



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**NURSING HOME CLOSURES**

**House Bill 5298**

**Sponsor: Rep. Sharon Gire  
Committee: Public Health**

**Complete to 11-7-91**

**A SUMMARY OF HOUSE BILL 5298 AS INTRODUCED 10-24-91**

The bill would amend the Public Health Code to revise and expand on procedures governing the closing or temporary administrative management of nursing homes that lost (or were about to lose) their licenses or Medicare certification.

Temporary managers. At present, under the Public Health Code, when the Department of Public Health (DPH) suspends or revokes a nursing home's license, the department, a patient in the home, or a patient's representative can file an emergency petition with the court to place the home under the control of a receiver. If the court finds that the health or safety of the patients in the nursing home would be seriously threatened if existing conditions at the nursing home were to continue, the court can appoint a receiver (the director of either the Department of Social Services or the Department of Public Health or another state agency or person designated by the director of the DPH) to manage and operate the nursing home and to try to correct the conditions constituting a threat to the patients. The receivership ends when one of several situations occurs: when the receiver and the court decide that the conditions triggering the receivership are corrected, when the license is restored or a new license is issued, or, in the case of a nursing home closure, when all patients are safely placed in other facilities.

The bill would do away with the receivership and instead put in its place a system of "administrative temporary managers" and "court-ordered managers." The Department of Public Health would be required to put a nursing home under the control of an administrative temporary manager whenever:

- (1) a nursing home was notified that the department intended to suspend or revoke its license or certification (or both) under the section of the health code defining the grounds for the denial, limitation, suspension or revocation of health facilities' licenses or certificates;
- (2) the department issued an emergency order suspending or revoking the nursing home's license;
- (3) the department was notified by a nursing home that the home was going to (or involuntarily had to) close or discontinue operation;
- (4) there was an emergency closing of a nursing home; or
- (5) the department was informed that the federal government intended to suspend or revoke a nursing home's Medicare certification.

Within 48 hours of appointing an administrative temporary manager, the department would have to petition the circuit court to make the administrative temporary manager the court-appointed manager. The court would have five days to hold a hearing on the petition,

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and could either make the administrative temporary manager the court-appointed manager or deny the petition. If the court denied the petition, the department would have to remove the administrative temporary manager, and a patient in the nursing home or his or her representative could petition the circuit court to place the nursing home under the control of a court-appointed manager.

An administrative temporary manager appointed by the DPH and a court-ordered manager would have to be someone designated by the director of the DPH from a list of qualified people compiled by the department. (The bill would require the DPH to promulgate rules establishing qualifications for administrative temporary managers and court-appointed managers. The department also would have to set guidelines for their conduct and compile a list of qualified people, giving preference to people who already had successfully served in this position and seeking help in compiling names for the list from relevant provider and patient advocacy groups.)

Administrative temporary managers and court-appointed managers would be able to:

- \* help close a nursing home;
- \* if there is an emergency, close the nursing home or transfer patients (or both) and pay from the home's funds for the patients' care, relocation, transfer, or discharge, for the maintenance and operation of the nursing home, for the correction of deficiencies, and for reimbursing patients for any personal funds lost; and
- \* take action necessary to return the nursing home to management by the licensee.

In addition to these powers, court-appointed managers also would be able to (1) contract for any construction projects necessary to bring the nursing home into compliance with the applicable law and (2) sell the nursing home to pay its debt (and turn over any surplus to the licensee).

As is true now for receivers, administrative temporary managers and court-appointed managers could ask for (and the DPH would have to provide) reasonable consultation from its staff.

Departmental responsibilities. Whenever a number of actions were taken against nursing homes, the Department of Public Health would have to

- \* give written notification to the nursing home residents and their families,
- \* form a "coordination committee" to help the administrative temporary manager or court-appointed manager and the nursing home patients and their families, and
- \* prohibit the nursing home from admitting new patients.

The committee would consist of the directors of the Departments of Public Health, Social Services, and Mental Health, and the attorney general (or any of their designees).

Freeze or limits on nursing home admissions. A nursing homes would not be able to admit new patients if:

- \* its license was suspended or revoked,
- \* it had failed to correct Medicare citations,

- \* it had failed to meet legally required staffing ratios three or more times during any twelve-month period,
- \* it had voluntarily closed or forfeited its Medicare certification, or
- \* it was subject to a legal action to foreclose its property or to seize its assets.

The ban on new admissions would last during the course of any license actions or legal proceedings being taken against the nursing home or until the DPH determined that the conditions causing the ban had been corrected and the nursing home was in compliance with all licensing and certification requirements. A nursing home banned from admitting new patients could request (and the department would have to conduct) an inspection to determine the home's compliance.

Under certain circumstances a nursing home could ask the department to limit the number or type of patients the home admitted and to temporarily close part of the home. The home could not be under investigation of a complaint nor be undergoing a licensure or certification survey. The home would have to submit its request in writing at least 30 days before its license expired and would have to say why, for how many beds, and for how long it wanted limited admissions. The department would have to determine that the request was not based on the source of payment for the beds in question nor made in order to limit the number of patients in the home either with a specific disease or with care requirements greater than the other patients in the home.

Closing policy handbook. The Department of Public Health, in conjunction with the Departments of Social Services and Mental Health, would have to issue a "closing policy handbook" within 120 days after the bill took effect. The handbook would describe the procedures required under the bill for the voluntary or involuntary closing of a nursing home or the appointment of a temporary administrative or court-appointed manager. The department would have to distribute a copy of the handbook to each nursing home and area agency on aging in the state and, upon request, to consumers.

License refusals, certificate of need. Currently, the department may refuse to issue a license to a nursing home if the applicant's license has been revoked during the five years before the application or if the department finds that the applicant is not suitable to run a nursing home (either because of financial reasons, lack of "good moral character," or lack of appropriate business or professional experience).

The bill would also prohibit the department from issuing a license or a certificate of need if the applicant had a license revoked in the immediately preceding five years or had an action pending to revoke his or her license or if the applicant had voluntarily closed a nursing home within the immediately preceding five years without following the legal closing requirements.

Patient discharge/transfer plans. Currently, nursing home licensees are required to develop (and get the approval of the DPH for) a plan for the "orderly and safe" transfer or discharge of patients. Patients and their families (or representatives) must be consulted in choosing another nursing home, and patients must get counseling before the move in order

to minimize the adverse effects of the transfer. The department is responsible for making counseling available after the transfer, if necessary.

The bill would add a number of specific requirements for transfers or discharges resulting from the voluntary or involuntary closing of a nursing home. The home would have to ensure that the patient got counseling before and after the transfer or discharge. The Department of Social Services would have to monitor this counseling, make sure that the patient got counseling within 72 hours after the move, and help the nursing home develop its patient transfer/discharge plan. The plan would have to be developed and used so as to meet certain objectives, specified in the bill, that would focus on the patient's needs and well being (including making sure that the proposed new care setting placement was appropriate to the patient's needs and took into consideration the recommendations of the patient's physician, giving the patient the opportunity to visit the proposed new placement before the move, ensuring that a family member or other appropriate individual accompanied the patient during the actual move, and ensuring that the patient and his or her family were involved in selecting the new nursing home).

Other provisions. The bill also would make a number of technical language changes (to reflect the change, for example, from the use of a "receiver" to that of a "temporary administrative manager"), and would require nursing homes involuntarily closed by the department to make their financial records accessible to the DPH and the attorney general.

MCL 333.20108 et al.