



**House
Legislative
Analysis
Section**

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NURSING HOME ADMISSIONS

House Bill 4261 (Substitute H-3)
First Analysis (5-11-93)

Sponsor: Rep. Paul Baade
Committee: Human Services & Children

THE APPARENT PROBLEM:

The federal Social Security Act prohibits Medicaid-approved nursing homes from evicting residents due to 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. Legislation has been introduced to allow for better enforcement of the prohibitions, and to give families the ability to bring civil suits against nursing homes who violate the requirements.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to prohibit a nursing home from making a waiver of Medicare or Medicaid a condition of admission, or similarly conditioning admission on an assurance that the applicant either is not eligible for the programs or will not apply for Medicare or Medicaid benefits. A nursing home could not require that a patient remain a private pay patient for a specified amount of time, or that someone make a gift or donation on behalf of a patient or applicant for admission.

Violation of the above provisions would be a misdemeanor punishable by up to one year in jail, and/or a fine of between \$1,000 and \$10,000. In addition, the offender would be liable to an applicant or a patient for treble the amount of actual damages or \$1,000, whichever was greater, plus costs and reasonable attorney fees.

A contract in conflict with the bill would be unenforceable as of the date the bill took effect, regardless of when the contract was made. Within 30 days after the bill took effect, a nursing home that participated in Medicaid and had contracts in

conflict with the bill would have to notify each affected patient that the contract was no longer a bar to the patient applying for Medicaid.

The bill would allow a nursing home employee to request a guardian for an applicant or patient only if the employee reasonably believed that the individual met the legal requirements for appointment of a guardian.

A nursing home could require a patient's guardian or an individual who had legal access to a patient's income or resources to sign a contract to provide nursing home payment from that income without incurring personal liability.

In addition to matters covered by current law, a contract would have to specify the general and foreseeable terms upon which a deposit would be held and refunded.

MCL 333.21702 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could increase Medicaid expenditures through payments to nursing home patients who are currently private-pay under contracts rendered unenforceable under the bill. (5-10-93)

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

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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:

Citizens for Better Care supports the bill. (5-7-93)

The Health Care Association of Michigan (representing long term care facilities) supports the bill. (5-10-93)