employees shall respect the
18 confidentiality of patient clinical records and shall ~~not~~
19 ~~divulge or disclose the contents of records in a manner which~~
20 ~~identifies an individual except on court order~~ COMPLY WITH THE
21 HEALTH CARE INFORMATION ACT.

22 (5) A health facility or agency with a medical staff shall
23 report to the appropriate licensing board and to the department
24 not more than 30 days after any disciplinary action has been
25 taken against a member of the medical staff, and the relevant
26 circumstances OF THE DISCIPLINARY ACTION, for any of the grounds
27 set forth in section 16221.

1 (6) The records, data, and knowledge collected for or by
2 individuals or committees assigned a professional review function
3 in a health facility or agency are confidential, shall be used
4 only for the purposes provided in this article, are not public
5 records, ~~and~~ are not subject to court subpoena, AND, IF APPLI-
6 CABLE, ARE SUBJECT TO THE HEALTH CARE INFORMATION ACT.

7 Sec. 20201. (1) ~~A~~ SUBJECT TO SECTION 20203, A health
8 facility or agency ~~which~~ THAT provides services directly to
9 patients or residents and ~~which~~ is licensed under this article
10 shall adopt a policy describing the rights and responsibilities
11 of patients or residents admitted to the health facility or
12 agency. Except for a licensed health maintenance organization,
13 which shall comply with section 21086, ~~the policy shall be~~
14 ~~posted~~ A HEALTH FACILITY OR AGENCY SHALL POST THE POLICY at a
15 public place in the HEALTH facility OR AGENCY and shall ~~be~~
16 ~~provided~~ PROVIDE A COPY OF THE POLICY to each member of ~~the~~
17 ~~facility~~ ITS staff. ~~Patients~~ A HEALTH FACILITY OR AGENCY
18 SHALL TREAT PATIENTS or residents ~~shall be treated~~ in accord-
19 ance with the policy.

20 (2) The policy describing the rights and responsibilities of
21 patients or residents shall include, ~~as~~ AT a minimum, ALL OF
22 THE FOLLOWING:

23 (a) A patient or resident will not be denied appropriate
24 care on the basis of race, religion, color, national origin, sex,
25 age, handicap, marital status, sexual preference, or source of
26 payment.

1 (b) ~~An individual who is or has been a patient or resident~~
2 ~~is entitled to inspect, or receive for a reasonable fee, a copy~~
3 ~~of his or her medical record upon request. A third party shall~~
4 ~~not be given a copy of the patient's or resident's medical record~~
5 ~~without prior authorization of the patient.~~ MEDICAL RECORDS
6 RETAINED BY A HEALTH FACILITY OR AGENCY ARE SUBJECT TO THE HEALTH
7 CARE INFORMATION ACT.

8 (c) A patient or resident is entitled to confidential treat-
9 ment of personal ~~and medical~~ records, and may refuse their
10 release to a person outside the facility except as required
11 because of a transfer to another health care facility or as
12 required by law or third party payment contract.

13 (d) A patient or resident is entitled to privacy, to the
14 extent feasible, in treatment and in caring for personal needs
15 with consideration, respect, and full recognition of his or her
16 dignity and individuality.

17 (e) A patient or resident is entitled to receive adequate
18 and appropriate care, and to receive, from the appropriate indi-
19 vidual within the HEALTH facility OR AGENCY, information about
20 his or her medical condition, proposed course of treatment, and
21 prospects for recovery, in terms that the patient or resident can
22 understand, unless medically contraindicated as documented by the
23 attending physician in the PATIENT'S OR RESIDENT'S medical
24 record.

25 (f) A patient or resident is entitled to refuse treatment to
26 the extent provided by law and to be informed of the consequences
27 of that refusal. When a refusal of treatment prevents a health

1 facility OR AGENCY or its staff from providing appropriate care
2 according to ethical and professional standards, the relationship
3 with the patient or resident may be terminated upon reasonable
4 notice.

5 (g) A patient or resident is entitled to exercise his or her
6 rights as a patient or resident and as a citizen, and to this end
7 may present grievances or recommend changes in policies and serv-
8 ices on behalf of himself or herself or others to the HEALTH
9 facility OR AGENCY staff, to governmental officials, or to
10 another person of his or her choice within or outside the HEALTH
11 facility OR AGENCY, free from restraint, interference, coercion,
12 discrimination, or reprisal. A patient or resident is entitled
13 to information about the HEALTH facility's OR AGENCY'S policies
14 and procedures for initiation, review, and resolution of patient
15 or resident complaints.

