

**SUBSTITUTE FOR
SENATE BILL NO. 1436**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 22203, 22205, 22207, 22209, 22211, 22213, 22215, 22221, 22226, 22230, 22231, 22235, 22239, 22241, 22247, 22255, and 22260 (MCL 333.22203, 333.22205, 333.22207, 333.22209, 333.22211, 333.22213, 333.22215, 333.22221, 333.22226, 333.22230, 333.22231, 333.22235, 333.22239, 333.22241, 333.22247, 333.22255, and 333.22260), sections 22203, 22207, 22209, 22213, 22215, 22221, 22231, 22239, 22241, 22247, and 22260 as amended by 1993 PA 88, section 22205 as amended by 2000 PA 253, sections 22211, 22230, 22235, and 22255 as added by 1988 PA 332, and section 22226 as added by 1988 PA 331, and by adding section 22231a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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1 Sec. 22203. (1) "Addition" means adding patient rooms,
2 beds, and ancillary service areas, including, but not limited to,
3 procedure rooms or fixed equipment, surgical operating rooms,
4 therapy rooms or fixed equipment, or other accommodations to a
5 health facility.

6 (2) "Capital expenditure" means an expenditure for a single
7 project, including cost of construction, engineering, and equip-
8 ment that under generally accepted accounting principles is not
9 properly chargeable as an expense of operation. Capital expendi-
10 ture includes a lease or comparable arrangement by or on behalf
11 of a health facility ~~by which a person obtains~~ TO OBTAIN a
12 health facility, ~~or~~ licensed part of a health facility, or
13 equipment for a health facility, IF the ~~expenditure for which~~
14 ACTUAL PURCHASE OF A HEALTH FACILITY, LICENSED PART OF A HEALTH
15 FACILITY, OR EQUIPMENT FOR A HEALTH FACILITY would have been con-
16 sidered a capital expenditure under this part. ~~if the person had~~
17 ~~acquired it by purchase.~~ Capital expenditure includes the cost
18 of studies, surveys, designs, plans, working drawings, specifica-
19 tions, and other activities essential to the acquisition,
20 improvement, expansion, addition, conversion, modernization, new
21 construction, or replacement of physical plant and equipment.

22 (3) "Certificate of need" means a certificate issued
23 ~~pursuant to~~ UNDER this part authorizing a new health facility,
24 a change in bed capacity, the initiation, replacement, or expan-
25 sion of a covered clinical service, or a covered capital expendi-
26 ture that is issued in accordance with this part.

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1 (4) "Certificate of need review standard" or "review
2 standard" means a standard approved by the commission. ~~or the~~
3 ~~statewide health coordinating council under section 22215.~~

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

6 (a) An increase in licensed hospital beds.

7 (b) An increase in licensed nursing home beds or hospital
8 beds certified for long-term care.

9 (c) An increase in licensed psychiatric beds.

10 (d) A change from 1 licensed use to a different licensed
11 use.

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

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

16 (7) "Clinical service area" means an area of a health facil-
17 ity, including related corridors, equipment rooms, ancillary
18 service and support areas that house medical equipment, patient
19 rooms, patient beds, diagnostic, operating, therapy, or treatment
20 rooms or other accommodations related to the diagnosis, treat-
21 ment, or rehabilitation of individuals receiving services from
22 the health facility.

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

25 (9) "Covered capital expenditure" means a capital expendi-
26 ture of ~~-\$2,000,000.00~~ \$2,500,000.00 or more, as adjusted
27 ANNUALLY by the department under section 22221(g), by a person

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1 for a health facility for a single project, excluding the cost of
2 nonfixed medical equipment, that includes or involves the acqui-
3 sition, improvement, expansion, addition, conversion, moderniza-
4 tion, new construction, or replacement of a clinical service area
5 or a capital expenditure of ~~-\$3,000,000.00~~ \$5,000,000.00 or
6 more, as adjusted ANNUALLY by the department under
7 section 22221(g), by a person for a health facility for a single
8 project that involves the acquisition, improvement, expansion,
9 addition, conversion, modernization, new construction, or
10 replacement of nonclinical service areas only.

11 (10) "Covered clinical service", except as modified by the
12 commission ~~pursuant to~~ UNDER section 22215, ~~after the effec-~~
13 ~~tive date of the 1993 amendatory act that amended this~~
14 ~~subsection,~~ means 1 or more of the following:

15 (a) Initiation or expansion of 1 or more of the following
16 services:

17 (i) Neonatal intensive care services or special newborn
18 nursing services.

19 (ii) Open heart surgery.

20 (iii) Extrarenal organ transplantation.

21 (b) Initiation, replacement, or expansion of 1 or more of
22 the following services:

23 (i) Extracorporeal shock wave lithotripsy.

24 (ii) Megavoltage radiation therapy.

25 (iii) Positron emission tomography.

26 (iv) Surgical services provided in a freestanding surgical
27 outpatient facility, an ambulatory surgery center certified under

1 title XVIII, or a surgical department of a hospital licensed
2 under part 215 and offering inpatient or outpatient surgical
3 services.

4 (v) Cardiac catheterization.

5 (vi) Fixed ~~and mobile~~ magnetic resonance imager services
6 EXCEPT IN A COUNTY THAT HAS A POPULATION OF MORE THAN 150,000 BUT
7 DOES NOT HAVE AT LEAST 2 FIXED MAGNETIC RESONANCE IMAGER UNITS.

8

9 (vii) MOBILE MAGNETIC RESONANCE IMAGER SERVICES.

10 (viii) ~~(vii)~~ Fixed and mobile computerized tomography
11 scanner services.

12 (ix) ~~(viii)~~ Air ambulance services.

13 ~~(c) Initiation, replacement, or expansion of a partial hos-~~
14 ~~pitalization psychiatric program service.~~

15 (C) ~~(d)~~ Initiation or expansion of a specialized psychiat-
16 ric program for children and adolescent patients utilizing
17 licensed psychiatric beds.

18 (D) ~~(e)~~ Initiation, replacement, or expansion of a service
19 not listed in this subsection, but designated as a covered clini-
20 cal service by the commission under section 22215(1)(a).

21 (11) "Fixed equipment" means equipment that is affixed to
22 and constitutes a structural component of a health facility,
23 including, but not limited to, mechanical or electrical systems,
24 elevators, generators, pumps, boilers, and refrigeration
25 equipment.

26 Sec. 22205. (1) "Health facility", except as otherwise
27 provided in subsection (2), means:

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1 (a) A hospital licensed under part 215.

2 (b) A psychiatric hospital ~~,~~ OR psychiatric unit ~~, or~~
3 ~~partial hospitalization psychiatric program~~ licensed under the
4 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

7 (d) A freestanding surgical outpatient facility licensed
8 under part 208.

9 (e) A health maintenance organization issued a license or
10 certificate of authority in this state.

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

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

16 (b) A health facility or agency located in a correctional
17 institution.

