

# **Licensing Fee Structure**

## **Report for Health Facilities, Agencies and Programs**

(Pursuant to Public Act 252 of 2014)

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## **REPORT AUTHORITY**

Public Act 252 of 2014

Sec. 509. By February 1, the bureau of health care services shall provide the state budget office, the subcommittees, and the fiscal agencies an updated schedule of fees to be charged by the bureau of health care services for regulating health facilities. The updated fee schedule proposed by the bureau shall be based on the schedule submitted previously, but include updated figures from the prior fiscal year. It shall also bear a direct relationship to the cost of the service or act, including overhead expenses. The report shall also recommend the necessary statutory and administrative rule changes necessary to implement the recommended fee schedule.

## **REPORT OVERVIEW**

In accordance with Public Act 252 of 2014, this report provides the following:

- Proposed fee schedule for state licensing of facilities, agencies and programs.
- Costs to state license and federally certify facilities, agencies and programs.
- Recommended statutory and rule changes necessary to implement the proposed fee schedule and related activities.

## **RECOMMENDED STATE LICENSING FEE STRUCTURE**

The Michigan Compiled Laws (MCL), specifically 333.20161 and 330.1139, set forth the state licensing fees for health facilities, agencies and programs operating in Michigan. Licensing fees were established in Code on October 1, 1981 and have remained for the most part unchanged for the last 30 years. Health facility and agency is defined under MCL 333.20106.

Table 1 is the recommended fee schedule for state licensing activities by the Bureau of Health Care Services ("Bureau") within the Michigan Department of Licensing and Regulatory Affairs ("Department"). This table also includes the current fee schedule.

**Table 1  
Recommended State Licensing Fee Schedule**

Hospitals	Proposed	\$500 per license + \$10 per bed
	Current	\$8.28 per bed x # of years
Hospice Agencies	Proposed	\$500 per license
	Current	No Licensure Fee
Hospice Residences	Proposed	\$500 per license + \$5 per bed
	Current	\$200 per license + \$20 per bed
Freestanding Surgical Outpatient Facilities (FSOF)	Proposed	\$500 per license
	Current	\$238 per license
Nursing Homes	Proposed	\$500 per license + \$5 per bed
	Current	\$2.20 per bed
Psychiatric Hospitals/Units	Proposed	\$500 per license + \$10 per bed
	Current	\$600 per license + \$7.50 per bed
Partial Psych Hosp Programs	Proposed	Recommend Deregulation
	Current	\$600 per license + \$7.50 per Tx position
Clinical Laboratories	Proposed	Recommend Deregulation
	Current	\$475 per license
Substance Abuse Programs	Proposed	\$500 per license
	Current	No Licensure Fee
Application Fee	New	\$2,000 per new license

Currently hospitals and psychiatric hospitals, units and programs are issued biennial licenses as specified in Code. In addition to the proposed fee schedule, the Department recommends annual licensure renewal for all provider types and an application fee for new providers. Annual licensure creates a standardized renewal process for all providers and a consistent annual revenue balance for the Department. The proposed application fee applies only to new providers seeking initial licensure to assist with covering the costs of pre- and post-licensure inspections.

Table 2 shows the range for individual state licensing fees based on the current and proposed fee schedules using provider data as of December 30, 2014.

**Table 2**  
**Current and Proposed Annual Licensing Fee Range by Provider Type and Size**

License Provider Type	Smallest State Facility			Largest State Facility		
	Beds	Current Fee	Proposed Fee	Beds	Current Fee	Proposed Fee
Hospital	4	\$33.12	\$540	1,040	\$8,611.20	\$10,900
Hospice Agency	-	\$0	\$500	-	\$0	\$500
Hospice Residence	6	\$320	\$530	32	\$840	\$660
FSOF	-	\$238	\$500	-	\$238	\$500
Long-Term Care*	7	\$15.40	\$535	330	\$726	\$2,150
Psychiatric Hosp/Unit	10	\$337.50	\$600	205	\$406.25	\$3,000
Substance Abuse Program	-	\$0	\$500	-	\$0	\$500

\* Nursing homes, county medical care facilities, and hospital long-term care units.

## **BENEFITS OF RECOMMENDED STATE LICENSING FEE STRUCTURE**

The recommended fee schedule will:

- Reduce the need for general fund dollars to support state licensing functions.
- Provide necessary funding to fulfill mandatory licensing activities, such as
  - Timely processing of licensing applications for new providers,
  - Routine onsite inspections to assure compliance with state requirements,
  - Timely issuance of inspection reports, and
  - Timely inspection revisits to verify compliance.
- Create a uniformed fee schedule for all provider types.
- Create a uniformed triennial inspection requirement for all provider types.

