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NURSING HOME STAFFING RATIOS

House Bill 5296 as introduced
First Analysis (6-10-92)

Sponsor: Rep. Burton Leland
Committee: Public Health

THE APPARENT PROBLEM:

The Public Health Code requires nursing homes to have enough workers to provide at least 2.25 hours of nursing care each day for each patient on a 24-hour basis. The code also sets a minimum ratio of staff to patients for each of the three eight-hour shifts: eight to one in the morning, twelve to one in the afternoon, and fifteen to one in the evening. Licensed nursing staff also are prohibited under the code (except in emergencies) from providing such basic services to patients as food preparation, housekeeping, laundry, or maintenance.

However, despite these statutory requirements, nursing homes experience chronic shortages in staffing. This shortage is attested to both anecdotally, in stories told by families of nursing home residents and by nursing home workers, and statistically, in a survey by the Health Care Association of Michigan (representing 240 "for-profit" nursing homes). According to this survey, temporary nursing services ("nursing pools") accounted for 18 percent of all nursing hours worked in the association's facilities, while temporary nursing help accounted for 25 percent of the member facilities' nursing personnel costs.

Testimony submitted to the House Committee on Public Health further related the human costs of inadequate staffing. People told of situations in nursing homes in which residents were not adequately cleaned (for example, one resident was given three showers by staff her first five weeks as a resident, other residents have been left to lie in their own feces or urine until additional staff came on duty) or fed properly (not enough staff to deliver food while it was still warm, or physically disabled residents who did not get the help they needed to feed themselves). Others told of bedridden residents who were not turned frequently enough to avoid bed sores (and the sometimes life-threatening infections accompanying them) or who were left on bedpans because busy aides forgot to return.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to:

- * change the required minimum number of daily nursing care hours provided in nursing homes per patient from 2.25 to 2.65;
- * specify that the required staff-to-patient ratios be ratios between unlicensed nursing personnel and patients;
- * prohibit staff employed to provide basic services (food preparation, etc.) from providing nursing care to patients.

The bill also would create a new, separate required ratio of unlicensed nursing personnel (such as nursing aides) to licensed nurses of not more than five to one during the morning and afternoon shifts and of not more than ten to one during the night shift.

MCL 333.21720a

BACKGROUND INFORMATION:

House Bill 4079, which would require nursing homes to post required and actual patient-staff ratios, passed the House earlier this session.

FISCAL IMPLICATIONS:

Fiscal information is not available. (6-8-92)

ARGUMENTS:

For:

By establishing separate aide/orderly ("non-licensed nursing personnel")-to-resident ratios, and by establishing separate nurse-to-aide/orderly staff ratios, the bill would recognize and protect the work and significance of each part of the nursing staff, both licensed nurses and unlicensed aides and orderlies. While nurses are needed to assess residents, provide special treatments, administer medications, and supervise the work of aides and

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orderlies, the overwhelming majority of direct, "hands on" care of residents is provided by non-licensed nurses aides and orderlies. Aides and orderlies bathe, feed, clean, dress, and otherwise attend to the daily living needs of residents -- providing the so called "basic services" which licensed nurses are prohibited from providing except in emergencies.

Even though it is the non-licensed staff who provide the vast majority of direct care to nursing home residents, nursing homes include licensed nurses when calculating their required minimum staffing hour and ratio numbers. This means that just meeting minimum staffing hours and ratios does not necessarily mean that the residents' basic needs are being met. The bill would begin to address this chronic problem of understaffing both by raising the minimum number of hours of required patient care each day but also by requiring that the staff-to-patient ratios be those of unlicensed staff (that is, nurses aides and orderlies) to licensed staff (who do not provide basic care services) and that there be a specific ratio between licensed and unlicensed staff.

Against:

Opponents of the bill point out that even if nursing homes have staffing problems, there is no evidence that simply increasing the staffing requirements would solve the problem. In fact, some opponents of the bill will even go so far as to claim that any indication that more workers will improve care is a myth.

