

Biannual Inspection Report for Health Facilities and Agencies

Pursuant to Section 20158 of the Public Health Code,
1978 PA 368 as amended, MCL 333.20158

Submitted on August 31, 2023

Prepared by

Bureau of Survey and Certification



PROTECT PEOPLE &
PROMOTE BUSINESS

**GOVERNOR
GRETCHEN WHITMER**

**ACTING DIRECTOR
MARLON BROWN**

REPORT AUTHORITY

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

333.20158 Biannual inspection reports for certain entities.

Sec. 20158.

The department shall submit biannual reports to the appropriation subcommittees for the department, the senate and house fiscal agencies, and the state budget director containing a summary of input from individuals who perform inspections for entities regulated by the bureau of community and health systems, or a successor agency within the department, under this article. The feedback and input must be regarding the adequacy of federal and state guidelines pertaining to the areas that the individual inspects for the entities described in this section. The summary must include details of the feedback excluding information that identifies the inspectors providing the feedback. The summary may be cumulative in nature, but must be understandable to the general public.

History: Add. 2022, Act 117, Imd. Eff. June 24, 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.

Introduction

Public Act 117 of 2022 added section 20158 to the Public Health Code. This section took effect on June 24, 2022. It refers to “the bureau of community and health systems, or a successor agency within the department. . . .”

On June 28, 2022, the department reorganized the bureau of community and health systems. A new bureau was established, the bureau of survey and certification. All functions pertaining to the federal survey and certification of health facilities for Medicare and Medicaid Services were moved to the new bureau. Since section 20158 requires the reporting of information pertaining to federal and state guidelines, therefore, BSC will be submitting independent biannual inspection reports on behalf of the federal surveyors.

Bureau of Survey and Certification

The Bureau of Survey and Certification (BSC) was established in 2022 to provide sole oversight of the federal survey and certification process for multiple healthcare provider types. Functions of BSC include federal complaint investigations, routine surveys, and monitoring and enforcement of federal regulations which serve to protect the health, safety, and quality of care received by Michigan residents.

LARA is the State Survey Agency for the federal Centers for Medicare and Medicaid Services. This bureau administers Part 221 of the Public Health Code, which provides for this federal-state partnership.

Methodology

Section 20158 requires “a summary of input from individuals who perform inspections for entities regulated by the bureau of community and health systems, or a successor agency within the department, under this article. The feedback and input must be regarding the adequacy of federal and state guidelines pertaining to the areas that the individual inspects. . .”

Definitions

Section 20158 does not define “**individuals who perform inspections.**” Based on the context, this phrase is interpreted to mean: health care surveyors, state licensing consultants, and other personnel who inspect, survey, or visit health facilities and agencies for regulatory purposes.

In addition, section 20158 does not define “**federal and state guidelines.**” Based on the context in which these terms are used, they are interpreted to mean federal statutes, federal regulations, state statutes, and state administrative rules.

To gather the information for this report, a survey was conducted. A total of 128 BSC personnel were surveyed. Responses were received from 76 personnel (59% response ratio). The survey opened on August 7, 2023 and closed on August 18, 2023.

Section 20158 requires that the **identity (ID)** of inspectors (i.e., survey respondents) shall not be disclosed. Therefore, the survey was designed to ensure that all respondents are anonymous. Each respondent was assigned an ID number so written comments could be linked to an individual respondent. The survey included 4 questions.

Results

Question 1: What types of health facilities and agencies do you inspect (select all that apply)?¹

	Type of Health Facility or Agency	Number of Inspectors
1.	Freestanding Surgical Outpatient Facilities or Ambulatory Surgical Centers	7
2.	Clinical Laboratory Services (CLIA)	2
3.	Dialysis Centers	16
4.	Home Health Agencies	10
5.	Hospice Agencies or Residences	12
6.	Hospitals	14
7.	Nursing Homes, County Medical Care Facilities, Hospital Long-Term Care Facilities	57
8.	Outpatient Physical Therapy and Speech Pathology Providers	8
9.	Portable X-Ray Providers	4
10.	Psychiatric Hospitals and Psychiatric Units	9
11.	Rural Health Clinics	5

Question 2: Rate the overall adequacy of federal and state guidelines pertaining to the areas that you inspect. This includes any federal statutes, federal regulations, state statutes, or state administrative rules for which you determine compliance.

