SFA BILL ANALYSIS

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Senate Bill 724 (as passed by the Senate)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Health Policy

Date Completed: 5-23-88

RATIONALE

Many hospitals, especially those located in rural areas, are facing a two-pronged problem: difficulty in placing patients in skilled nursing home beds within the community, and a decrease in overall occupancy rates. Federal law permits the granting of a certificate of need (CON) for alternative bed use by small rural hospitals. (Under the CON process, proposals for new health care services are reviewed in an effort to restrain rising costs and achieve a more equitable allocation of health care resources.) Under the Federal program, rural hospitals that meet certain criteria are reimbursed through Medicare for operating "swing beds". This program permits an acute care facility to designate a certain percentage of beds for rendering a type of intermediate care to patients who are no longer in the acute phase of their illness. Michigan, however, currently has no law allowing the designation of swing beds. Some people believe that permitting hospitals to develop alternative use of acute care beds, such as swing beds, would provide patients with an intermediate level of care between acute medical-surgical care and nursing home care, while alleviating some of the financial difficulties facing small rural hospitals.

CONTENT

The bill would amend the Public Health Code to:

- **Provide that a hospital applying for a certificate of need (CON), which met certain criteria, including Federal "swing bed" requirements, would have to be granted a CON for a short-term nursing care program of up to 10 beds.**
- **Require that a certificate of need be obtained before a short-term nursing care program could be established.**
- **Establish certain requirements that would have to be met by a hospital granted a CON for a short-term nursing care program.**
- **Permit the Department of Public Health to grant a variation in the number of patient days established in the bill, if a hospital could demonstrate a need as specified in the bill.**
- **Provide penalties for violation of the bill's requirements for hospitals granted a CON for a short-term nursing care program.**
- **Require a hospital operating a short-term nursing care program to include specific patients' rights and responsibilities in the patient or resident rights and responsibilities policy required by the Code.**
- **Require the Department to report to the Legislature on the status of short-term nursing care programs in the State.**
- **Define "short-term nursing care program".**
- **Delete reference to a current financial requirement that certain construction, modernization, and operation projects costing "in excess of $150,000" obtain a certificate of need.**

The bill would be repealed five years after its effective date.

Certificate of Need

A hospital that applied to the Department of Public Health for a certificate of need and met the following criteria would have to be granted a CON for a short-term nursing care program with up to 10 beds:

- Was eligible for, and in compliance with, the swing-bed provisions of Title XVIII of the Federal Social Security Act, except for the certificate of need requirement.
- Had under 100 licensed beds, not counting beds used for newborns, psychiatric patients, and inpatient substance abuse patients.
- Did not have uncorrected licensing certification, or safety deficiencies for which the Department or the State Fire Marshal, or both, had not accepted a plan of correction.
- Provided evidence satisfactory to the Department that the hospital had had difficulty in placing patients in nursing home beds during the 12 months immediately preceding the date of the application.

No one could establish a short-term nursing care program without first obtaining a certificate of need.

"Short-term nursing care" would mean nursing care provided in a hospital to a patient who had been discharged from an acute care bed and could not be placed in a nursing home bed or hospital long-term care unit located within a 50-mile radius of the patient's residence.

Short-Term Care Program Requirements

A hospital that was granted a certificate of need for a short-term nursing care program would have to comply with all of the following:

- Limit the length of stay for a patient in the short-term nursing care program to 20 days for each hospital admission.
- Admit patients to the short-term nursing care program only pursuant to an admissions contract that was approved by the Department.
- Not discharge a patient from an acute care bed and admit that patient to the short-term nursing care program

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unless determined medically appropriate by the attending physician.

- Permit access to a representative of an organization, which had received approval as prescribed in the Code, to patients admitted to the short-term nursing care program for all of the purposes described in the Code, such as assisting patients in asserting their legal rights and making personal, social, and legal services available to the patients (MCL 333.21763).
- Subject to the bill's provisions for a variation on the maximum number of patient days, not allow the number of patient days for the short-term nursing care program to exceed 3,650 patient days for a single State fiscal year.
- Transfer a patient in the short-term nursing care program to an appropriate nursing home bed or hospital long-term care unit located within a 50-mile radius of the patient's residence within five business days after the hospital had been notified, orally or in writing, that a nursing home bed had become available.
- Not charge or collect from a patient admitted to the short-term nursing care program, for services rendered as part of that program, an amount in excess of the reasonable charge for the services as determined by the U. S. Secretary of Health and Human Services under Title XVIII of the Federal Social Security Act.
- Assist a patient who had been denied coverage for services received in a short-term nursing care program under Title XVIII to file an appeal with the Medicare Recovery Project operated by the Office of Services to the Aging.
- Operate the short-term nursing care program in accordance with the bill and the requirements of the swing bed provisions of Title XVIII.
- Provide the Department, upon request, with data considered necessary by the Department to evaluate the short-term nursing care program. The data could include, but would not be limited to, the number of patients admitted to the hospital's short-term care program during the period specified by the Department; the number of patient days for the period specified by the Department; and information identifying the type of care to which patients in the short-term care nursing program were released.