18 (c) A veterans facility operated by the state or federal
19 government.

20 (d) A facility owned and operated by the department of
21 ~~mental~~ COMMUNITY health.

22 (3) "HEALTH PLANNER" MEANS AN INDIVIDUAL WHO IS EMPLOYED BY
23 A HEALTH FACILITY OR HEALTH SYSTEM, HAS EXPERIENCE IN QUANTITA-
24 TIVE AND QUALITATIVE RESEARCH AND DATA ANALYSIS, AND IS RESPONSI-
25 BLE FOR LONG-RANGE PLANNING AND IMPLEMENTATION OF POLICIES,
26 RULES, AND REGULATIONS MANDATED BY STATE AND FEDERAL GOVERNMENTAL

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1 AGENCIES INCLUDING, BUT NOT LIMITED TO, CERTIFICATE OF NEED
2 PROCEDURES.

3 (4) ~~-(3)-~~ "Initiate" means the ~~initiation~~ OFFERING of a
4 covered clinical service ~~by a person if the covered clinical~~
5 ~~service~~ THAT has not been offered in compliance with this part
6 or former part 221 on a regular basis ~~by that person at the~~
7 THAT location ~~where the covered clinical service is to be~~
8 ~~offered~~ within the 12-month period immediately preceding the
9 date the covered clinical service will be offered.

10 (5) ~~-(4)-~~ "Medical equipment" means a single equipment com-
11 ponent or a related system of components that is used for clini-
12 cal purposes.

13 Sec. 22207. (1) "Medicaid" means the program for medical
14 assistance administered by the department of ~~social services~~
15 COMMUNITY HEALTH under the social welfare act, ~~Act No. 280 of~~
16 ~~the Public Acts of 1939, being sections 400.1 to 400.119b of the~~
17 ~~Michigan Compiled Laws~~ 1939 PA 280, MCL 400.1 TO 400.119B.

18 (2) "Modernization" means an upgrading, alteration, or
19 change in function of a part or all of the physical plant of a
20 health facility. Modernization includes, but is not limited to,
21 the alteration, repair, remodeling, and renovation of an existing
22 building and initial fixed equipment and the replacement of obso-
23 lete fixed equipment in an existing building. Modernization of
24 the physical plant does not include normal maintenance and oper-
25 ational expenses.

26 (3) "New construction" means construction of a health
27 facility where a health facility does not exist or construction

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1 replacing or expanding an existing health facility or a part of
2 an existing health facility.

3 (4) "Person" means a person as defined in section 1106 or a
4 governmental entity.

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

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

15 (7) "Rural county" means a county not located in a metropol-
16 itan ~~area as that term is~~ STATISTICAL AREA OR MICROPOLITAN STA-
17 TISTICAL AREAS AS THOSE TERMS ARE defined ~~pursuant to~~ UNDER the
18 ~~"revised standards for defining metropolitan areas in the~~
19 ~~1990's"~~ "STANDARDS FOR DEFINING METROPOLITAN AND MICROPOLITAN
20 STATISTICAL AREAS" by the statistical policy office of the office
21 of information and regulatory affairs of the United States office
22 of management and budget, ~~55 F.R. p. 12154 (March 30, 1990)~~ 65
23 F.R. P. 82238 (DECEMBER 27, 2000).

24 ~~(8) "Statewide health coordinating council" means the state~~
25 ~~agency created by section 7 of Act No. 323 of the Public Acts of~~
26 ~~1978, being section 325.2007 of the Michigan Compiled Laws,~~

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1 ~~before section 7 was amended by the 1988 amendatory act that~~
2 ~~created the state health planning council.~~

3 (8) ~~(9)~~ "Stipulation" means a requirement that is germane
4 to the proposed project and has been agreed to by an applicant as
5 a condition of certificate of need approval.

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

9 (a) Acquire an existing health facility or begin operation
10 of a health facility at a site that is not currently licensed for
11 that type of health facility.

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

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

15 (d) Make a covered capital expenditure.

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

18 (3) An applicant seeking a certificate of need for the
19 acquisition of an existing health facility may file a single,
20 consolidated application for the certificate of need if the
21 project results in the acquisition of an existing health facility
22 but does not result in an increase or relocation of licensed beds
23 or the initiation, expansion, or replacement of a covered clini-
24 cal service. Except as otherwise provided in this subsection, a
25 person acquiring an existing health facility is subject to the
26 applicable certificate of need review standards in effect on the
27 date of the transfer for the covered clinical services provided

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1 by the acquired health facility. The department may except 1 or
2 more of the covered clinical services listed in section
3 22203(10)(b), except the covered clinical service listed in sec-
4 tion 22203(10)(b)(iv), from the minimum volume requirements in
5 the applicable certificate of need review standards in effect on
6 the date of the transfer, if the equipment used in the covered
7 clinical service is unable to meet the minimum volume require-
8 ments due to the technological incapacity of the equipment. A
9 covered clinical service excepted by the department under this
10 subsection is subject to all the other provisions in the applica-
11 ble certificate of need review standards in effect on the date of
12 the transfer, except minimum volume requirements.

13 (4) ~~The center for rural health created in section 2612~~
14 ~~shall designate a certificate of need ombudsman to provide tech-~~
15 ~~nical assistance and consultation to hospitals and communities~~
16 ~~located in rural counties regarding certificate of need proposals~~
17 ~~and applications under this part. The ombudsman shall also act~~
18 ~~as an advocate for health concerns of rural counties in the~~
19 ~~development of certificate of need review standards under this~~
20 ~~part.~~ AN APPLICANT SEEKING A CERTIFICATE OF NEED FOR THE RELOCA-
21 TION OR REPLACEMENT OF AN EXISTING HEALTH FACILITY MAY FILE A
22 SINGLE, CONSOLIDATED APPLICATION FOR THE CERTIFICATE OF NEED IF
23 THE PROJECT DOES NOT RESULT IN AN INCREASE OF LICENSED BEDS OR
24 THE INITIATION, EXPANSION, OR REPLACEMENT OF A COVERED CLINICAL
25 SERVICE. A PERSON RELOCATING OR REPLACING AN EXISTING HEALTH
26 FACILITY IS SUBJECT TO THE APPLICABLE CERTIFICATE OF NEED REVIEW

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1 STANDARDS IN EFFECT ON THE DATE OF THE RELOCATION OR REPLACEMENT
2 OF THE HEALTH FACILITY.