Rating	Responses
Inadequate	0
Somewhat Inadequate	5
Adequate	60

¹ Note: An individual may inspect more than one type of health facility and agency.

More than Adequate	10
Excessive	1

Question 3: Briefly summarize your opinion of any state guidelines that you think are inadequate or excessive along with any recommendations you have for improving them. Cite the federal regulation or the state law or administrative rule along with the subject, for example:

- For Federal Regulation: cite the federal tag number, subject, and reference. Example: F 880- Infection Prevention and Control; 42 CFR 483.80
- For state law cite Michigan Compiled Law number and the subject, such as MCL 400.726c, Medical orders provided on POST form; compliance required; failure to comply because of policy, religious belief, or moral conviction; referral or transfer to another foster care facility.
- For a state administrative rule, cite the rule number and the subject, such as R 400.2413 Residents; personal care.

Background on Federal Tags (F Tags)

The Centers for Medicare and Medicaid Services (CMS) publishes a State Operations Manual (SOM) for State Survey Agencies. LARA Bureau of Survey and Certification is the State Survey Agency for Michigan. The SOM provides guidance on how to conduct federal survey and certification procedures. It includes a list of all federal regulations for covered health facilities. In addition, it provides guidance on how to interpret these regulations and examples of deficiencies.

Each federal regulation and for lengthy regulations each part of that regulation is given an identifier for purposes of citing deficiencies. These identifiers are called Tags. Each Tag is preceded by a letter which designates the type of health facility. For example, an F Tag refers to a long-term care facility. Each Tag is also assigned a number that corresponds with the federal regulation. For example, F604 refers to the resident’s right to be free from physical restraints pursuant to 42 CFR 483.12. There are approximately 224 F Tags.

Inspectors' Feedback on Federal and State Guidelines

ID	Guidelines	Comments
5	N/A	I feel that there is not appropriate penalty for noncompliance with state law when it comes to LTC facilities; State Law needs to be changed so facilities that are noncompliant receive some sort of penalty that is commensurate with their noncompliance. This pertains to all state laws governing LTC facilities.
7	N/A	As a new surveyor, I have not found any regulations to be inadequate so far.
8	N/A	Overall good balance is noted between being overly stringent on the providers and more than adequate safeguards for maintaining public trust in healthcare institutions.
16	N/A	All seem adequate at this time.
17	F655- Baseline Care Plan F656- Develop/Implement Comprehensive Care Plan F657- Care Plan Timing and Revision 42 CFR §483.21	There are 3 F tags for care plan. I feel that is a bit excessive. Care plans are one of the top 11 citations in the State of Michigan. Facilities should have to worry more about staffing levels, competent staffing, and staff implementing care plans. I feel care plans are definitely part of the care of the resident-but they are not consistently being reviewed with the resident, RR, staff or Administration, so what can we do about care plans?
18	42 CFR §488.1100 Hospice Surveys and Hotline	I feel the Hospice Surveys are excessive. The number of chart reviews required at each survey was increased to 17...reviewing more records does not add or reveal anymore information than the original requirements, and makes it difficult to review all the area requirements for the Hospice Surveys.

