



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 1145 (as enrolled)
Sponsor: Senator Robert Geake
Senate Committee: Health Policy and Senior Citizens
House Committee: Health Policy

Date Completed: 12-27-96

RATIONALE

Some nursing home administrators contend that in recent years there have been a number of incidents in which unauthorized persons have come upon nursing home property and threatened or intimidated patients and/or staff, or caused disruptions in a nursing home's operations. Reportedly, one incident involved a demonstration by picketing employees who entered a nursing home, and another involved an attempt by a person to convert patients to a particular religion. While the Public Health Code specifically requires authorized representatives of approved organizations to be given access to nursing home residents (for such things as visiting, informing patients of their rights and responsibilities, assisting patients in obtaining medical assistance and social service benefits, and assisting, advising, and representing patients), it does not specifically prohibit persons from entering a nursing home and intimidating, threatening, or frightening patients or employees. While there are general statutes against trespassing, some people feel that they are inadequate in this case, and that frail elderly people and their caretakers should be afforded special protection against certain behavior.

CONTENT

The bill would amend the Public Health Code to prohibit an individual from entering upon the premises of a nursing home for the purpose of engaging in an activity that would cause a reasonable person to feel, and that actually caused a nursing home patient, employee, or visitor to feel, terrorized, intimidated, frightened, threatened, harassed, or molested. A person who violated the prohibition would be guilty of a misdemeanor, punishable by imprisonment for up to one year, a fine of at least \$1,000 but not more than \$10,000, or both.

The bill would not prohibit "constitutionally protected activity or conduct that serves a legitimate purpose", including but not limited to: visiting, talking with, and making personal, social, and legal services available to patients; informing patients of their rights and entitlements, and their corresponding obligations, under Federal and State laws; assisting patients in asserting their legal rights regarding claims for public assistance, medical assistance, and social services benefits, as well as all matters in which patients were aggrieved; and engaging in other methods of assisting, advising, and representing patients. Currently, the Code requires nursing homes to give access to a representative of an approved organization for these purposes. The bill would extend that access requirement to a family member of a patient or a legal representative of a patient.

Currently, under the Code, the Department of Social Services (now the Family Independence Agency), with the advice of the Department of Public Health (now within the Department of Community Health), must promulgate rules for a quality of care allowance formula regarding nursing home reimbursement. The bill would require the Department of Community Health to promulgate the rules.

MCL 333.21763 & 333.21799c

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Recently there have been an increasing number of complaints from nursing home operators about

disruptive activity by individuals and groups on nursing home property. These disruptions can have a heightened effect on frail, elderly residents and the staff that cares for them, and can contribute to increased levels of fear, confusion, and stress. The bill would make clear that behavior resulting in specific emotional responses by staff, visitors, and residents would be subject to criminal penalties. Since the language in the bill is modeled after language in the stalking law, there already is case law to help frame the type of behavior or activity that would result in a penalty. In addition, the bill specifies that certain constitutional activities would remain protected, as would activities by family members. In short, residents of nursing homes represent a very vulnerable segment of our population, and they need and deserve to be protected. By imposing criminal penalties on those individuals who, through their behavior, frighten and terrorize residents, employees, and visitors, the bill would create a safer environment for nursing home residents.

Opposing Argument

The bill makes no distinction between repeated behaviors and one-time occurrences. Some people feel that because of the vagueness of the language it could be used against family members or legitimate representatives of advocacy groups who complain, perhaps vehemently, about inadequate care or safety violations at a nursing home. A family member could be banned and even face criminal penalties just because a nursing home employee claimed to feel terrorized, intimidated, or harassed by a family member upset in finding that his or her relative was receiving substandard care or living in unsafe conditions.

Response: The bill specifically would allow a patient's family members or a legal representative to assist a patient in various ways as prescribed in the bill, including assisting patients in asserting their legal rights in all matters in which patients were aggrieved.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill could result in increased costs for apprehending, prosecuting, and sanctioning violators of the bill's new provisions. While there is no information currently available on the expected number of new violators, and therefore, the level of increased costs associated with the bill, it is not expected to be significant.

Fiscal Analyst: M. Hansen

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.