## **RECOMMENDED STATE STATUTORY AND RULE CHANGES**

Recommended changes include:

- An annual base fee for all providers, similar to the current base fee already assessed to psychiatric and hospice residence providers. The base fee is designed to cover routine fixed costs that occur no matter the size of the provider. Routine expenditures include administrative costs, issuing licenses, maintaining records, etc.
- An increase in the existing per bed or treatment position fee. This proxy fee allows for an incremental increase in licensing fees based on the size of the health facility. Larger health facilities tend to consume more inspection time due to the size and complexity of services offered and potential number of complaints.
- Initiation of a licensing fee for hospice agency and substance abuse providers. Currently these providers types are not charged a licensing fee.
- Creation of an initial application fee for new providers. This new fee is to offset the cost of establishing and processing a new provider for licensure, as well as the labor intensive work to conduct pre- and post-licensure inspections.
- Creating a uniformed inspection schedule for all provider types. Current inspections are either annual or biennial depending on the provider type. The Department recommends an inspection every three years for all provider types. Triennial inspections are in line with industry standards and will reduce costs for both the provider and state while still assuring patient safety and quality of care regulatory oversight. The Department also recommends expanding the option to waive state inspection to all provider types. The waiver is currently available only to acute care hospitals (MCL 333.20155(9)). If a provider is already inspected by an accrediting organization, the provider can request waiver of the state inspection as long as the most recent accrediting organization report cites no deficiencies that represent a threat to public safety or patient care. These changes will not impact routine complaint investigations when allegations are made against a licensed provider, as these inspections will continue to be conducted as deemed necessary.
- Elimination of the state clinical laboratory licensing requirement. State licensing for laboratories was suspended in 1992 under the former Department of Public Health. The Bureau estimates approximately 3,200 existing laboratories could fall under state licensing requirements if the program is reconstituted. A comparable federal program, Clinical Laboratory Improvement Amendments (CLIA), is administered by the Bureau on behalf of the Centers for Medicare and Medicaid Services (CMS) covering nearly 8,000 laboratories in the State with similar requirements.
- Elimination of the state psychiatric partial hospitalization program licensing requirement. State licensure requirements are minimal since these outpatient programs were removed from the Michigan Certificate of Need oversight/approval in the late 1990s. There is no evidence that patient safety or quality of care would be impacted from deregulation since current requirements are minimal.

## **STATE LICENSING AUTHORITY**

MCL 333.20141(1) states that, “A person shall not establish or maintain and operate a health facility or agency without holding a license from the department.”

MCL 330.1137(1) states that, “A person shall not construct, establish, or maintain a psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program or use the terms psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program, without first obtaining a license.”

MCL 333.6233(1) states that, “A person not otherwise licensed to provide psychological, medical, or social services shall not establish, conduct, or maintain a substance abuse service unless it is licensed under this article.”

## **STATE LICENSING FEE HISTORY**

Prior to the Public Act 76 of 1981, the licensing fee section of the Public Health Code read, “The department may promulgate rules to prescribe fees for a review of a license application and the issuance or renewal of a license.”

Public Act 76 codified the current licensing fees for health facilities and agencies, effective October 1, 1981, under MCL 333.20161(1). Relevant amendments since 1981 are identified below.

Public Act 376 of 1984 amended the fee for clinical laboratories from \$270 to \$475. On September 4, 1992, the former Department of Public Health suspended all State clinical laboratory licensing activities. This action was taken to save general fund dollars at the time. No State clinical laboratory licenses have been issued or fees collected since.

Public Act 267 of 1996 added a licensing fee for hospice residences of \$200 per license and \$20 per bed annually. This amendment did not propose a license fee for hospice agencies that provide in-home care.

Public Act 469 of 2004 amended MCL 333.20161(9) to read, “The cost of licensure activities shall be supported by license fees.”

## **DEPARTMENT STRUCTURE AND DUTIES**

LARA is composed of agencies and commissions that promote business growth and job creation through streamlined, simple, fair, and efficient regulation, while at the same time protect the health and safety of Michigan's citizens.

The Bureau of Health Care Services, within LARA, serves to protect and improve the health status of Michigan citizens through the development, maintenance and assurance of safe, effective, efficient and accessible health care services delivered through health care facilities and health professions, and to promote the development of appropriate regulatory policies to achieve a safe, efficient and effective health care delivery system.

The Bureau is responsible for state licensing of health facilities, agencies and programs under the Public Health and Mental Health Codes. The Bureau is also the State Agency responsible for conducting certification activities on behalf of the Centers for Medicare and Medicaid Services (CMS) to assure that covered health providers and suppliers meet federal conditions to participate in the Medicare and Medicaid programs.

While it is important to recognize and understand the Bureau's scope of duties related to federal certification activities, this report focuses primarily on those Bureau activities needed to maintain and support the state licensing functions set forth in Code.