16 (h) A patient or resident is entitled to information con-
17 cerning an experimental procedure proposed as a part of his or
18 her care and ~~shall have~~ HAS the right to refuse to participate
19 in the experiment without jeopardizing his or her continuing
20 care.

21 (i) A patient or resident is entitled to receive and examine
22 an explanation of his or her bill regardless of the source of
23 payment and to receive, upon request, information relating to
24 financial assistance available through the HEALTH facility OR
25 AGENCY.

26 (j) A patient or resident is entitled to know who is
27 responsible for and who is providing his or her direct care, is

1 entitled to receive information concerning his or her continuing
2 health needs and alternatives for meeting those needs, and to be
3 involved in his or her discharge planning, if appropriate.

4 (k) A patient or resident is entitled to associate and have
5 private communications and consultations with his or her physi-
6 cian, attorney, or any other person of his or her choice and to
7 send and receive personal mail unopened on the same day it is
8 received at the health facility or agency, unless medically con-
9 traindicated as documented by the attending physician in the
10 PATIENT'S OR RESIDENT'S medical record. A patient's or
11 resident's civil and religious liberties, including the right to
12 independent personal decisions and the right to knowledge of
13 available choices, shall not be infringed and the HEALTH facility
14 OR AGENCY shall encourage and assist in the fullest possible
15 exercise of these rights. A patient or resident may meet with,
16 and participate in, the activities of social, religious, and com-
17 munity groups at his or her discretion, unless medically contra-
18 indicated as documented by the attending physician in the
19 PATIENT'S OR RESIDENT'S medical record.

20 (l) A patient or resident is entitled to be free from mental
21 and physical abuse and from physical and chemical restraints,
22 except those restraints authorized in writing by the attending
23 physician for a specified and limited time or as are necessitated
24 by an emergency to protect the patient or resident from injury to
25 self or others, in which case the restraint may only be applied
26 by a qualified professional who shall set forth in writing the
27 circumstances requiring the use of restraints and who shall

1 promptly report the action to the attending physician. In case
2 of a chemical restraint a physician shall be consulted within 24
3 hours after the commencement of the restraint.

4 (m) A patient or resident is entitled to be free from per-
5 forming services for the HEALTH facility OR AGENCY that are not
6 included for therapeutic purposes in the plan of care.

7 (n) A patient or resident is entitled to information about
8 the health facility OR AGENCY rules and regulations affecting
9 patient or resident care and conduct.

10 (3) The following additional requirements for the policy
11 described in subsection (2) ~~shall~~ apply to licensees under
12 parts 213 and 217:

13 (a) The policy shall be provided to each nursing home
14 patient or home for the aged resident upon admission, and the
15 staff of the ~~facility~~ NURSING HOME OR HOME FOR THE AGED shall
16 be trained and involved in the implementation of the policy.

17 (b) Each nursing home patient may associate and communicate
18 privately with persons of his or her choice. Reasonable, regular
19 visiting hours, which shall be not less than 8 hours per day, and
20 which shall take into consideration the special circumstances of
21 each visitor, shall be established for patients to receive
22 visitors. A NURSING HOME patient may be visited by the patient's
23 attorney or by representatives of the departments named in sec-
24 tion 20156, during other than established visiting hours.
25 Reasonable privacy shall be afforded for visitation of a NURSING
26 HOME patient who shares a room with another NURSING HOME
27 patient. Each NURSING HOME patient shall have reasonable access

1 to a telephone. A married nursing home patient or home for the
 2 aged resident is entitled to meet privately with his or her
 3 spouse in a room which assures privacy. If both spouses are
 4 PATIENTS OR residents in the same ~~facility~~ NURSING HOME OR HOME
 5 FOR THE AGED, they are entitled to share a room unless medically
 6 contraindicated and documented by the attending physician in the
 7 PATIENT'S OR RESIDENT'S medical record.