3 Sec. 22211. (1) The certificate of need commission is cre-
4 ated in the department. ~~The commission shall be appointed~~
5 ~~within 3 months after the effective date of this part.~~ The com-
6 mission shall consist of ~~5~~ 9 members appointed by the governor
7 with the advice and consent of the senate. ~~Three appointees~~
8 ~~shall be members of a major political party, and 2 appointees~~
9 ~~shall be members of another major political party.~~ EACH MEMBER
10 SERVING ON THE COMMISSION ON THE EFFECTIVE DATE OF THE 2002 AMENDATORY
ACT
11 THAT ADDED THIS SENTENCE SHALL SERVE THE REMAINDER OF HIS OR HER TERM.
ON
12 THE EXPIRATION OF THE TERMS OF THOSE MEMBERS, THE GOVERNOR, WITH THE
13 ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT A SUCCESSOR TO THE
COMMISSION AS REQUIRED UNDER THIS SECTION. WITHIN 30 DAYS AFTER THE
EFFECTIVE DATE OF THE 2002 AMENDATORY ACT THAT ADDED THIS SENTENCE. THE
GOVERNOR. WITH THE ADVICE AND CONSENT OF THE SENATE. SHALL APPOINT 4
ADDITIONAL MEMBERS TO THE COMMISSION AS REQUIRED UNDER THIS SECTION. THE
COMMISSION SHALL CONSIST OF THE FOLLOWING 9 MEMBERS:

14 (A) ONE REPRESENTATIVE FROM THE MICHIGAN HEALTH AND HOSPITAL
15 ASSOCIATION OR A SUCCESSOR ORGANIZATION.

16 (B) ONE REPRESENTATIVE FROM AN ENTITY SUBJECT TO THE INSUR-
17 ANCE LAWS AND REGULATIONS OF THIS STATE, OR SUBJECT TO THE JURIS-
18 DICTION OF THE COMMISSIONER, THAT CONTRACTS OR OFFERS TO CONTRACT
19 TO PROVIDE, DELIVER, ARRANGE FOR, PAY FOR, OR REIMBURSE ANY OF
20 THE COSTS OF HEALTH CARE SERVICES, INCLUDING A SICKNESS AND ACCI-
21 DENT INSURANCE COMPANY, A HEALTH MAINTENANCE ORGANIZATION, OR ANY
22 OTHER ENTITY PROVIDING A PLAN OF HEALTH INSURANCE, HEALTH BENE-
23 FITS, OR HEALTH SERVICES.

24 (C) ONE REPRESENTATIVE FROM EITHER THE MICHIGAN STATE MEDI-
25 CAL SOCIETY OR THE MICHIGAN OSTEOPATHIC ASSOCIATION OR A SUCCES-
26 SOR ORGANIZATION.

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1 (D) ONE REPRESENTATIVE FROM A SCHOOL OF MEDICINE OR
2 OSTEOPATHIC MEDICINE APPROVED BY THE MICHIGAN BOARD OF MEDICINE
3 OR THE MICHIGAN BOARD OF OSTEOPATHIC MEDICINE AND SURGERY.

4 (E) ONE REPRESENTATIVE FROM A STATE ASSOCIATION REPRESENTING
5 NURSING HOMES.

6 (F) ONE REPRESENTATIVE REPRESENTING ORGANIZED LABOR UNIONS
7 IN THIS STATE.

8 (G) ONE REPRESENTATIVE REPRESENTING A COMPANY WITH 200 OR
9 MORE EMPLOYEES.

10 (H) ONE REPRESENTATIVE REPRESENTING A COMPANY WITH 50 OR
11 FEWER EMPLOYEES.

12 (I) ONE REPRESENTATIVE FROM A NONPROFIT HEALTH CARE CORPORA-
13 TION OPERATING PURSUANT TO THE NONPROFIT HEALTH CARE CORPORATION
14 REFORM ACT, 1980 PA 350, MCL 550.1101 TO 550.1703.

15 (2) In making appointments, the governor shall, to the
16 extent feasible, ~~assure~~ DO EACH OF THE FOLLOWING:

17 (A) MAKE THE APPOINTMENTS FROM AMONG RECOMMENDATIONS MADE BY
18 EACH OF THOSE ORGANIZATIONS DESCRIBED IN SUBSECTION (1).

19 (B) ASSURE that the membership of the commission is broadly
20 representative of the interests of all of the people of this
21 state AND OF THE VARIOUS GEOGRAPHIC REGIONS.

22 (3) Except for initial members, a member of the commission
23 shall serve for a term of 3 years or until a successor is
24 appointed. Of the members initially appointed, ~~1~~ 3 of the mem-
25 bers shall be appointed for a term of 1 year, ~~2~~ 3 of the mem-
26 bers shall be appointed for a term of 2 years, and ~~2~~ 3 of the
27 members shall be appointed for a term of 3 years. A vacancy on

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1 the commission shall be filled for the ~~balance~~ REMAINDER of the
2 unexpired term in the same manner as the original appointment.

3 (4) Commission members are subject to the following:

4 (a) ~~Act No. 317 of the Public Acts of 1968, being sections~~
5 ~~15.321 to 15.330 of the Michigan Compiled Laws~~ 1968 PA 317, MCL
6 15.321 TO 15.330.

7 (b) ~~Act No. 196 of the Public Acts of 1973, being sections~~
8 ~~15.341 to 15.348 of the Michigan Compiled Laws~~ 1973 PA 196, MCL
9 15.341 TO 15.348.

10 (c) ~~Act No. 472 of the Public Acts of 1978, being sections~~
11 ~~4.411 to 4.431 of the Michigan Compiled Laws~~ 1978 PA 472, MCL
12 4.411 TO 4.431.

13 Sec. 22213. (1) The commission shall, within 2 months after
14 appointment and confirmation of all members, adopt bylaws for the
15 operation of the commission. The bylaws shall include, at a min-
16 imum, voting procedures that protect against conflict of interest
17 and minimum requirements for attendance at meetings.

18 (2) The governor may remove a commission member from office
19 for failure to attend 3 consecutive meetings in a 1-year period.

20 (3) The commission annually shall elect a chairperson and
21 vice-chairperson.

22 (4) The commission shall hold regular quarterly meetings at
23 places and on dates fixed by the commission. Special meetings
24 may be called by the chairperson, by not less than ~~2~~ 3 commis-
25 sion members, or by the department.

26 (5) A majority of the commission members appointed and
27 serving constitutes a quorum. Final action by the commission

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1 shall be only by affirmative vote of a majority of the commission
2 members appointed and serving. A commission member shall not
3 vote by proxy.

4 (6) The legislature annually shall fix the per diem compen-
5 sation of members of the commission. Expenses of members
6 incurred in the performance of official duties shall be reim-
7 bursed as provided in section 1216.

8 (7) The department shall furnish administrative services to
9 the commission, shall have charge of the commission's offices,
10 records, and accounts, and shall provide AT LEAST 2 FULL-TIME
11 ADMINISTRATIVE EMPLOYEES, secretarial STAFF, and other staff nec-
12 essary to allow the proper exercise of the powers and duties of
13 the commission. The department shall make available the times
14 and places of commission meetings and keep minutes of the meet-
15 ings and a record of the actions of the commission. THE DEPART-
16 MENT SHALL MAKE AVAILABLE A BRIEF SUMMARY OF THE ACTIONS TAKEN BY
17 THE COMMISSION.