Table 3 shows the types and numbers of health facilities, agencies and programs that are required to be state licensed as well as those eligible for federal certification to participate in the Medicare and Medicaid program as of December 30, 2014.

**Table 3**  
**Provider Types Requiring State Licensure and Eligible for Federal Certification**

Type/No. of Beds/Treatment Positions	No. of Providers	State Licensure	Federal Certification
Acute Care Hospitals (26,063 Beds)	169	Yes	Yes
Clinical Laboratories	8,309	Yes	Yes
Community Mental Health Centers (CMHC)*	7	No	Yes
Comprehensive Outpatient Rehab (CORF)	7	No	Yes
End-Stage Renal Dialysis (ESRD)	197	No	Yes
Home Health Agencies	659	No	Yes
Hospice Agencies	126	Yes	Yes
Hospice Residences (254 Beds)	18	Yes	Yes
Freestanding Surgical Outpatient Facilities (FSOF)	132	Yes	Yes
Long-Term Care Facilities** (46,747 Beds)	450	Yes	Yes
Outpatient Physical Therapy (OPT)/Speech	162	No	Yes
Portable X-Ray Providers	9	No	Yes
Psychiatric Hospitals/Units (2,338 Beds)	59	Yes	Yes
Psych Partial Hosp Programs (1,100 Tx Positions)	31	Yes	No
Rural Health Clinics	164	No	Yes
Substance Abuse Programs	1,284	Yes	No

\* CMHC providers have been added to federal certification activities for state agencies in 2015.

\*\* LTC facilities include nursing homes, hospital long-term care units, and county medical care facilities.

The following Code excerpts provide a general overview of core duties of the Bureau related to issuing licenses and monitoring compliance with state requirements.

MCL 333.20131 requires the establishment of a comprehensive system to license and certify health facilities or agencies in order to protect the health, safety, and welfare of individuals receiving care and services in or from a health facility or agency, and assure the medical accountability for reimbursed care provided by a certified health facility or agency participating in a federal or state health program.

MCL 333.20162 (1) requires the issuance of an initial license within 6 months after the applicant files a completed application.

Prior to issuance of a license, the Bureau conducts a pre-licensure survey to verify policies, procedures, and staffing are in place prior to receiving and caring for patients. In addition, MCL 20145 may require a construction permit to be issued prior to construction of or renovation to a health facility.

Some administrative rules require the department to conduct opening surveys for initial licensure within specific time frames. For example, Hospice Administrative Rule 325.13205 requires the department to conduct a survey of a hospice for initial licensure within the 3-month period following receipt of the application.

Once a pre-licensure survey is conducted, and the health facility or agency demonstrates compliance with State requirements, a post-licensure survey is conducted after the provider has delivered care to patients. The pre- and post- surveys are designed to assure the health, safety and welfare of patients.

MCL 333.20164 (1) requires a license to be issued for one to two years. Licenses are then renewed through the department's online licensing system.

MCL 333.20155 (1) requires the department to make annual visits to each health facility or agency licensed for the purposes of survey, evaluation, and consultation, as well as to investigate complaints.

MCL 333.20155 (2) requires the department to make at least a biennial (every two years) visit to each licensed clinical laboratory, each nursing home, and each hospice residence for the purposes of survey, evaluation, and consultation.

MCL 333.20155 (3) requires the department to make a biennial visit to each hospital for survey and evaluation for the purpose of licensure. This provision can be waived if the hospital meets certain requirements set forth by Code.

MCL 333.6238 requires the department to issue substance abuse licenses annually and under Section 6241 conduct onsite inspections of these licensed programs within 90 days of licensure renewal.

## STATE LICENSING ACTIVITY OVERVIEW

In general, the majority of state licensing activities involve the issuance and renewal of licenses to qualified health facilities and agencies; conducting initial, routine and revisit inspections to determine compliance with state and federal requirements; and investigating complaints against state licensed and federally certified providers.

Onsite inspections are routinely conducted by Bureau surveyors (nurses, pharmacists, social workers, engineers, etc.) to determine if a health facility, agency or program is ready for state licensure prior to receiving and caring for patients or currently meeting state and federal requirements after licensure. These surveys are labor intensive that include, but limited to, intensive training of surveyors, pre-onsite preparations, travel, onsite survey time, report writing, revisits, and data input and record maintenance. Table 4 provides estimated time and costs for standard inspections of state licensed health facilities and agencies.

**Table 4**  
**State Licensure Inspection Estimated Costs by Provider Type**

License Facility Type	No. of Inspectors*	Average Days to Inspect	Estimated Costs**
Hospitals	1-3	1-3	\$600 - \$5,400
Hospice Agencies/Residences	1-2	1	\$600 - \$1,200
FSOFs	1-2	1	\$600 - \$1,200
Nursing Homes/CMCF/HLTCU	4-6	3-4	\$7,200 - \$14,400
Psychiatric Hospitals/Units	1-2	1-2	\$600 - \$2,400
Substance Abuse Program	1	1	\$600

\* Inspectors include nurses, social workers, dietitians, engineers, etc.