8 (c) A nursing home patient or home for the aged resident is
 9 entitled to retain and use personal clothing and possessions as
 10 space permits, unless to do so would infringe upon the rights of
 11 other NURSING HOME patients or HOME FOR THE AGED residents, or
 12 unless medically contraindicated as documented by the attending
 13 physician in the PATIENT'S OR RESIDENT'S medical record. Each
 14 nursing home patient or home for the aged resident shall be pro-
 15 vided with reasonable space. At the request of a NURSING HOME
 16 patient, a nursing home shall provide for the safekeeping of per-
 17 sonal effects, funds, and other property of a patient in accord-
 18 ance with section 21767, except that a nursing home ~~shall not~~
 19 ~~be~~ IS NOT required to provide for the safekeeping of a property
 20 which would impose an unreasonable burden on the nursing home.

21 (d) A nursing home patient or home for the aged resident is
 22 entitled to the opportunity to participate in the planning of his
 23 or her medical treatment. A nursing home patient shall be fully
 24 informed by the attending physician of the patient's medical con-
 25 dition unless medically contraindicated as documented by a physi-
 26 cian in the PATIENT'S medical record. Each nursing home patient

1 shall be afforded the opportunity to discharge himself or herself
2 from the nursing home.

3 (e) A home for the aged resident may be transferred or dis-
4 charged only for medical reasons, for his or her welfare or that
5 of other residents, or for nonpayment of his or her stay, except
6 as provided by ~~title 18 or 19 of the social security act, 42~~
7 ~~U.S.C. 1395 to 1396k~~ TITLE XVIII OR TITLE XIX. A nursing home
8 patient may be transferred or discharged only as provided in sec-
9 tions 21773 to 21777. A nursing home patient or home for the
10 aged resident is entitled to be given reasonable advance notice
11 to ensure orderly transfer or discharge. ~~Those actions~~ STEPS
12 TAKEN TO ENSURE REASONABLE ADVANCE NOTICE shall be documented in
13 the PATIENT'S OR RESIDENT'S medical record. AS USED IN THIS SUB-
14 DIVISION AND SUBDIVISION (F):

15 (i) "TITLE XVIII" MEANS TITLE XVIII OF THE SOCIAL SECURITY
16 ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO 1395b, 1395b-2,
17 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO 1395t, 1395u TO
18 1395w-2, 1395w-4 TO 1395zz, AND 1395bbb TO 1395ccc.

19 (ii) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT,
20 CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396d, 1396f TO
21 1396g, AND 1396i TO 1396s.

22 (f) A nursing home patient or home for the aged resident is
23 entitled to be fully informed before or at the time of admission
24 and during stay of services available in the ~~facility~~ NURSING
25 HOME OR HOME FOR THE AGED, and of the related charges including
26 any charges for services not covered under ~~title 18 or 19 of the~~
27 ~~social security act, 42 U.S.C. 1395 to 1396k~~ TITLE XVIII OR

1 TITLE XIX, or not covered by the ~~facility's~~ NURSING HOME'S OR
2 HOME FOR THE AGED'S basic per diem rate. The statement of serv-
3 ices provided by the ~~facility~~ NURSING HOME OR HOME FOR THE AGED
4 shall be in writing and shall include those required to be
5 offered on an as-needed basis.

6 (g) A nursing home patient or home for the aged resident is
7 entitled to manage his or her own financial affairs, or to have
8 at least a quarterly accounting of personal financial transac-
9 tions undertaken in his or her behalf by the ~~facility~~ NURSING
10 HOME OR HOME FOR THE AGED during a period of time the patient or
11 resident has delegated those responsibilities to the ~~facility~~
12 NURSING HOME OR HOME FOR THE AGED. In addition, a NURSING HOME
13 patient or HOME FOR THE AGED resident is entitled to receive each
14 month from the ~~facility~~ NURSING HOME OR HOME FOR THE AGED an
15 itemized statement setting forth the services paid for by or on
16 behalf of the patient and the services rendered by the ~~facility~~
17 NURSING HOME OR HOME FOR THE AGED. The admission of a patient to
18 a nursing home does not confer on the nursing home or its owner,
19 administrator, employees, or representatives the authority to
20 manage, use, or dispose of ~~a~~ THE patient's property.

21 (h) A nursing home patient or a person authorized by ~~a~~ THE
22 patient in writing may inspect and copy the patient's personal
23 RECORDS UNDER THIS SUBDIVISION and medical records PURSUANT TO
24 THE HEALTH CARE INFORMATION ACT. The PERSONAL records shall be
25 made available for inspection and copying by the nursing home
26 within a reasonable time, not exceeding 1 week, after the receipt
27 of a written request UNDER THIS SUBDIVISION.