Most nursing homes reportedly already are staffing at or above the minimum level now required by law, with reportedly over 75 percent of licensed nursing homes in Michigan currently being actually above the 2.65 minimum staffing hours that would be required by the bill. For example, according to one nursing home advocacy group, state-owned nursing homes (that is, those in the state prisons) average 4.14 hours (instead of the required 2.25 hours), while for-profit homes average 2.82 hours. According to this same group, when nursing homes are looked at in terms of Health Systems Agency regions, the staffing hours range from 2.88 to 3.10 hours. Only seven of the state's eighty-three counties have county-wide averages of less than 2.65 hours, and even then three of these counties have only a single nursing home.

But even if only the present minimum staffing hours were being met, no study or evidence has been put forward that would support the proposed change in

the minimum staffing requirements. Even though an increasing percentage of nursing homes already are at or above 2.65 hours voluntarily, no one has ever shown that a home staffing at 2.50 or 2.60 hours provides less quality care than a home staffing at 2.65 or 2.85 or even 3.00 hours. And as one representative of nursing homes pointed out, there have been no convincing arguments that the 103 nursing homes who now staff below 2.65 hours per patient per day are either individually or generally providing sub-standard care.

Until it can be proven that the present formula, much less the proposed formula, results in better patient outcomes or higher quality patient care, attempting to improve quality of care by changing the formula is just a "numbers game" and an easy way to regulate -- nothing more.

Response:

Surely it is ludicrous to claim that the level of staffing of nursing homes has nothing to do with the quality of patient care. Nursing homes really are a "hands on" business in the sense that the fewer staff there are the fewer personal or basic care services can be provided to nursing home residents. As the tragic fire in the adult foster care home recently illustrated, even if the "service" is something as basic as helping people leave a burning building, when there are not enough people to help frail and often physically impaired people out of that burning building, lives will be lost. Besides, if most nursing homes already are staffing above the code's minimums, then the bill will simply recognize this fact in statute and require those few who currently are not meeting industry norms to bring their staffing up to these industry-set norms.

Against:

The bill isn't needed because the Department of Public Health already has the statutory authority to require a nursing home to hire more staff, regardless of the number of hours of care being provided. The Public Health Code already requires nursing homes to "employ nursing personnel sufficient to meet the needs of each patient in the nursing home."

Response:

Although those testifying before the House Committee on Public Health did not know of any time and motion studies done on nursing homes, anecdotal and other evidence supports the severity of the problem of chronic understaffing. For example, in 1989 and 1990, the Michigan Ombudsman Program reportedly received over 400

complaints that there were not enough staff in nursing homes to do "what was needed to be done," while during this same period residents and their support systems reported over 500 cases of nursing home residents who received inadequate basic hygiene care. Over 200 people complained of nursing home residents being left in their own urine or feces for long periods of time. And whenever public hearings are held on problems in the nursing home industry, the problem of chronic staff shortages inevitably is brought up. Clearly, existing law is not adequately addressing this problem.

Against:

Nursing homes support the need for adequate staffing, but they also need to be paid for such staffing. The industry cannot afford to have new costs added when old obligations are not being paid for (the point of their 1989 federal lawsuit). Nursing homes already must staff above minimums in order to ensure that they will meet those minimums (because they have to take a number of factors into account such as illness, absenteeism, and termination). The bill's requirements would force many nursing homes (up to one third, on one estimate) to hire additional staff, without providing any increased reimbursement to the homes.

It takes nursing homes two years to recover their costs under the Medicaid program, because Medicaid reimburses on the basis of the nursing home's audited costs two years prior to the reimbursement. At the very least, the bill should be tie-barred to an appropriations bill that would give nursing homes money for these additional costs as those costs are incurred (called a "pass through" or "forward funding"). Without some kind of "forward funding", nursing homes would simply be forced to absorb these additional costs, even as they already incur losses under Medicaid reimbursement. (In fact, nursing homes settled a successful federal lawsuit two years ago to increase their Medicaid funding by a new inflation factor. As a result, for the first time, according to the industry, over the past two years a majority of nursing homes have been paid rates reflecting their actual costs.)

