Report on Certain Departmental Enforcement Actions in Response to Nursing Home License Noncompliance

October 1, 2021 through September 30, 2022

Pursuant to Section 21799b of 1978 PA 368 as amended, MCL 333.21799b

Fiscal Year 2022

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Prepared by

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LARA LICENSING AND REGULATORY AFFAIRS | PROTECT PEOPLE & PROMOTE BUSINESS

DIRECTOR ORLENE HAWKS

REPORT AUTHORITY

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.21799b Noncompliance; notice of finding; correction notices; hearing; verification of compliance; investigation; action; definitions; annual report; presumption.

Sec. 21799b.

(1) If, upon investigation, the department finds that a licensee is not in compliance with this part, a rule promulgated under this part, or a federal law or regulation governing nursing home certification under title XVIII or XIX, which noncompliance impairs the ability of the licensee to deliver an acceptable level of care and services, or in the case of a nursing home closure, the department shall notify the department of health and human services of the finding and may issue 1 or more of the following correction notices to the licensee:

(a) Suspend the admission or readmission of patients to the nursing home.

(b) Reduce the licensed capacity of the nursing home.

(c) Selectively transfer patients whose care needs are not being met by the licensee.

(d) Initiate action to place the home in receivership as prescribed in section 21751.

(e) Require appointment at the nursing home's expense of a department approved temporary administrative advisor or a temporary clinical advisor, or both, with authority and duties specified by the department to assist the nursing home management and staff to achieve sustained compliance with required operating standards.

(f) Require appointment at the nursing home's expense of a department approved temporary manager with authority and duties specified by the department to oversee the nursing home's achievement of sustained compliance with required operating standards or to oversee the orderly closure of the nursing home.

(g) Issue a correction notice to the licensee and the department of health and human services describing the violation and the statute or rule violated and specifying the corrective action to be taken and the period of time in which the corrective action is to be completed. Upon issuance, the director shall cause to be published in a daily newspaper of general circulation in an area in which the nursing home is located notice of the action taken and the listing of conditions upon which the director's action is predicated.

(2) Within 72 hours after receipt of a notice issued under subsection (1), the licensee must be given an opportunity for a hearing on the matter. The director's notice shall continue in effect during the pendency of the hearing and any subsequent court proceedings. The hearing must be conducted in compliance with the administrative procedures act of 1969.

(3) A licensee who believes that a correction notice has been complied with may request a verification of compliance from the department. Not later than 72 hours after the licensee makes the request, the department shall investigate to determine whether the licensee has taken the corrective action prescribed in the notice under subsection (1)(g). If the department finds that the licensee has taken the corrective action and that the conditions giving rise to the notice have been alleviated, the department may cease taking further action against the licensee, or may take other action that the director considers appropriate.

(4) The department shall report annually to the house of representatives and senate standing committees on senior issues on the number of times the department appointed a temporary administrative advisor, temporary clinical advisor, and temporary manager as described in subsection (1)(e) or (f). The report must include whether the nursing home closed or remained open. The department may include this report with other reports made to fulfill legislative reporting requirements.

(5) If the department determines that a nursing home's patients can be safeguarded and provided with a safe environment, the department shall make its decisions concerning the nursing home's future operation based on a presumption in favor of keeping the nursing home open.

(6) As used in this section:

(a) "Title XVIII" means title XVIII of the social security act, 42 USC 1395 to 1395lll.

(b) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396w-6.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2000, Act 437, Imd. Eff. Jan. 9, 2001 ;-- Am. 2022, Act 187, Imd. Eff. July 25, 2022
Popular Name: Act 368

DEPARTMENT OVERVIEW

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 Community and Health Systems (BCHS) serves to protect and ensure safe, effective, efficient, and accessible community and health care services delivered by state licensed providers in Michigan. It is responsible for state licensing of facilities, agencies, and programs under all of the following public acts:

- Adult Foster Care Facility Licensing Act, 1979 PA 218
- Mental Health Code, 1974 PA 258
- Public Health Code, 1978 PA 368

The majority of state licensing activities involve the issuance and renewal of licenses to qualified facilities, agencies, and programs; conducting initial, routine and revisit

inspections to determine compliance with state and federal requirements; and investigating complaints against state licensed providers.

REPORTING REQUIREMENTS

During fiscal year 2022, how many times did the department take the following actions?

1. Appoint a temporary administrative advisor as provided by MCL 21799b(1)(e)

   Response: 0

   In each case, did the nursing home close or remain open? N/A

2. Appoint a temporary clinical advisor as provided by MCL 21799b(1)(e)

   Response: 0

   In each case, did the nursing home close or remain open? N/A

3. Appoint a temporary manager as provided by MCL 21799b(1)(f)

   Response: 0

   In each case, did the nursing home close or remain open? N/A