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## **NURSING HOMES: PREADMISSION PHYSICALS AND APPOINTMENT OF MEDICAL DIRECTOR**

### **House Bill 4207 as passed by the House Second Analysis (3-18-98)**

**Sponsor: Rep. Mary Schroer  
Committee: Health Policy**

#### ***THE APPARENT PROBLEM:***

Currently, Michigan administrative rules require that a patient who is admitted to a nursing home be examined by a physician within 48 hours after admission unless the patient had been examined within the previous five days (Michigan Administrative Code, R 325.20602). However, patients are often admitted to nursing homes directly from a hospital stay where medical exams and tests have already been performed. This results in many patients having to have a second physical exam a short time after the first one. Some people believe that the Public Health Code should be amended to allow patients under certain conditions to be exempt from the rule's requirement of undergoing a physical exam within the first two days of admission to a nursing home.

Further, under federal regulations pertaining to certification for Medicaid and Medicare programs, nursing homes are required to designate a physician to serve as medical director. Though most of the state's nursing homes are certified to participate in the federal programs, and therefore would already have a medical director, some feel that a similar requirement should be placed in state law.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Public Health Code to require a nursing home, as a condition for licensure, to appoint a medical director and to require patients to undergo physical examinations prior to admission to a nursing home under certain conditions. Under the bill, the Department of Consumer and Industry Services could not license a nursing home or renew a license unless a physician had been designated to serve as medical director for the facility. The medical director would be responsible for implementing resident care policies, for coordinating medical care, and for the overall quality of medical services in the nursing home. A nursing home could contract with a physician who was not an employee to serve as the

medical director, and the bill would specify that a physician who entered into a contract with a nursing home to serve as its medical director would not be an employee of that nursing home for that reason only.

Further, if a patient were under the care of a physician at the time of application to a nursing home, and if the same physician were to continue to direct the care of the patient at the facility, the bill would require the nursing home to require that the patient be examined by his or her physician within 30 days prior to admission to the facility. A copy of the examination would have to be made available at the time of admission. If the patient had a significant illness after the examination but before admission to the nursing home, the patient would have to be reexamined by his or her physician within seven days before being admitted to the nursing home. The physician would have to forward a copy of the examination to the nursing home.

If a patient were not under the care of a physician who would direct that patient's care at a nursing home, the facility would have to require that patient to be examined by a physician within 48 hours of admission to the facility (72 hours for patients admitted on a Friday, Saturday, or Sunday), unless the patient had been examined by a physician within five days before the admission.

A registered professional nurse or licensed practical nurse licensed under Article 15 of the code and who was employed by or under contract to a nursing home would have to immediately enter standing and other treatment orders prescribed by a physician for the care of a patient in the patient's permanent medical record, and would have to sign the entry unless the orders had already been entered and signed by the prescribing physician. If the prescribing physician had not yet signed the orders, he or she would have to countersign the orders within seven days after the date the standing

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or other treatment orders had been entered into the patient's record. If the standing or other treatment orders had been entered into a patient's record by a physician's assistant or a nurse practitioner, the supervising physician would also have to countersign the orders within seven days of the entry.

MCL 333.21707 et al.

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency reports that though the bill does impose new requirements on physicians as well as nursing homes, it would not impose costs through the additional responsibilities associated with verification by the Department of Consumer and Industry Services. Therefore, the bill would not have a fiscal impact on the state or local governments. (2-20-98)

### **ARGUMENTS:**

#### **For:**

Many patients admitted to nursing homes come directly from a hospital where physical exams and medical tests have been recently performed. Yet, under current rules, nursing homes must subject newly admitted patients to a physical exam within 48 hours of admission (72 hours if the person was admitted on a Friday) unless an exam had been done within five days of the admission. Duplicating an exam within a short period of time results in higher costs for the patient, his or her family, or the state in regards to Medicaid recipients. The bill would eliminate the duplication of physical exams for some patients. A patient who would be entering a nursing home directly from a hospital, and who would be under the same physician's care, would not have to undergo the exam required under the administrative rules if his or her last hospital exam was within 30 days of being admitted to the nursing home. The bill would protect a patient who had suffered a significant illness after the physical exam in the hospital but before entering the nursing home by requiring that he or she be reexamined within seven days before being admitted to the home. For those patients who would qualify for the exemption, the bill would result in saving the cost of an additional exam without sacrificing medical care.