18 (8) The department shall assign AT LEAST 2 FULL-TIME profes-
19 sional employees to staff the commission to assist the commission
20 in the performance of its substantive responsibilities under this
21 part.

22 Sec. 22215. (1) ~~Pursuant to the requirements of this part,~~
23 ~~the~~ THE commission shall do all of the following:

24 (a) If determined necessary by the commission, revise, add
25 to, or delete 1 or more of the covered clinical services listed
26 in section 22203. If the commission proposes to add to the
27 covered clinical services listed in section 22203, the commission

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1 shall develop proposed review standards and make the review
2 standards available to the public not less than 30 days before
3 conducting a hearing under subsection (3).

4 (b) ~~Approve~~ DEVELOP, APPROVE, disapprove, or revise cer-
5 tificate of need review standards that establish for purposes of
6 section 22225 the need, if any, for the initiation, replacement,
7 or expansion of covered clinical services, the acquisition or
8 beginning the operation of a health facility, making changes in
9 bed capacity, or making covered capital expenditures, including
10 conditions, standards, assurances, or information that must be
11 met, demonstrated, or provided by a person who applies for a cer-
12 tificate of need. A certificate of need review standard may also
13 establish ongoing quality assurance requirements including any or
14 all of the requirements specified in section 22225(2)(c). ~~The~~
15 ~~statewide health coordinating council may perform the duties of~~
16 ~~the commission under this subdivision, only until all members of~~
17 ~~the commission are appointed and confirmed, or until March 1,~~
18 ~~1989, whichever is sooner.~~ BY JANUARY 1, 2004, REVISE ALL CER-
19 TIFICATE OF NEED REVIEW STANDARDS TO INCLUDE A REQUIREMENT THAT
20 EACH APPLICANT PARTICIPATE IN TITLE XIX OF THE SOCIAL SECURITY
21 ACT, CHAPTER 531, 49 STAT. 620, 1396r-6 AND 1396r-8 TO 1396v.

22 (c) Direct the department to prepare and submit recommenda-
23 tions regarding commission duties and functions that are of
24 interest to the commission including, but not limited to, spe-
25 cific modifications of proposed actions considered under this
26 section.

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1 (d) Approve, disapprove, or revise proposed criteria for
2 determining health facility viability under section 22225.

3 (e) Annually assess the operations and effectiveness of the
4 certificate of need program based on periodic reports from the
5 department and other information available to the commission.

6 (f) By ~~October 1, 1992~~ JANUARY 1, 2003, and every ~~5~~ 2
7 years ~~after October 1, 1992~~ THEREAFTER, make recommendations to
8 the standing committees in the senate and the house that have
9 jurisdiction over matters pertaining to public health regarding
10 statutory changes to improve or eliminate the certificate of need
11 program.

12 (g) Upon submission by the department approve, disapprove,
13 or revise standards to be used by the department in designating a
14 regional certificate of need review agency, pursuant to
15 section 22226.

16 (h) ~~Approve~~ DEVELOP, APPROVE, disapprove, or revise
17 certificate of need review standards governing the acquisition of
18 new technology.

19 (i) In accordance with section 22255, approve, disap-
20 prove, or revise proposed procedural rules for the certificate of
21 need program.

22 (j) Consider the recommendations of the department and
23 the department of attorney general as to the administrative fea-
24 sibility and legality of proposed actions under subdivisions (a),
25 (b), and (c).

26 (k) Consider the impact of a proposed restriction on
27 the acquisition of or availability of covered clinical services

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1 on the quality, availability, and cost of health services in this
2 state.

3 ~~(l) Appoint ad hoc advisory committees to assist in the~~
4 ~~development of proposed certificate of need review standards. An~~
5 ~~ad hoc advisory committee shall complete its duties under this~~
6 ~~subdivision and submit its recommendations to the commission~~
7 ~~within the time limit specified by the commission when an ad hoc~~
8 ~~advisory committee is appointed. The composition of the ad hoc~~
9 ~~advisory committee shall include all of the following:~~

10 ~~(i) Experts with professional competence in the subject~~
11 ~~matter of the proposed standard, who shall constitute a majority~~
12 ~~of the ad hoc advisory committee.~~

13 ~~(ii) Representatives of health care provider organizations~~
14 ~~concerned with licensed health facilities or licensed health~~
15 ~~professions.~~

16 ~~(iii) Representatives of organizations concerned with health~~
17 ~~care consumers and the purchasers and payers of health care~~
18 ~~services.~~

19 (L) ENGAGE THE SERVICES OF PRIVATE CONSULTANTS OR CONTRACT
20 WITH ANY PRIVATE ORGANIZATION FOR PROFESSIONAL AND TECHNICAL
21 ASSISTANCE AND ADVICE OR OTHER SERVICES TO ASSIST THE COMMISSION
22 IN CARRYING OUT ITS DUTIES AND FUNCTIONS UNDER THIS PART.

23 (M) HIRE OR CONTRACT WITH HEALTH PLANNERS, ADMINISTRATIVE
24 EMPLOYEES, SECRETARIAL STAFF, AND OTHER STAFF NECESSARY TO CARRY
25 OUT ITS DUTIES AND FUNCTIONS UNDER THIS PART.

1 (N) IN ADDITION TO SUBDIVISION (B), REVIEW AND, IF
2 NECESSARY, REVISE EACH SET OF CERTIFICATE OF NEED REVIEW
3 STANDARDS AT LEAST EVERY 3 YEARS.

4 (2) The commission shall exercise its duties under this part
5 to promote AND ASSURE all of the following:

6 (a) The availability and accessibility of quality health
7 services at A reasonable cost and ~~with~~ WITHIN A reasonable geo-
8 graphic proximity for all people in ~~the~~ THIS state.

9 (b) Appropriate differential consideration of the health
10 care needs of residents in rural counties in ways that do not
11 compromise the quality and affordability of health care services
12 for those residents.

13 (3) Not less than 30 days before final action is taken by
14 the commission under subsection (1)(a), (b), (d), or ~~(h)~~ (G),
15 the commission shall conduct a public hearing on its proposed
16 action. In addition, not less than 30 days before final action
17 is taken by the commission under subsection (1)(a), (b), (d), or
18 ~~(h)~~ (G), the commission CHAIRPERSON shall submit the proposed
19 action AND A CONCISE SUMMARY OF THE EXPECTED IMPACT OF THE PRO-
20 POSED ACTION for comment to EACH MEMBER OF the standing commit-
21 tees in the senate and house of representatives with jurisdiction
22 over public health matters. THE COMMISSION SHALL INFORM THE
23 STANDING COMMITTEES IN THE SENATE AND HOUSE OF REPRESENTATIVES OF
24 THE DATE, TIME, AND LOCATION OF THE NEXT MEETING REGARDING THE
25 PROPOSED ACTION.