According to industry estimates, between one-fourth and one-third of nursing homes would have to increase staffing at an added cost of over \$5 million per year, even as the House-approved version of the proposed social services budget for 1992-93 reduced the industry's recently-acquired Medicaid inflation factor by half -- a loss in operating revenues of

some \$16 million. The nursing home industry simply can't afford this bill.

Against:

Neither the current system of staffing nor the proposed system bear any relationship to the needs of individual patients. In fact, the bill simply shores up the archaic, inflexible 8-hour shift method of staffing under which nursing homes now operate, without trying to find out whether there is a better way to care for patients. The latest federal nursing home reform laws (OBRA' 87 and OBRA' 90) reportedly create a regulatory and enforcement scheme based on outcomes, not on minimum staffing requirements. In this light, opponents of the bill ask "What outcome would the bill attempt to change?" In order to meet the needs of today's potential employees and to care for differing patient populations, nursing homes need to develop new and innovative staffing patterns, and not be tied to old, outmoded ways of doing things.

Response:

Staffing does not always follow patient or employee needs. For example, recent changes in the federal nursing home laws required increases in coverage by registered nurses, and what modest increase in staffing that has resulted reportedly is the result of this federal requirement. (Besides, as noted above, increases in numbers of registered nurses does not generally mean more daily care for nursing home residents, since that care is given by the non-licensed staff.) Reportedly staffing ratios also are higher in the non-profit sector (about 30 percent of nursing homes in the state, both public and private) than in the "for profit" sector (about 70 percent of the total). And while new and innovative nursing home care is greatly to be desired, people currently in nursing homes with inadequate staffing cannot wait for such research to be conducted. They need help now--and the help they apparently need most is simply more people to care for them, which this bill would require.

Against:

Decisions regarding staffing are made for a number of reasons, including the availability of labor and the nursing requirements of residents. The new requirement will simply guarantee that some nursing homes will have to hire additional staff regardless of whether or not they are needed and whether or not qualified people are available.

Response:

Nursing home workers, as well as residents themselves and their families, have testified to the

problem of shortstaffing. Workers tell of having to work consecutive shifts, of being unable to adequately care for residents or to answer their call lights -- because of shortstaffing. Workers tell of working shortstaffed "more times than full staffed," of employers failing to call in replacements when a worker calls in sick. Workers tell of not having enough staff to turn bedridden patients, and of these patients then developing bed sores. They tell of residents being overmedicated or physically restrained because there was not enough staff to keep track of them otherwise. Family members tell of finding elderly parents soaked in urine because the aides were "working short", of going to nursing homes to provide their parents with basic care (such as showering and feeding) because they could not otherwise be sure there was enough staff to provide these services.

It also seems clear that there is a problem getting and keeping staff at nursing homes, with a major problem being the low levels of pay and lack of benefits for staff. The average hourly wage for a Michigan nurses' aide in 1990 reportedly was \$4.73. Most workers do not have health insurance, and many who do cannot afford to pay the premium. Virtually none of the workers have a pension plan. While the nursing home industry received a major increase in reimbursement of \$30 million in 1991 through a federal court settlement with the state of Michigan, and though workers were to get a modest increase in wages through a "wage enhancement" provision of the settlement, in the year following the settlement less than ten percent (about 40) of nursing homes even applied for this provision. When wages and benefits are increased, the pool of available labor will increase and there will be less turnover in existing staff. Better wages and working conditions would attract more workers, which would improve not only the care of nursing home residents but the working conditions of the workers as well.

POSITIONS:

The Service Employees International Union (SEIU) supports the bill. (6-8-92)

Citizens for Better Care supports the bill. (6-8-92)

Voices of the Elderly (VOTE) supports the bill. (6-8-92)

The American Association of Retired Persons supports the bill. (6-8-92)

The Michigan Hospital Association opposes the bill as written, but could support it if funding for increased ratios were included. (6-9-92)

The Michigan Non-Profit Homes Association (which represents 150 religious, fraternal, and community-owned tax-exempt long-term care agencies) opposes the bill. (6-9-92)

A representative of the Health Care Association of Michigan (which represents 250 for-profit long-term care facilities) testified in opposition to the bill. (6-4-92)