ID	Guidelines	Comments
22	F 578 Request/Refuse/Discontinue Treatment; Formulate Advance Directive 42 CFR § 483.10	I think it would be beneficial to have independent F tags with best practice/evidence based guidelines related to diabetes mellitus and Congestive Heart Failure (CHF) care/management. Additionally, it would be beneficial to all to clarify and include more specific information and requirements related to F 578 advance directives.
30	MCL 333.17208 Licensed practice nurse; health profession subfield	It is inadequate for Michigan not to have a Nurse Practice Act. LPN's are doing things that only RN's should be doing in Michigan.
31	N/A	I survey federal regs. I feel the regs are adequate at this time.
34	N/A	I don't feel the regulations are excessive or inadequate.
35	N/A	CMS is over regulated in LTC's.
41	Chapter 17 of the Public Health Code of 1968, 1968 PA 368, MCL 333.20101 to 333.20203	No State regulations regarding private duty care. Every year I perform many complaint investigations that the public identifies as home health. Once on-site, it is determined the poor care is from private duty. The public does not know the difference.
44	42 CFR 483.12- Freedom from Abuse, Neglect, and Exploitation 483.15- Admission, Transfer, and Discharge 483.20- Resident Assessments 483.21- Comprehensive Resident Centered Care Plan 483.24- Quality of Life 483.25- Quality of Care	For Federal Regulations in Long Term Care Facilities, I feel the F600 group is a bit excessive but understand why it was broken up. I think the addition of phase 3 Ethics regulation will be a welcomed addition.

ID	Guidelines	Comments
58	N/A	I feel the Federal Regulations are adequate.
61	42 CFR §483.12 Freedom from Abuse, Neglect, and Exploitation	I think the abuse tags F600 to F610 can be excessive. Breaking down each element for abuse can be repetitive and I can only imagine costly for the providers. The plan of correction is also similar for these tags especially if you have concerns in several categories for the same incident.
63	F880 Infection Prevention and Control 42 CFR §483.80 (i)	Specific to the Water Management plan for the prevention and handling of legionella and other opportunistic waterborne pathogens. This tag states: The facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary and comfortable environment and to help prevent the development and transmission of communicable diseases and infections. We need more teeth to require proactive testing for legionella in all healthcare facilities. We have fatalities every year in Michigan based up our current reactive approach that leans on general industry standards instead of developing our own proactive statewide safeguards.
65	42 CFR §483.80 Infection Prevention and Control	At this time, until CMS is able to complete their review of what is necessary for infection control after the end of the Covid-19 Pandemic, I feel regulations are adequate.
66	42 CFR §493.1 Laboratory Requirements Basis and Scope	<p>Many states have additional state licensing requirements for laboratories and Michigan has none. This makes it difficult to ensure all staff are properly qualified and the test systems/procedures/etc can provide quality results prior to the laboratory initiating testing.</p> <p>For CLIA, because we don't survey initial laboratories until they have already been operating, we often find unqualified staff had been performing diagnostic testing up to two years after starting. State licensing requirements in other states can require labs be surveyed prior to testing beginning, which can curb deficiencies from ever starting instead of the current CLIA process to survey up to one year after they have started testing. In</p>

ID	Guidelines	Comments
		<p>one instance, I went to a laboratory that had been testing almost two years (one full year testing without a CLIA certificate, so we were unaware until they applied) while never ensuring test quality for patients receiving anticoagulants based on these inaccurate results (immediate jeopardy).</p> <p>This particular laboratory's testing personnel asked me why we didn't come in prior or sooner to them starting because this information would have been more helpful at that point. While the noncompliance falls on the laboratory director who clearly had little involvement, this situation didn't give this laboratory much confidence in the regulatory process and I would be more helpful to these patients and the laboratory coming in on survey prior to starting to ensure they had the appropriate procedures, staff, and instrumentation in place to set them up for success.</p> <p>I realize surveying before testing patients has its own challenges because the outcome is often theoretical. Oftentimes laboratories that apply for their CLIA certificate never start testing, so figuring out when to survey without wasting time on labs that never test would be an obstacle. Tennessee is one example of a state that has state requirements. Maybe building off of something like that?</p>
77	F 623 -Notice Requirements Before Transfer/Discharge 42 CFR §483.15(c)(3) Notice before transfer	Excessive, it states a written notice be given to resident and family - the facility does notify and does get permission to send out from resident and/or DPOA per written or verbal wishes. The written notice of transfer mailed later is unnecessary.
78	N/A	No concerns with federal regulations.