26 (4) The CHAIRPERSON OF THE commission shall submit the
27 proposed final action INCLUDING A CONCISE SUMMARY OF THE EXPECTED

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1 IMPACT OF THE PROPOSED FINAL ACTION to the governor and TO EACH
2 MEMBER OF the standing committee of each house of the legislature
3 with jurisdiction over public health matters. The governor or
4 the legislature may disapprove the proposed final action within
5 45 days after the date of submission. If the proposed final
6 action is not submitted on a legislative session day, the 45 days
7 commence on the first legislative session day after the proposed
8 final action is submitted. The 45 days shall include not less
9 than 9 legislative session days. Legislative disapproval shall
10 be expressed by concurrent resolution which shall be adopted by
11 each house of the legislature. The concurrent resolution shall
12 state specific objections to the proposed final action. A pro-
13 posed final action by the commission under subsection (1)(a),
14 (b), (d), or ~~(h)~~ (G) is not effective if it has been disap-
15 proved under this subsection. If the proposed final action is
16 not disapproved under this subsection, it is effective and bind-
17 ing on all persons affected by this part upon the expiration of
18 the 45-day period or on a later date specified in the proposed
19 final action. As used in this subsection, "legislative session
20 day" means each day in which a quorum of either the house of rep-
21 resentatives or the senate, following a call to order, officially
22 convenes in Lansing to conduct legislative business.

23 ~~-(5) Within 2 years after the effective date of the amenda-~~
24 ~~tory act that added this sentence, the ad hoc advisory committee~~
25 ~~for psychiatric services appointed by the department under sec-~~
26 ~~tion 22221 or by the commission under section 22215 shall develop~~
27 ~~and submit certificate of need review standards under this~~

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1 ~~section for the covered clinical services described in~~
2 ~~section 22203(10)(c) and (d). The ad hoc advisory committee for~~
3 ~~psychiatric services shall include in the review standards a spe-~~
4 ~~cific methodology for the determination of need. If the ad hoc~~
5 ~~advisory committee for psychiatric services does not develop and~~
6 ~~submit review standards for the covered clinical services~~
7 ~~described in section 22203(10)(c) and (d) within the 2-year time~~
8 ~~limit set forth in this subsection, the commission shall delete~~
9 ~~the covered clinical services described in section 22203(10)(c)~~
10 ~~and (d) pursuant to subsection (1)(a).~~

11 (5) ~~(6)~~ If the reports received under section 22221(f)
12 indicate that the certificate of need application fees collected
13 under section 20161(2) have not been within 10% of 1/2 the cost
14 to the department of implementing this part, the commission shall
15 make recommendations TO THE GOVERNOR AND TO EACH MEMBER OF THE
16 STANDING COMMITTEES IN THE SENATE AND HOUSE OF REPRESENTATIVES
17 WITH JURISDICTION OVER PUBLIC HEALTH MATTERS regarding the revi-
18 sion of those fees so that the certificate of need application
19 fees collected equal approximately 1/2 of the cost to the depart-
20 ment of implementing this part.

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

22 (a) ~~Promulgate~~ SUBJECT TO APPROVAL BY THE COMMISSION,
23 PROMULGATE rules to implement its powers and duties under this
24 part.

25 (b) Report to the commission at least annually on the per-
26 formance of the department's duties under this part.

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

3 (d) Administer and apply certificate of need review
4 standards. ~~In applying a review standard that establishes the~~
5 ~~minimum number of magnetic resonance imaging procedures necessary~~
6 ~~for a certificate of need for a mobile magnetic resonance imaging~~
7 ~~service servicing only hospitals located in rural counties, the~~
8 ~~department shall use an adjustment factor of 2.0. In applying a~~
9 ~~review standard that establishes the minimum number of magnetic~~
10 ~~resonance imaging procedures necessary for a certificate of need~~
11 ~~for a mobile magnetic resonance imaging service servicing hospi-~~
12 ~~tals located in both rural and nonrural counties, for a hospital~~
13 ~~located in a rural county the department shall use an adjustment~~
14 ~~factor of 1.4.~~ IN THE REVIEW OF CERTIFICATE OF NEED APPLICA-
15 TIONS, THE DEPARTMENT SHALL CONSIDER RELEVANT WRITTEN COMMUNICA-
16 TIONS FROM ANY PERSON.

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

20 (f) ~~Following the first state fiscal year after October 1,~~
21 ~~1988~~ BY DECEMBER 1, 2003, and annually thereafter, report to the
22 commission regarding the costs to the department of implementing
23 this part and the certificate of need application fees collected
24 under section ~~20161(2)~~ 20161 in the immediately preceding state
25 fiscal year.

26 (g) Beginning January 1, ~~1995~~ 2003, annually adjust the
27 ~~-\$2,000,000.00~~ \$2,500,000.00 and ~~-\$3,000,000.00~~ \$5,000,000.00

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1 thresholds set forth in section 22203(9) by an amount determined
2 by the state treasurer to reflect the annual percentage change in
3 the consumer price index, using data from the immediately preced-
4 ing period of July 1 to June 30. As used in this subdivision,
5 "consumer price index" means the most comprehensive index of con-
6 sumer prices available for this state from the bureau of labor
7 statistics of the United States department of labor.

8 (H) ANNUALLY REVIEW THE APPLICATION PROCESS, INCLUDING ALL
9 FORMS, REPORTS, AND OTHER MATERIALS THAT ARE REQUIRED TO BE SUB-
10 MITTED WITH THE APPLICATION. IF NEEDED TO PROMOTE ADMINISTRATIVE
11 EFFICIENCY, REVISE THE FORMS, REPORTS, AND ANY OTHER MATERIALS
12 REQUIRED WITH THE APPLICATION.

13 (I) WITHIN 6 MONTHS OF THE EFFECTIVE DATE OF THE AMENDATORY
14 ACT THAT ADDED THIS SUBSECTION, CREATE A CONSOLIDATED APPLICATION
15 FOR A CERTIFICATE OF NEED FOR THE RELOCATION OR REPLACEMENT OF AN
16 EXISTING HEALTH FACILITY.

17 Sec. 22226. (1) The ~~department and the office~~ COMMISSION
18 shall ~~jointly~~ develop standards for the designation by the
19 department of a regional certificate of need review agency for
20 each review area to develop advisory recommendations for proposed
21 projects. The standards shall be based on the requirements for a
22 regional certificate of review agency set forth in
23 subsection (3). ~~The standards developed under this subsection~~
24 ~~shall be approved by the commission before implementation by the~~
25 ~~department.~~

26 (2) The department, with the concurrence of the commission,
27 shall designate a person to be a regional certificate of need

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1 review agency for a specific review area, according to procedures
2 approved by the commission, if the person meets the standards
3 approved under subsection (1), and if a regional certificate of
4 need review agency has not already been designated for that spe-
5 cific review area.