\*\* Costs include wages, fringes, travel, etc.

Another labor intensive activity for the Bureau is the intake and investigation of complaints against state licensed and federally certified providers. In Fiscal Year 2014, the Bureau received 5,651 complaints containing 14,015 allegations and 2,327 facility incidents reports against state licensed or federally certified providers. Long-term care related complaints (nursing homes, county medical care facilities, hospital long-term care units) accounted for 83% of all complaint allegations received by the Bureau during this time period. Complaint investigations can take up to three health care surveyors one to three days to conduct an onsite investigation depending on the allegations and provider type.

## BUDGET OVERVIEW

The Bureau employs approximately 160 employees related to state licensing and federal certification activities (132 for long-term care and 28 for all other providers). These positions include managers, secretaries, analysts, health care surveyors, etc.

Federal certification activities are primarily funded by CMS that includes a cost share mechanism. For example, there are generally 12 provider types that can be federally certified to participate in the Medicare and Medicaid programs. Five (5) of these provider types also require state licensure. Therefore, CMS apportions shared costs to these common types (hospitals, hospices, surgery centers, long-term care facilities) and does not reimburse the state 100% of expenditures where state licensure and federal certification activities occur jointly.

State licensing fees for health facilities, agencies and programs have not been revised since the early 1980s, when state licensing of hospice residences was added to the Public Health Code. Even with the addition of hospice residences to the fee schedule, all other fees remained the same. The licensing fees paid by hospitals (\$8.28 per bed) and nursing homes (\$2.20 per bed) have remained the same since the 1970s, while operational costs to license and inspect these providers have steadily increased. In addition, hospice agencies and substance abuse programs pay no licensing fee.

**Table 5**  
**Current and Proposed State Licensing Annual Estimated Fee Revenues**  
(Table Revised – Current Hospital Revenue Corrected)

Provider Type	Current Fee Schedule	Proposed Fee Schedule	Total New Revenues
Hospitals*	\$215,801	\$345,130	\$129,329
Hospice Agencies	None	\$63,000	\$63,000
Hospice Residences	\$8,680	\$10,270	\$1,590
Freestanding Surgical Outpatient Facilities	\$31,416	\$66,000	\$34,584
Long-Term Care Facilities	\$102,843	\$458,735	\$355,892
Psychiatric Hospitals/Units*	\$26,467	\$52,880	\$26,413
Psych Partial Hospitalization Programs*	\$18,067	Deregulate	(\$18,067)
Clinical Laboratories**	\$0	Deregulate	\$0
Substance Abuse Programs	None	\$642,000	\$642,000
<b>TOTAL</b>	<b>\$295,373</b>	<b>\$1,638,015</b>	<b>\$1,234,741</b>

\* Current licensing fee is biennial (every two years). Estimate above is an annual average.

\*\* State licensing program deactivated in 1992/number of laboratories is estimated on CLIA data.

Table 6 and 7 show expenditures and revenue shortfall from Fiscal Year 2014 for state licensing and federal certification activities.

**Table 6**  
**FY14 Expenditures and Revenue Shortfall for State Licensing Activities**  
 (Table Revised – Non-LTC State Licensing Fees Corrected)

Provider Type	Licensing & Certification Expenditures	State Licensing Fees**	Shortfall
Long-Term Care (LTC)	\$1,554,069	\$102,843	\$(1,451,226)
Non-LTC	\$625,085	\$300,431	\$(324,654)
<b>TOTAL</b>	<b>\$2,179,154</b>	<b>\$403,274</b>	<b>\$(1,775,880)</b>

\* Title 18 and 19 revenues, including Medicaid state match, are to support federal certification activities.

\*\* Hospital licensing fees are currently collected only on even years. An annual average for hospitals was included in the above table.

*Note:* Table does not include expenditures or revenues related to federal CLIA certification or state construction permit activities.

**Table 7**  
**FY14 Expenditures by Category for State Licensing Activities**

Expenditure Categories	Amount
Salaries	\$980,624
Fringe/Retirement Benefits	\$806,286
Other Direct Costs	\$326,872
Indirect	\$65,373
<b>TOTAL</b>	<b>\$2,179,154</b>

*Note:* Tables do not include expenditures related to federal certification or state construction permit activities.

## SUMMARY

The recommendations in this report have the long-term goal to reduce the need for general funds dollars by creating an equitable cost-based state licensing fee schedule while restructuring the inspection schedule to reduce the regulatory burden on the provider and the state's costs to operate the program.