1 (i) If a nursing home patient desires treatment by a
2 licensed member of the healing arts, the treatment shall be made
3 available unless it is medically contraindicated, and the medical
4 contraindication is justified in the patient's medical record by
5 the attending physician.

6 (j) A nursing home patient has the right to have his or her
7 parents, if a minor, or his or her spouse, next of kin, or
8 patient's representative, if an adult, stay at the facility 24
9 hours a day if the patient is considered terminally ill by the
10 physician responsible for the patient's care.

11 (k) Each nursing home patient shall be provided with meals
12 which meet the recommended dietary allowances for that patient's
13 age and sex and which may be modified according to special
14 dietary needs or ability to chew.

15 (l) Each nursing home patient has the right to receive rep-
16 resentatives of approved organizations as provided in section
17 21763.

18 (4) A nursing home, its owner, administrator, employee, or
19 representative shall not discharge, harass, or retaliate or dis-
20 criminate against a patient because the patient has exercised a
21 right protected under this section.

22 (5) In the case of a nursing home patient, the rights enu-
23 merated in subsection (2)(c), (g), and (k) and subsection (3)(d),
24 (g), and (h) may be exercised by the patient's representative as
25 defined in section 21703.

26 (6) A nursing home patient or home for the aged resident is
27 entitled to be fully informed, as evidenced by the patient's or

1 resident's written acknowledgment, before or at the time of
2 admission and during stay, of the policy required by this
3 section. The policy shall provide that if a NURSING HOME patient
4 or HOME FOR THE AGED resident is adjudicated incompetent and not
5 restored to legal capacity, the rights and responsibilities set
6 forth in this section shall be exercised by a person designated
7 by the NURSING HOME patient or HOME FOR THE AGED resident. The
8 ~~facility or agency~~ NURSING HOME OR HOME FOR THE AGED shall pro-
9 vide proper forms for the NURSING HOME patient or HOME FOR THE
10 AGED resident to provide for the designation of this person at
11 the time of admission.

12 (7) This section ~~shall not be construed to~~ DOES NOT pro-
13 hibit a health facility or agency from establishing and recogniz-
14 ing additional patients' OR RESIDENTS' rights.

15 Sec. 21025. (1) The insurance bureau may visit or examine
16 the business and financial operations of a health maintenance
17 organization as follows:

18 (a) At periodic intervals during the first licensure
19 period.

20 (b) Annually, during the second licensure period.

21 (c) Once each licensure period, during the third and subse-
22 quent licensure periods. This subdivision shall not apply after
23 December 31, 1989.

24 (d) For reasonable cause as determined by the insurance
25 bureau.

26 (e) At the request of a majority of the members of the
27 governing body of a health maintenance organization.

1 (2) The department may visit or examine the health care
2 service operations of a health maintenance organization and con-
3 sult with enrollees to the extent necessary to carry out the
4 intent of this part as follows:

5 (a) At periodic intervals during the first licensure
6 period.

7 (b) Annually, during the second licensure period.

8 (c) Once each licensure period, during the third and subse-
9 quent licensure periods. This subdivision shall not apply after
10 December 31, 1989.

11 (d) For reasonable cause as determined by the director.

12 (e) At the request of a majority of the members of the gov-
13 erning body of a health maintenance organization.

14 (3) Notwithstanding subsections (1)(c) and (2)(c), until
15 January 1, 1985, the department or insurance bureau each may
16 visit or examine a health maintenance organization annually
17 during the third and subsequent licensure periods.

18 (4) ~~The~~ SUBJECT TO THE HEALTH CARE INFORMATION ACT, THE
19 department ~~or~~ AND the insurance bureau each shall have access
20 to the books, papers, and documents of the organization relating
21 to the delivery of health services in a manner ~~which~~ THAT pre-
22 serves the confidentiality of the health records of individual
23 enrollees. The department ~~or~~ AND the insurance bureau each
24 shall have access to the corporate books, papers, and documents
25 of the organization relating to the business and finances of the
26 organization.

1 (5) The department or the insurance bureau may:

2 (a) Summon and qualify witnesses under oath, and examine the
3 officers, agents, employees, providers, or other persons having
4 knowledge of the operations, affairs, transactions, and condi-
5 tions of a health maintenance organization. The officers,
6 agents, employees, providers, or other persons may be required to
7 produce any books or papers considered to be relevant to the
8 evaluation or inspection of a health maintenance organization's
9 affairs, and shall fully cooperate and aid the commissioner or
10 the director in an examination or inspection of a health mainte-
11 nance organization.