6 (3) A regional certificate of need review agency shall meet
7 all of the following requirements:

8 (a) Be an independent nonprofit organization that is not a
9 subsidiary of, or otherwise controlled by, any other person.

10 (b) Be governed by a board that is broadly representative of
11 consumers, providers, payers, and purchasers of health care in
12 the review area, with a majority of the board being consumers,
13 payers, and purchasers of health care.

14 (c) Demonstrate a willingness and ability to conduct reviews
15 of all proposed projects requiring a certificate of need that
16 would be located within the review area served by the regional
17 certificate of need review agency.

18 (d) Avoid conflict of interest in its review of all applica-
19 tions for a certificate of need.

20 (e) Provide data to the department to enable the department
21 to evaluate the regional certificate of need review agency's
22 performance. The data provided under this subdivision shall be
23 reviewed at periodic meetings between the department and the
24 regional certificate of need review agency.

25 (f) Not receive more than a designated proportion of its
26 financial support from health facilities and health
27 professionals, as determined by the commission.

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1 (g) Meet other requirements established by the commission
2 that are relevant to the functions of a regional certificate of
3 need review agency, ~~pursuant to~~ UNDER this part.

4 (4) The designation of a regional certificate of need review
5 agency shall be operative for a period of time approved by the
6 commission, but not for more than 24 months. The designation of
7 a regional certificate of need review agency may be terminated by
8 the department WITH THE CONCURRENCE OF THE COMMISSION at any time
9 for noncompliance with the standards approved under subsection
10 (1). In addition, the designation may be terminated by the
11 regional certificate of need review agency upon the expiration of
12 60 days after the department receives written notice of the
13 termination.

14 (5) A local certificate of need review agency that was des-
15 ignated pursuant to a designation agreement authorized under
16 former section 22124 and effective on ~~the effective date of this~~
17 ~~part~~ OCTOBER 1, 1988 is designated as the regional certificate
18 of need review agency for its review area until the expiration of
19 1 year after the date of final approval of the standards devel-
20 oped under subsection (1), unless the designation is terminated
21 by either the department UNDER SUBSECTION (4) or the regional
22 certificate of need review agency before that time.

23 (6) A person applying for a certificate of need under this
24 part shall simultaneously provide a copy of any letter of intent,
25 application, or additional information required by the department
26 to the regional certificate of need review agency designated by
27 the department for the review area in which the proposed project

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1 would be located, unless the regional certificate of need review
2 agency determines that it will not review the application or
3 other information, and notifies both the applicant and the
4 department in writing of its determination. The regional certifi-
5 cate of need review agency may review the application and submit
6 its recommendations to the department. If the regional certifi-
7 cate of need review agency determines that it will not review the
8 application, then the regional certificate of need review agency
9 shall notify both the applicant and the department in writing of
10 its determination. In developing its recommendations, the
11 regional certificate of need review agency shall utilize the
12 review procedures and time frames specified for ~~health systems~~
13 ~~agencies or~~ regional certificate of need review agencies in the
14 rules continued or promulgated under this part, and shall also
15 utilize certificate of need review standards, statutory criteria,
16 and forms identical to those used by the department.

17 (7) Before developing a proposed decision on an application,
18 the department shall review the recommendations of the regional
19 certificate of need review agency for the review area in which
20 the proposed project would be located, if the recommendations are
21 submitted to the department within the time frames required under
22 subsection (6). If the director makes a final decision that is
23 inconsistent with the recommendations of the regional certificate
24 of need review agency, the department shall promptly provide the
25 regional certificate of need review agency with a detailed state-
26 ment of the reasons for the director's decision. The statement
27 shall address each instance in which the director's decision is

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1 inconsistent with the recommendation of the regional certificate
2 of need review agency regarding a specific certificate of need
3 review standard or criterion.

4 (8) A regional certificate of need review agency may convene
5 consumers, providers, purchasers, or payers of health care, or
6 representatives of all of those groups, related to activities in
7 its review area for the purpose of achieving the objectives of
8 this part.

9 ~~(9) In the review of certificate of need applications, the~~
10 ~~department shall consider relevant written communications from~~
11 ~~any person.~~

12 (9) ~~(10)~~ Before developing a recommendation on a certifi-
13 cate of need application, a regional certificate of need review
14 agency shall hold a public hearing on the proposed project. If
15 THE DEPARTMENT DETERMINES THAT LOCAL INTEREST MERITS A PUBLIC
16 HEARING AND a regional certificate of need review agency has not
17 been designated for the review area in which the proposed project
18 will be located, THEN the department ~~may~~ SHALL hold a public
19 hearing on the proposed project. ~~, if the department determines~~
20 ~~that local interest merits a public hearing.~~

21 (10) ~~(11)~~ A regional certificate of need review agency
22 shall conduct all meetings regarding its activities for the pur-
23 pose of achieving the objectives of this part in compliance with
24 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
25 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws~~
26 1976 PA 267, MCL 15.261 TO 15.275.

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1 (11) ~~(12)~~ As used in this section, "review area" means a
2 geographic area established for a health systems agency pursuant
3 to former section 1511 of the public health service act, or a
4 geographic area otherwise established by the commission for a
5 regional certificate of need review agency. ~~, after considera-~~
6 ~~tion of the recommendations of the department and the office.~~

7 Sec. 22230. In evaluating applications for a health facil-
8 ity as defined under section 22205(1)(c) in a comparative review,
9 the department shall include participation in title XIX of the
10 social security act, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 to
11 ~~1396d, 1396f to 1396s~~ 1396r-6 AND 1396r-8 TO 1396v, as a dis-
12 tinct criterion, weighted as very important, and determine the
13 degree to which an application meets this criterion based on the
14 extent of participation in the medicaid program.

15 Sec. 22231. (1) The decision to grant or deny an applica-
16 tion for a certificate of need shall be made by the director. A
17 decision shall be proposed to the director by a bureau within the
18 department designated by the director as responsible for the cer-
19 tificate of need program. A decision shall be in writing and
20 shall indicate 1 of the following:

21 (a) Approval of the application.

22 (b) Disapproval of the application.

23 (c) Subject to subsection (2), approval of the application
24 with conditions.

25 (d) If agreed to by the department and the applicant,
26 approval of the application with stipulations.

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1 (2) If an application is approved with conditions ~~pursuant~~
2 ~~to~~ UNDER subsection (1)(c), the conditions shall be explicit,
3 shall be related to the proposed project or to the applicable
4 provisions of this part, and shall specify a time, not to exceed
5 1 year after the date the decision is rendered, within which the
6 conditions shall be met.

7 (3) If the department is conducting a comparative review,
8 the director shall issue only 1 decision for all of the applica-
9 tions included in the comparative review.