An applicant for a certificate of need for a short-term nursing program would not have to comply with requirements in the Code that otherwise apply to applicants for a certificate of need.

Patients' Rights

As part of the hospital's policy describing the rights and responsibilities of patients admitted to the hospital, as required in the Code (MCL 333.20201), a hospital that was granted a CON for a short-term nursing care program would have to incorporate all of the following additional rights and responsibilities for patients in the short-term nursing care program.

The policy would have to be provided to each short-term nursing care patient upon admission. The staff of the hospital would have to be trained and involved in the policy's implementation.

Each short-term nursing care patient could associate and communicate privately with persons of his or her choice. "Reasonable, regular" visiting hours, which took into consideration the special circumstances of each visitor, would have to be established for short-term nursing care patients to receive visitors. A short-term nursing care patient could be visited by his or her attorney or by representatives of the departments, as specified in the Code (MCL 333.20156), during hours other than established visiting hours. "Reasonable" privacy would have to be afforded for visitation of a short-term nursing care patient who shared a room with another short-term nursing care patient. Each short-term nursing care patient would have to have "reasonable" access to a telephone.

A short-term nursing care patient would be entitled to retain and use personal clothing and possessions as space permitted, unless medically contraindicated (making the indicated, or expected, treatment or drug inadvisable) as documented by the attending physician in the medical record.

A short-term nursing care patient would be entitled to the opportunity to participate in the planning of his or her medical treatment. The patient would have to be informed fully by the attending physician of his or her medical condition unless medically contraindicated, as documented by a physician in the medical record. Each patient would have to be afforded the opportunity to discharge himself or herself from the short-term nursing care program.

A short-term nursing care patient would be entitled to be informed fully either before or at the time of admission, and during his or her stay, of services available in the hospital and of the related charges for those services. The statement of services provided by the hospital would have to be in writing and would have to include those required to be offered on an as-needed basis.

A short-term nursing care patient would have the right to have his or her parents, if the patient were a minor, or his or her spouse, next of kin, or patient's representative, if the patient were an adult, stay at the facility 24 hours a day if the patient were considered terminally ill by the physician responsible for the patient's care.

Each short-term nursing care patient would have to be provided with meals that met the recommended dietary allowances for that patient's age and sex and that could be modified according to special dietary needs or ability to chew.

Each short-term nursing care patient would have the right to receive a representative of an organization approved under the Code (MCL 333.21764) for the purposes described in the Code, such as assisting patients in asserting their legal rights and making personal, social, and legal services available to the patients (MCL 333.21763).

A hospital or an owner, administrator, employee, or representative of the hospital could not discharge, harass, or retaliate or discriminate against a short-term nursing care patient because the patient had exercised a right described in the bill. In the case of a short-term nursing care patient, the rights described in the bill concerning medical treatment, could be exercised by the patient's representative, as defined in the Code (MCL 333.21703(2)).

A short-term nursing care patient would have to be fully informed, as evidenced by the patient's written acknowledgement, before or at the time of admission and during stay, of the rights described in the bill. The written acknowledgment would have to provide that if a short-term nursing care patient were adjudicated incompetent and not restored to legal capacity, the rights and responsibilities set forth in the bill would have to be exercised by a person designated by the patient. The hospital would have to provide proper forms for the short-term nursing care patient to designate this person at the time of admission.

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The bill specifies that these provisions would not prohibit a hospital from establishing and recognizing additional rights for short-term nursing care patients.

Variation in Patient Days

Upon application, the Department could grant a variation from the maximum number of patient days established in the bill to an applicant hospital that demonstrated to the Department's satisfaction that there was an immediate need for skilled nursing beds within a 100-mile radius of the hospital. A variation would not be valid for more than one year after the date it was granted. The Department would be required to promulgate rules to implement this provision, including, at a minimum, a definition of immediate need and the procedure for applying for a variation.