12 (b) Require the submission of information regarding a pro-
13 posed contract between a health maintenance organization and an
14 affiliated provider as the department or insurance bureau consid-
15 ers necessary to assure that the contract is in compliance with
16 this part.

17 (c) Jointly promulgate rules, except that, unless specifi-
18 cally authorized by this part, the department and the insurance
19 bureau shall not promulgate rules to require a health maintenance
20 organization to assume responsibility for long-term care for
21 individuals whose custodial maintenance is assigned by statute to
22 this state or a political subdivision of this state.

23 (6) The department shall promptly send to the insurance
24 bureau copies of submissions filed by a health maintenance
25 organization.

26 Sec. 21743. (1) In addition to public records subject to
27 disclosure under section 20175, the following information is

1 subject to disclosure from the department of public health or the
2 department of social services:

3 (a) Ownership of nursing homes, ownership of buildings occu-
4 pied by nursing homes, and the names and addresses of suppliers
5 and the ownership of suppliers of goods and services to nursing
6 homes required to be reported under section 20142.

7 (b) Records of license and certification inspections, sur-
8 veys, and evaluations of nursing homes, other reports of inspec-
9 tions, surveys, and evaluations of patient care, and reports con-
10 cerning a nursing home prepared pursuant to ~~titles 18 and 19 of~~
11 ~~the social security act, 42 U.S.C. 1395 to 1396k~~ TITLE VIII OR
12 TITLE XIX. AS USED IN THIS SUBDIVISION:

13 (i) "TITLE XVIII" MEANS TITLE XVIII OF THE SOCIAL SECURITY
14 ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO 1395b, 1395b-2,
15 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO 1395t, 1395u TO
16 1395w-2, 1395w-4 TO 1395zz, AND 1395bbb TO 1395ccc.

17 (ii) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT,
18 CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396d, 1396f TO
19 1396g, AND 1396i TO 1396s.

20 (c) Cost and reimbursement reports submitted by a nursing
21 home, reports of audits of nursing homes, and other public
22 records concerning costs incurred by, revenues received by, and
23 reimbursement of nursing homes.

24 (d) Complaints filed against a nursing home and complaint
25 investigation reports. A complaint or complaint investigation
26 report shall not be disclosed to a person other than the
27 complainant or complainant's representative before it is

1 disclosed to a nursing home under section 21799a and a
 2 complainant's or patient's name shall not be disclosed except as
 3 provided in section 21799a.

4 (2) ~~The department of public health, the department of~~
 5 ~~social services and the nursing home shall respect the confiden-~~
 6 ~~tiality of a patient's clinical record as provided in section~~
 7 ~~20175 and shall not divulge or disclose the contents of a record~~
 8 ~~in a manner which identifies a patient, except upon a patient's~~
 9 ~~death to a relative or guardian, or under judicial proceedings.~~
 10 ~~This subsection shall not be construed to limit the right of a~~
 11 ~~patient or a patient's representative to inspect or copy the~~
 12 ~~patient's clinical record~~ A NURSING HOME PATIENT'S MEDICAL
 13 RECORD IS SUBJECT TO THE HEALTH CARE INFORMATION ACT.

14 (3) Confidential ~~medical,~~ social, personal, or financial
 15 information identifying a patient shall not be available for
 16 public inspection in a manner which identifies a patient.

17 Sec. 22210. (1) A hospital that applies to the department
 18 for a certificate of need and meets all of the following criteria
 19 shall be granted a certificate of need for a short-term nursing
 20 care program with up to 10 licensed hospital beds:

21 (a) Is eligible to apply for certification as a provider of
 22 swing-bed services under section 1883 of title XVIII of the
 23 social security act, 42 U.S.C. 1395tt.

24 (b) Subject to subsection (2), has fewer than 100 licensed
 25 beds not counting beds excluded under section 1883 of title XVIII
 26 of the social security act AND THE REGULATIONS PROMULGATED UNDER
 27 SECTION 1883.

1 (c) Does not have uncorrected licensing, certification, or
2 safety deficiencies for which the department or the state fire
3 marshal, or both, has not accepted a plan of correction.

4 (d) Provides evidence satisfactory to the department that
5 the hospital has had difficulty in placing patients in skilled
6 nursing home beds during the 12 months immediately preceding the
7 date of the application.