10 (4) Before a final decision on an application is made, the
11 bureau of the department designated by the director as responsi-
12 ble for the certificate of need program shall issue a proposed
13 decision with specific findings of fact in support of the pro-
14 posed decision with regard to each of the criteria listed in sec-
15 tion 22225. The proposed decision also shall state with speci-
16 ficity the reasons and authority of the department for the pro-
17 posed decision. ~~If a proposed decision is issued within the~~
18 ~~application review period specified in the rules promulgated~~
19 ~~under former part 221, the department is in compliance with the~~
20 ~~review period requirement of those rules.~~ The department shall
21 transmit a copy of the proposed decision to the applicant.

22 (5) The proposed decision shall be submitted to the director
23 on the same day the proposed decision is issued.

24 (6) If the proposed decision is other than an approval with-
25 out conditions or stipulations, the director shall issue a final
26 decision not later than 60 days after the date a proposed
27 decision is submitted to the director unless the applicant has

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1 filed a request for a hearing on the proposed decision. If the
2 proposed decision is an approval, the director shall issue a
3 final decision not later than 5 days after the proposed decision
4 is submitted to the director.

5 (7) The director shall review the proposed decision before a
6 final decision is rendered.

7 (8) If a proposed decision is an approval, and if, upon
8 review, the director reverses the proposed decision, the director
9 immediately shall notify the applicant of the reversal. Within
10 15 days after receipt of the notice of reversal, the applicant
11 may request a hearing under section 22232. After the hearing,
12 the applicant may request the director to reconsider the reversal
13 of the proposed decision, based on the results of the hearing.

14 (9) ~~The~~ WITHIN 30 DAYS AFTER THE FINAL DECISION OF THE
15 DIRECTOR, THE final decision of the director may be appealed
16 ~~only~~ by the applicant ~~and only~~ OR SUBJECT TO SECTION 22231A,
17 BY A PERSON WHO IS ADVERSELY AFFECTED OR AGGRIEVED BY THE FINAL
18 DECISION OF THE DIRECTOR. THE APPEAL SHALL ONLY BE on the record
19 directly to the circuit court for the county where the applicant
20 has its principal place of business in this state or the circuit
21 court for Ingham county. Judicial review is governed by
22 ~~sections 103 to 106 of~~ the administrative procedures act of
23 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
24 ~~24.303 to 24.306 of the Michigan Compiled Laws~~ 1969 PA 306,
25 MCL 24.201 TO 24.328.

26 ~~(10) The review and appeal of a certificate of need~~
27 ~~application submitted with the required filing fee before~~

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1 ~~October 1, 1988 shall be conducted under former part 221 and the~~
2 ~~rules promulgated under that part. The certificate of need board~~
3 ~~created by former section 22121(2) shall continue for the purpose~~
4 ~~of performing the functions vested in it by former part 221,~~
5 ~~until all appeals lawfully brought under former part 221 are~~
6 ~~concluded.~~

7 (10) ~~(11)~~ If the department exceeds the time ~~frames~~ set
8 forth in this section for other than good cause, as determined by
9 the commission, upon the written request of an applicant, the
10 department shall return to the applicant all of the certificate
11 of need application fee paid by the applicant under section
12 ~~20161(2)~~ 20161.

13 SEC. 22231A. (1) A PERSON WHO APPEALS A FINAL DECISION OF
14 THE DIRECTOR UNDER SECTION 22231(9) SHALL BASE THE APPEAL ON THE
15 ALLEGATION THAT THE APPLICATION FAILED TO COMPLY WITH SECTION
16 22225.

17 (2) IF THE DEPARTMENT IS THE PREVAILING PARTY IN AN APPEAL
18 DESCRIBED IN SUBSECTION (1), THE COURT THAT HEARS THE APPEAL
19 SHALL AWARD COSTS AND FEES TO THE DEPARTMENT IF THE COURT FINDS
20 THAT THE APPELLANT'S POSITION WAS FRIVOLOUS. TO FIND THAT THE
21 APPELLANT'S POSITION WAS FRIVOLOUS, THE COURT SHALL DETERMINE
22 THAT AT LEAST 1 OF THE FOLLOWING CONDITIONS HAS BEEN MET:

23 (A) THE APPELLANT'S PRIMARY PURPOSE IN INITIATING THE ACTION
24 WAS TO HARASS, EMBARRASS, OR INJURE THE PREVAILING PARTY.

25 (B) THE APPELLANT HAD NO REASONABLE BASIS TO BELIEVE THAT
26 THE FACTS UNDERLYING ITS LEGAL POSITION WERE IN FACT TRUE.

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1 (C) THE APPELLANT'S LEGAL POSITION WAS DEVOID OF ARGUABLE
2 LEGAL MERIT.

3 (3) IF THE APPELLANT IS THE PREVAILING PARTY IN AN APPEAL
4 DESCRIBED IN SUBSECTION (1), THE COURT THAT HEARS THE APPEAL
5 SHALL AWARD COSTS AND FEES TO THE APPELLANT.

6 (4) AS USED IN THIS SECTION:

7 (A) "COSTS AND FEES" MEANS THE NORMAL COSTS INCURRED IN
8 BEING A PARTY IN A CIVIL ACTION AFTER AN ACTION HAS BEEN FILED
9 WITH THE COURT, THOSE PROVIDED BY LAW OR COURT RULE, AND INCLUDE,
10 BUT ARE NOT LIMITED TO, ALL OF THE FOLLOWING:

11 (i) THE REASONABLE AND NECESSARY EXPENSES OF EXPERT WIT-
12 NESSES AS DETERMINED BY THE COURT.

13 (ii) THE REASONABLE COST OF ANY STUDY, ANALYSIS, ENGINEERING
14 REPORT, TEST, OR PROJECT THAT IS DETERMINED BY THE COURT TO HAVE
15 BEEN NECESSARY FOR THE PREPARATION OF EITHER PARTY'S CASE.

16 (iii) REASONABLE AND NECESSARY ATTORNEY'S FEES.

17 (B) "PARTY" MEANS A NAMED APPELLANT OR APPELLEE IN AN APPEAL
18 DESCRIBED IN SUBSECTION (1).

19 (C) "PREVAILING PARTY" MEANS 1 OF THE FOLLOWING:

20 (i) IN AN APPEAL INVOLVING SEVERAL ISSUES, THE PARTY PRE-
21 VAILING AS TO EACH ISSUE.

22 (ii) IN AN APPEAL INVOLVING ONLY 1 ISSUE, THE PARTY PREVAIL-
23 ING ON THE ENTIRE RECORD.

24 Sec. 22235. (1) The department may waive otherwise applica-
25 ble provisions of this part and procedural requirements and cri-
26 teria for review upon a showing by the applicant, by affidavit,
27 of all of the following:

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1 (a) The necessity for immediate or temporary relief due to
2 natural disaster, fire, unforeseen safety consideration, or other
3 emergency circumstances.

4 (b) The serious adverse effect of delay on the applicant and
5 the community that would be occasioned by compliance with the
6 otherwise applicable requirements of this part and rules promul-
7 gated under this part.