For other patients, the bill would reflect current rule requirements. Patients who entered a nursing home directly from a hospital but who would be under a different doctor's care would still be subject to having an exam performed within 48 hours, as would a

person who entered a nursing home from his or her home or other facility. (Patients admitted on Fridays, Saturdays, and Sundays would have to be examined within 72 hours of admission.) However, if a patient had an exam within five days before entering the nursing home, he or she would not have to undergo another exam within the 48-hour period.

#### **Response:**

Existing regulations extend the time frame for mandatory exams from 48 hours to 72 hours for those patients being admitted to nursing homes on Fridays. This makes sense, as many Friday admissions occur after physicians complete morning rounds, and so allow a patient exam to be conducted on the following Monday when physicians and laboratories conduct their normal business hours. However, it is not necessary to extend the 72-hour time frame to Saturday and Sunday admissions, as the bill would do. For Sunday afternoon admissions, this would mean that a patient would not have to be examined by a physician until the following Wednesday afternoon. Since this provision would apply to people who had been admitted directly from their homes or from facilities other than a hospital, this is too long of a time frame, especially since the required exam is easily accommodated within the current 48-hour requirement. The bill should be amended to reflect current administrative rule requirements.

#### **For:**

Federal certification for nursing homes that participate in the Medicare and Medicaid programs require that a physician be designated as a medical director. The federal regulations, as would the bill, specify that the medical director's responsibilities are to implement resident care policies and coordinate medical care in the nursing home. Further, federal certification regulations require the medical director to be part of a nursing home's quality assurance team, and so the bill would add that a medical director would also be responsible for the overall quality of medical services in the nursing home. Therefore, the bill would bring state law into compliance with current federal Medicaid and Medicare certification requirements.

#### **Response:**

There are times that a nursing home may be temporarily without the services of a designated medical director, such as if a home's medical director moves, retires, or terminates employment with the nursing home (or in the case of contracts, is no longer able to fulfill his or her contractual duties). The bill should be amended to require only that a nursing home designate a medical director, and not make the designation of a medical director a condition of

licensure. In this way, the Department of Consumer and Industry Services would have discretion as to possible sanctions, such as levying a fine or issuing an order, as opposed to pulling a home's license and forcing the removal of residents in the event a nursing home is temporarily without a medical director even though physical danger to the residents is not imminent.

***Against:***

Some feel that the bill is unnecessary as it would make few changes to current practice. All but twelve of the state's more than 400 nursing homes are certified to participate in the Medicare and Medicaid programs and so would already have medical directors. Though the bill is promoted as a vehicle to eliminate costly duplication of physical exams for nursing home admissions, only a small number of patients may actually qualify for the exemption from a duplicate exam as only those coming directly from a hospital and who would retain the same treating physician and who had a physical exam within the previous thirty days would be able to skip the exam required under the administrative rules. The number of patients affected by the attempt to save money by eliminating duplication of physical exams may be too insignificant to justify changing the law.

In addition, the language of the bill would appear to be requiring the nursing home to require the patient to be examined before admission to the home, which in effect could be interpreted that a hospitalized patient who would be under the same physician's care could not be admitted to a nursing home unless an exam had been done within 30 days prior to admission, which may not reflect the intent of the bill.

***Against:***

The bill would change the current requirement that all patients admitted to a nursing home be examined within 48 hours to exempt patients being admitted directly from a hospital who would remain under the same doctor's care. Yet, the bill would also specify that a medical director would be responsible for coordination of medical care and the overall quality of medical services in the nursing home. This raises liability questions for the medical director such as whether or not he or she would be liable for a patient's condition that was undiagnosed or misdiagnosed by the patient's doctor during an exam that was performed up to 30 days before the patient was admitted to the nursing home, but worsened after admittance to the facility. The bill should be amended to clarify that liability exists when a doctor/patient relationship is established.

***POSITIONS:***

The Michigan Association of Homes and Services for the Aging (MAHSA) supports the bill. (2-20-98)

The Health Care Association of Michigan supports the bill. (2-20-98)

Citizens for Better Care supports the bill. (2-23-98)

The Michigan State Medical Society has indicated some concerns over liability issues (see *Argument* section). (3-17-98)

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.