8 (2) After October 1, 1990, the criteria set forth in
9 subsection (1)(b) may be modified by the commission, using the
10 procedure set forth in section 22215(3). The department shall
11 not charge a fee for processing a certificate of need application
12 to initiate a short-term nursing care program.

13 (3) A hospital that is granted a certificate of need for a
14 short-term nursing care program under subsection (1) shall comply
15 with all of the following:

16 (a) Not charge for or otherwise attempt to recover the cost
17 of a length of stay for a patient in the short-term nursing care
18 program that exceeds the length of time allowed for post-hospital
19 extended care under title XVIII of the social security act,
20 chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
21 1395c to 1395i, 1395i-2 to 1395i-4, 1395j TO 1395t, 1395u to
22 1395w-2, 1395w-4 to ~~1395dd, 1395ff to 1395yy~~ 1395zz, and
23 1395bbb to 1395ccc.

24 (b) Admit patients to the short-term nursing care program
25 only pursuant to an admissions contract approved by the
26 department.

1 (c) Not discharge or transfer a patient from a licensed
2 hospital bed, other than a hospital long-term care unit bed, and
3 admit that patient to the short-term nursing care program unless
4 the discharge or transfer and admission is determined medically
5 appropriate by the attending physician.

6 (d) Permit access to a representative of an organization
7 approved under section 21764 to patients admitted to the
8 short-term nursing care program, for all of the purposes
9 described in section 21763.

10 (e) Subject to subsection (8), not allow the number of
11 patient days for the short-term nursing care program to exceed
12 the equivalent of 1,825 patient days for a single state fiscal
13 year.

14 (f) Transfer a patient in the short-term nursing care pro-
15 gram to an appropriately certified nursing home bed, county medi-
16 cal care facility bed, or hospital long-term care unit bed
17 located within a 50-mile radius of the patient's residence within
18 5 business days after the hospital has been notified, either
19 orally or in writing, that a bed has become available.

20 (g) Not charge or collect from a patient admitted to the
21 short-term nursing care program, for services rendered as part of
22 the short-term nursing care program, an amount in excess of the
23 reasonable charge for the services as determined by the United
24 States secretary of health and human services under title XVIII
25 of the social security act.

26 (h) Assist a patient who has been denied coverage for
27 services received in a short-term nursing care program under

1 title XVIII of the social security act to file an appeal with the
2 medicare recovery project operated by the office of services to
3 the aging.

4 (i) Operate the short-term nursing care program in accord-
5 ance with this section and the requirements of the swing bed pro-
6 visions of section 1883 of title XVIII of the social security
7 act, 42 U.S.C. 1395tt.

8 (j) Provide data to the department considered necessary by
9 the department to evaluate the short-term nursing care program.
10 The data shall include, but is not limited to, all of the
11 following:

12 (i) The total number of patients admitted to the hospital's
13 short-term nursing care program during the period specified by
14 the department.

15 (ii) The total number of short-term nursing care patient
16 days for the period specified by the department.

17 (iii) Information identifying the type of care to which
18 patients in the short-term care nursing program are released.

19 (k) As part of the hospital's policy describing the rights
20 and responsibilities of patients admitted to the hospital, as
21 required under section 20201, incorporate all of the following
22 additional rights and responsibilities for patients in the
23 short-term nursing care program:

24 (i) A copy of the hospital's policy shall be provided to
25 each short-term nursing care patient upon admission, and the
26 staff of the hospital shall be trained and involved in the
27 implementation of the policy.

1 (ii) Each short-term nursing care patient may associate and
2 communicate privately with persons of his or her choice.
3 Reasonable, regular visiting hours, which shall take into consid-
4 eration the special circumstances of each visitor, shall be
5 established for short-term nursing care patients to receive
6 visitors. A short-term nursing care patient may be visited by
7 the patient's attorney or by representatives of the departments
8 named in section 20156 during other than established visiting
9 hours. Reasonable privacy shall be afforded for visitation of a
10 short-term nursing care patient who shares a room with another
11 short-term nursing care patient. Each short-term nursing care
12 patient shall have reasonable access to a telephone.

13 (iii) A short-term nursing care patient is entitled to
14 retain and use personal clothing and possessions as space per-
15 mits, unless medically contraindicated, as documented by the
16 attending physician in the PATIENT'S medical record.

