

NURSING HOMES: PATIENT ABUSE

House Bill 5320 as passed by the House
Second Analysis (8-28-92)

Sponsor: Rep. Clark Harder
Committee: Public Health

THE APPARENT PROBLEM:

Currently, the Public Health Code prohibits abuse of nursing home patients and requires that nursing home employees report patient abuse to the administrator or nursing director, who then must report the abuse to the Department of Public Health. Physicians (and other licensed health care professionals) in hospitals or other health facilities to which a nursing home patient is transferred also must report any abuse of which they become aware. Violations of the prohibition against patient abuse and failure by licensed health professionals to report such abuse are misdemeanors punishable by fines and imprisonment. In addition, nursing homes are subject to civil fines of \$15 per patient bed or \$1,500 (whichever is greater) for violations of patients' rights.

Despite these provisions in the health code, nursing home patient abuse sometimes goes unreported, while at the same time, reportedly, there are instances in which nursing homes which self-report patient abuse to the Department of Public Health (and take action against the employees who engage in patient abuse) still are fined by the department.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to clarify the responsibilities of nursing home owners and administration with regard to preventing and reporting patient abuse in their facilities and would increase penalties for patient abuse.

Preventing and reporting nursing home patient abuse. Currently, the Public Health Code prohibits nursing home owners, administrators, and employees from physically, mentally, or emotionally abusing patients. The code also requires nursing home administrators or directors to immediately report patient abuse, when they are aware of it, to the Department of Public Health.

The bill would:

- * require nursing homes to inform their staff of the staff's obligations with regard to patient abuse, both when the home hired the staff person and at least annually through formal in-service training;
- * add nursing home owners to the list of those required to report abuse of nursing home patients to the Department of Public Health;
- * require nursing home owners, administrators, and nursing directors to take "affirmative steps" to prevent "similar occurrences" of patient abuse when an incident of patient abuse occurs in the nursing home;
- * add nursing home nursing directors to the list of those prohibited from retaliating against patients, their representatives, and employees for reporting abuse.

Legal liability exemptions. The bill would exempt nursing homes who complied in good faith with the bill's requirements from criminal liability and from any civil fines that otherwise might be imposed by the Department of Public Health for acts of patient abuse if the facility licensee, administrator, or nursing director had not "acted affirmatively" in any specific instance of patient abuse.

Penalties. Currently, two violations of this part of the health code are misdemeanors, punishable by up to one years' imprisonment and a fine of \$1,000 to \$10,000: patient abuse and failure on the part of hospital physicians (or other licensed health professionals) to report such abuse when a nursing home patient is transferred to a hospital or health facility. The bill would increase the maximum fine to \$50,000, and would add a third violation to this misdemeanor list: nursing home licensees, administrators, or nursing directors who retaliated against patients, their representatives, or employees who reported patient abuse.

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Nursing home licensees who failed to inform their staffs of their obligations under this part of the health code also would be guilty of a misdemeanor (punishable by imprisonment for up to a year and a fine of from \$1,000 to \$10,000).

MCL 333.21771 and 333.21799c

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Patient abuse cannot be tolerated in any form. At the same time, under current law, providers who have done everything that they can and should do to prevent abuse still can be fined when a single incident of abuse by a single staff person is reported. The bill would clarify the responsibility of nursing home management (owners, administrators, and nursing directors) in educating other staff regarding their responsibility for acts of patient abuse, encourage the reporting of abuse, and establish immunity for criminal liability and civil fines for management when the law is upheld.

Response:

Nursing homes should remain liable for civil fines for instances of patient abuse even if they take the initiative and report the abuse to the Department of Public Health. Nursing homes still are responsible for interactions between their employees and the nursing home residents, even when employees act in ways prohibited by law.

Against:

More could be done to help put an end to abuse of nursing home patients. The bill perpetuates the current law's structure of misdemeanor penalties for various violations, when felony penalties could be more effective. It also lets stand existing language that prohibits owners, administrators, and employees from mistreating patients, but does not specifically apply that prohibition to contract workers who are not employees of the nursing home.

POSITIONS:

The Michigan Non-Profit Homes Association supports the bill. (1-28-92)

The American Association of Retired Persons supports the bill. (9-1-92)

The Health Care Association of Michigan has no position on the bill. (9-1-92)

Citizens for Better Care supports legislation intended to reduce the incidence of patient abuse, but opposes the amendment exempting nursing homes from civil fines. (1-28-92)