



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

NURSING HOME PREADMISSION CONTRACTS

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House Bill 4440 (Substitute H-4)

First Analysis (12-12-89)

DEC 05 1989

Sponsor: Rep. Perry Bullard Mich. State Law Library
Committee: Public Health

THE APPARENT PROBLEM:

The Social Security Act prohibits Medicaid-approved nursing homes from evicting residents due to a change in the source of payment, and from demanding that a private-pay rate be paid for a specified period of time before Medicaid is accepted as payment in full. Despite substantial federal penalties for failure to comply, there are frequent reports, including reports in Michigan, of nursing homes requiring contracts that commit a family to private pay for a minimum term before Medicaid will be accepted and that threaten eviction for failure to comply with the contract. For better enforcement of the prohibitions, and to give families the ability to commence civil suits against nursing homes who violate the requirements, amendments to the state's Public Health Code are sought.

THE CONTENT OF THE BILL:

House Bill 4440 would amend the Public Health Code to prohibit certain nursing home preadmission practices that discriminate against people who are, or who will be, eligible for Medicaid reimbursement. It would prohibit a nursing home from requiring an applicant for admission to waive his or her right to Medicare or Medicaid benefits, to provide assurances that he or she is not eligible for those programs, or to provide assurances that he or she will not apply for benefits under those programs.

The bill would also prohibit a nursing home that participates in the federal Medicaid program from requiring as a condition of a patient's admission or continued stay in the nursing home that a patient (or someone on behalf of a patient) agree either (a) to remain a private pay patient (or to pay the private pay rate) for a specified period of time before applying for Medicaid or (b) to make a gift or donation. Existing contracts with such requirements would become unenforceable upon the effective date of the bill, and within 30 days of the effective date of the bill nursing homes would have to notify each private pay patient with whom the nursing home had such a contract that the contract no longer was a bar to the patient applying for Medicaid. A violation of the prohibition on waiving rights to benefits would be a misdemeanor punishable by a jail term of up to one year or a fine of not less than \$1,000 or more than \$10,000, or both. A person who violated any of the prohibitions in the bill would be liable to an applicant or patient in a civil action for treble the amount of actual damages or \$1,000, whichever is greater, together with costs and reasonable attorney fees.

Finally, the bill would require that if a patient who had made payments to a Medicaid-participating nursing home became a newly enrolled Medicaid recipient, the nursing home would be required to accept any retroactive payment from the Department of Social Services and to refund to the patient the private funds paid for care covered by Medicaid, less amounts determined to be required

copayments and payments for services not covered by Medicaid. For 90 days following receipt of a refund, the refund would not be considered income or an asset of the patient for the purposes of determining Medicaid eligibility.

MCL 333.20108 et al.

FISCAL IMPLICATIONS:

According to a Department of Social Services analysis dated December 7, 1989, there may be some increase in costs to the Medicaid program as a result of refunds made to patients and families. There may also be a possible increase in Medicaid expenditures if any remaining private pay arrangements exist that would be declared null and void.

ARGUMENTS:

For:

The private-pay requirements imposed by many nursing homes are not only illegal under federal law, they unfairly limit access and discriminate against those who are or may become eligible for Medicaid. At present, there is little the state, local law enforcement, or families can do to combat the practice, because it is federal law which prohibits it, and there is no provision for private suits. The bill would rectify this situation by establishing prohibitions and penalties in state law, and providing for civil actions that could recover treble damages.

Against:

Nursing homes impose private-pay requirements out of necessity, so that they may be assured adequate income to offset inadequate Medicaid payments, and timely cash flow to pay for care given.

POSITIONS:

The Michigan Nonprofit Homes Association supports the bill. (12-11-89)

H.B. 4440 (12-12-89)