17 (iv) A short-term nursing care patient is entitled to the
18 opportunity to participate in the planning of his or her medical
19 treatment. A short-term nursing care patient shall be fully
20 informed by the attending physician of the short-term nursing
21 care patient's medical condition, unless medically contraindi-
22 cated, as documented by a physician in the medical record. Each
23 short-term nursing care patient shall be afforded the opportunity
24 to discharge himself or herself from the short-term nursing care
25 program.

26 (v) A short-term nursing care patient is entitled to be
27 fully informed either before or at the time of admission, and

1 during their stay, of services available in the hospital and of
2 the related charges for those services. The statement of serv-
3 ices provided by the hospital shall be in writing and shall
4 include those services required to be offered on an as needed
5 basis.

6 (vi) A patient in a short-term nursing care program or a
7 person authorized in writing by the patient may, upon submission
8 to the hospital of a written request, inspect and copy the
9 patient's personal ~~or medical~~ records. The hospital shall make
10 the PERSONAL records available for inspection and copying within
11 a reasonable time, not exceeding 7 days, after the receipt of the
12 written request. THE PATIENT'S MEDICAL RECORDS ARE SUBJECT TO
13 THE HEALTH CARE INFORMATION ACT.

14 (vii) A short-term nursing care patient has the right to
15 have his or her parents, if the short-term nursing care patient
16 is a minor, or his or her spouse, next of kin, or patient's rep-
17 resentative, if the short-term nursing care patient is an adult,
18 stay at the facility 24 hours a day if the short-term nursing
19 care patient is considered terminally ill by the physician
20 responsible for the short-term nursing care patient's care.

21 (viii) Each short-term nursing care patient shall be pro-
22 vided with meals that meet the recommended dietary allowances for
23 that patient's age and sex and that may be modified according to
24 special dietary needs or ability to chew.

25 (ix) Each short-term nursing care patient has the right to
26 receive a representative of an organization approved under

1 section 21764, for all of the purposes described in section
2 21763.

3 (4) Achieve and maintain medicare certification under title
4 XVIII of the social security act.

5 (4) A hospital or the owner, administrator, an employee, or
6 a representative of the hospital shall not discharge, harass, or
7 retaliate or discriminate against a short-term nursing care
8 patient because the short-term nursing care patient has exercised
9 a right described in subsection (3)(k).

10 (5) In the case of a short-term nursing care patient, the
11 rights described in subsection (3)(k)(iv) may be exercised by the
12 patient's representative, as defined in section 21703(2).

13 (6) A short-term nursing care patient shall be fully
14 informed, as evidenced by the short-term nursing care patient's
15 written acknowledgment, before or at the time of admission and
16 during stay, of the rights described in subsection (3)(k). The
17 written acknowledgment shall provide that if a short-term nursing
18 care patient is adjudicated incompetent and not restored to legal
19 capacity, the rights and responsibilities set forth in subsection
20 (3)(k) shall be exercised by a person designated by the
21 short-term nursing care patient. The hospital shall provide
22 proper forms for the short-term nursing care patient to provide
23 for the designation of this person at the time of admission.

24 (7) Subsection (3)(k) does not prohibit a hospital from
25 establishing and recognizing additional rights for short-term
26 nursing care patients.

1 (8) Upon application, the department may grant a variation
2 from the maximum number of patient days established under
3 subsection (3)(e), to an applicant hospital that demonstrates to
4 the satisfaction of the department that there is an immediate
5 need for skilled nursing beds within a 100-mile radius of the
6 hospital. A variation granted under this subsection ~~shall be~~
7 IS valid for not more than 1 year after the date variation is
8 granted. The department shall promulgate rules to implement this
9 subsection including, at a minimum, a definition of immediate
10 need and the procedure for applying for a variation.

11 (9) A hospital that violates subsection (3) is subject to
12 the penalty provisions of section 20165.

13 (10) A person shall not initiate a short-term nursing care
14 program without first obtaining a certificate of need under this
15 section.

16 (11) By October 1, 1990, the department shall collect data
17 from hospitals operating short-term nursing care programs and
18 report to the legislature on the status of short-term nursing
19 care programs in this state. The report shall include a recom-
20 mendation as to whether or not short-term nursing care programs
21 should continue.

22 (12) This section is repealed effective October 1, 1993.

23 Section 2. This amendatory act shall not take effect unless
24 Senate Bill No. _____ or House Bill No. 4749 (request
25 no. 01629'93) of the 87th Legislature is enacted into law.