8 (c) The lack of substantial change in facilities or services
9 that existed before the emergency circumstances established under
10 subdivision (a).

11 (d) The temporary nature of the construction of facilities
12 or the services that will not preclude different disposition of
13 longer term determinations in a subsequent application for a cer-
14 tificate of need not made under this section.

15 (2) The department may issue an emergency certificate of
16 need after necessary and appropriate review. A record of the
17 review shall be made, including copies of affidavits and other
18 documentation. Findings and conclusions shall be made as to an
19 application for an emergency certificate of need, whether the
20 emergency certificate of need is issued or denied.

21 (3) An emergency certificate of need issued under this sec-
22 tion is A FINAL DECISION AND THE APPLICANT IS NOT REQUIRED TO
23 SUBMIT A FORMAL APPLICATION FOR A SECOND REVIEW. A CERTIFICATE
24 OF NEED ISSUED UNDER THIS SECTION MAY BE subject to special limi-
25 tations and restrictions, in regard to duration and right of
26 extension or renewal and other factors, imposed by the
27 department.

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1 Sec. 22239. (1) ~~A certificate of need ceases to be~~
2 ~~effective if~~ IF the certificate of need approval was based on a
3 stipulation that the project would participate in title XIX and
4 the project has not participated in title XIX for ~~not less than~~
5 AT LEAST 12 consecutive months within the first 2 years of opera-
6 tion OR CONTINUED TO PARTICIPATE ANNUALLY THEREAFTER, THE DEPART-
7 MENT SHALL REVOKE THE CERTIFICATE OF NEED. A stipulation
8 described in this section is germane to all health facility
9 projects.

10 (2) THE DEPARTMENT SHALL MONITOR THE PARTICIPATION IN TITLE
11 XIX OF EACH CERTIFICATE OF NEED APPLICANT APPROVED UNDER THIS
12 PART. THE DEPARTMENT SHALL REQUIRE EACH APPLICANT TO PROVIDE VERI-
13 FICATION OF PARTICIPATION IN TITLE XIX WITH ITS APPLICATION AND
14 ANNUALLY THEREAFTER.

15 Sec. 22241. (1) For purposes of this section and ~~sections~~
16 SECTION 22243, ~~and 22245,~~ "new technology" means medical equip-
17 ment that requires, but has not yet been granted, the approval of
18 the federal food and drug administration for commercial use.

19 (2) The period ending 12 months after the date of federal
20 food and drug administration approval of new technology for com-
21 mercial use shall be considered the new technology review
22 period. A person shall not acquire new technology before the end
23 of a new technology review period, unless 1 of the following
24 occurs:

25 (a) The department, with the concurrence of the commission,
26 issues a public notice that the new technology will not be added
27 to the list of covered medical equipment during the new

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1 technology review period. The notice may apply to specific new
2 technology or classes of new technology.

3 (b) The person complies with the requirements of section
4 22243.

5 (c) The commission approves the addition of the new technol-
6 ogy to the list of covered medical equipment, and the person
7 obtains a certificate of need for that covered medical
8 equipment.

9 (3) To assist in the identification of new medical technol-
10 ogy or new medical services that may be appropriate for inclusion
11 as a covered clinical service in the earliest possible stage of
12 its development, the commission shall appoint a standing new med-
13 ical technology advisory committee. A majority of the new medi-
14 cal technology advisory committee shall be representatives of
15 health care provider organizations concerned with licensed health
16 facilities or licensed health professions and other persons
17 knowledgeable in medical technology. The commission also shall
18 appoint representatives of health care consumer, purchaser, and
19 third party payer organizations to the committee. THE COMMISSION
20 SHALL ALSO APPOINT FACULTY MEMBERS FROM SCHOOLS OF MEDICINE AND
21 OSTEOPATHY IN THIS STATE.

22 Sec. 22247. (1) The department ~~may~~ SHALL monitor compli-
23 ance with ALL certificates of need issued under this part and
24 shall investigate allegations of noncompliance with a certificate
25 of need or this part.

26 (2) If the department determines that the recipient of a
27 certificate of need under this part is not in compliance with the

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1 terms of the certificate of need or that a person is in violation
2 of this part or the rules promulgated under this part, the
3 department ~~may~~ SHALL do 1 or more of the following:

4 (a) Revoke or suspend the certificate of need.

5 (b) Impose a civil fine of not more than the amount of the
6 billings for the services provided in violation of this part.

7 (c) Take any action authorized under this article for a vio-
8 lation of this article or a rule promulgated under this article,
9 including, but not limited to, issuance of a compliance order
10 under section 20162(5), whether or not the person is licensed
11 under this article.

12 (d) Request enforcement action under section 22253.

13 (e) Take any other enforcement action authorized by this
14 code.

15 (f) Publicize or report the violation or enforcement action,
16 or both, to any person.

17 (G) TAKE ANY OTHER ACTION AS DETERMINED APPROPRIATE BY THE
18 DEPARTMENT.

19 (3) A person shall not charge to, or collect from, another
20 person or otherwise recover costs for services provided or for
21 equipment or facilities that are acquired in violation of this
22 part. If a person has violated this subsection, in addition to
23 the sanctions provided under subsection (2), the person shall,
24 upon request of the person from whom the charges were collected,
25 refund those charges, either directly or through a credit on a
26 subsequent bill.

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1 Sec. 22255. ~~—(1)—~~ The department, with the approval of the
2 commission, may promulgate procedural rules to implement this
3 part.

4 ~~—(2) Pursuant to section 31 of the administrative procedures~~
5 ~~act of 1969, Act No. 306 of the Public Acts of 1969, being sec-~~
6 ~~tion 24.231 of the Michigan Compiled Laws, rules promulgated by~~
7 ~~the department under former part 221 shall remain in effect for~~
8 ~~review and appeal of applications submitted under former part 221~~
9 ~~and for this part until amended or rescinded by the department or~~
10 ~~as a result of this part.—~~

11 Sec. 22260. (1) The department shall prepare and publish
12 ~~at least annually~~ MONTHLY reports of reviews conducted under
13 this part. The reports shall include a statement on the status
14 of each pending review and a statement as to each review com-
15 pleted, including statements of the findings and decisions made
16 in the course of the reviews since the last report, and the rec-
17 ommendations of regional certificate of need review agencies.

18 (2) The department ~~and, if applicable, the appropriate~~
19 ~~regional certificate of need review agency~~ shall make available
20 to the public for examination during all business hours the
21 applications received by them and pertinent written materials on
22 file.

23 (3) THE DEPARTMENT, UPON REQUEST, SHALL PROVIDE COPIES OF AN
24 APPLICATION OR PART OF AN APPLICATION. THE DEPARTMENT MAY CHARGE
25 A REASONABLE FEE FOR THE COPIES.

26 Enacting section 1. Section 22217 of the public health
27 code, 1978 PA 368, MCL 333.22217, is repealed.