Penalty

A hospital that violated the bill's requirements for a hospital granted a certificate of need for a short-term nursing care program would be subject to the Code's penalty provisions for the denial, limitation or revocation of a license or registration (MCL 333.20165).

Construction/Conversion Costs

Currently under the Code, a person cannot begin operation of a new health facility, change bed capacity, change service, or undertake a capital expenditure for the construction, conversion, addition to, or modernization in excess of $150,000 of a health facility or make a commitment for financing the offering or development of a new institutional health service without first obtaining a certificate of need which documents a demonstrated need and grants permission for the proposed project. The bill would delete reference to these projects being "in excess of $150,000".

Report to Legislature

Within three years after the bill's effective date, the Department would be required to collect data from hospitals operating short-term nursing care programs and report to the Legislature on their status. The report would have to include a recommendation on whether the short-term nursing care programs should continue.

MCL 333.22131 et al.

FISCAL IMPACT

The bill would have an indeterminate impact on Department of Public Health expenditures. An increase in Department administrative costs would be offset by an increase in certificate of need application fee revenues. The bill would have no significant impact on the State's Medicaid Program. There is the potential for some savings in the Medicaid Program in cases in which an individual is maintained in an acute care hospital bed pending the availability of a skilled nursing facility bed, and the hospital is receiving partial payment under Medicaid.

ARGUMENTS

Supporting Argument

Approximately 46 states have hospitals that would qualify under the Federal program. Michigan is one of only six states that do not authorize swing beds. This restriction, along with the Diagnostic Related Group (DRG)-based payment system, which designates an expected length of stay for various medical procedures and establishes a set payment for those procedures, creates a hardship for small hospitals. Removing this ban and permitting the use of swing beds would allow hospitals, which met the criteria specified in the bill, to provide intermediate care to patients no longer in the acute phase of an illness. Swing beds would help ease financial burdens for hospitals that absorb the costs of keeping patients who are awaiting nursing home placement, and providing support care to the terminally ill.

Supporting Argument

Some physicians reportedly have had difficulty in providing their patients with an intermediate level of care that is short of acute-medical care and not as extensive as long-term care offered in a nursing home. Furthermore, some physicians, especially when dealing with terminally ill patients, feel it would be insensitive to release these patients from the hospital and subject them to the trauma of a transfer to an extended care facility, which may be located a great distance from their family and physician, for the short time they have remaining. In addition, some nursing homes reportedly are not accepting people who need special care, but do not have to be in a hospital to receive it, such as patients requiring feeding tubes, an intermittent need for intravenous medication, and intermittent chemotherapy. Swing beds would provide an intermediate level of care for these types of patients, especially those residing in areas of the State where there is a shortage of long-term care beds.

Supporting Argument

Small and rural hospitals are in financial trouble and many face closure in the next five years unless the State allows more flexibility to meet the needs of service areas, according to a recently released survey by the Michigan Hospital Association. These small rural hospitals cannot continue to absorb Federal and State budget cuts that are aimed at health care providers. Restrictions should be removed to allow these hospitals greater flexibility in providing services. Swing beds would permit these hospitals to provide a period of care not now available for transitional patients before nursing home placement.

Response: If there are service needs that are not being met for which hospital beds could be used, the needs should be verified by health planning agencies and the Department of Public Health so that economically efficient, high quality services would be provided. Allowing alternative uses of hospital beds, such as swing beds, should not be allowed merely as a method of bailing out some financially troubled hospitals.

Opposing Argument

Mechanisms should be established to ensure appropriate implementation of alternative use programs. Sufficient control needs to be exercised so that hospitals could not target the most desirable patients who otherwise would be transferred to nursing homes or use the program to avoid alleged financial losses. Furthermore, it is not certain whether specialized care units are needed for patients who have exceeded the number of treatment days alloted under Diagnostic Related Groups, since Medicare regulations reportedly provide—through "alternative placement days"—for additional payments for patients who cannot be discharged due to temporary unavailability of skilled nursing facility beds in an area.

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Opposing Argument

Supporters of alternative uses of hospital beds, such as swing beds, argue that a short-term nursing care program would meet unmet demands for nursing home care in some areas of the State. Unless there is a clear and unmistakenable need for the proposed program, however, the State should give priority to develop services that truly provide patients with health care alternatives—such as home-based care—rather than locking into only one solution: short-term nursing care.

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