

TEMPORARY MANAGEMENT FOR NURSING HOMES

House Bill 5689 (Substitute H-1) First Analysis (5-9-00)

Sponsor: Rep. Randy Richardville
**Committee: Senior Health, Security and
Retirement**

THE APPARENT PROBLEM:

Under 1999 administrative rules, the Department of Consumer and Industry Services is authorized to appoint temporary managers and advisors for nursing homes with serious compliance problems. Through a contract with the Michigan Public Health Institute, a nonprofit organization created in statute and involving personnel from the Department of Community Health and the three large research universities, private sector professionals with nursing home experience are appointed to assist homes to achieve and maintain regulatory compliance, and if necessary, to protect residents if a facility closes. The goal is to avoid closure of facilities if possible, as closures cause harm and trauma to residents who are forced to leave their homes.

It has been proposed that the authority to appoint temporary managers for troubled nursing homes be placed in statute.

THE CONTENT OF THE BILL:

Under the Public Health Code, the Department of Consumer and Industry Services may order a health facility or agency (an ambulance operation, clinical laboratory, county medical care facility, freestanding surgical outpatient facility, health maintenance organization, home for the aged, hospital, nursing home, hospice, or hospice residence) to take certain actions if it finds that the facility is not operating in accord with its license. It may order the facility to discontinue admissions, transfer selected patients out of the facility, reduce the facility's licensed capacity, or order it to comply with specific requirements for licensure or certification.

Further, with regard specifically to nursing homes, if the department finds that a licensee (a nursing home) is not in compliance with the code, its administrative rules, or an applicable federal law or regulation governing nursing home certification, and that the

noncompliance impairs the ability of the licensee to deliver an acceptable level of care and services, the department is authorized under current law to suspend the admission or readmission of patients to the nursing home, reduce the licensed capacity of the home, selectively transfer patients whose care needs are not being met by the nursing home, initiate action to place the home in receivership, or issue a correction notice that describes the violation and specifies the corrective action to be taken within a specified period of time.

House Bill 5689 would amend these provisions to add two additional options for the department in those circumstances:

- it could require appointment, at the facility's or agency's expense, of a department-approved temporary administrative advisor or clinical advisor, or both, with authority and duties specified by the department, to assist the facility's or agency's management and staff to achieve sustained compliance with required operating standards; or
- it could require appointment, at the facility's or agency's expense, of a department-approved temporary manager with authority and duties specified by the department, to oversee efforts to achieve sustained compliance with required operating standards or to oversee the orderly closure of the facility or agency.

The bill would further specify that, for the regulatory actions that apply specifically to nursing homes, the department could take the specified actions in the case of a nursing home closure for any reason (in addition to when it found noncompliance that impairs the licensee's ability to deliver acceptable care).

However, the bill would require the department to first explore all other listed options (discontinuing admissions, transferring patients, reducing capacity,

etc.) before it could take the step of requiring the appointment of a temporary advisor or manager.

Further, the bill would require the department to annually report to the House and Senate standing committees on senior issues on the number of times the department appointed a temporary administrative manager, temporary clinical advisor, and temporary manager as described in the bill. The report would have to include whether the facility closed or remained open. The bill specifies that this report could be included with other reports that the department is required to make to the legislature.

MCL 333.20162 and 333.21799b

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, although the bill provides that temporary advisors or managers are to be appointed at the nursing home's expense, it is possible that some costs could be passed on to the state through Medicaid or Medicare payments. (5-8-00)

ARGUMENTS:

For:

The use of temporary managers and advisors is generally supported by providers, consumer groups, and the federal government as an effective way to deal with those nursing homes where continuing serious operating problems put residents at risk. A temporary manager may be able to make swift improvements in operations, stabilize staffing, and so forth, so as to avoid even more serious regulatory actions, such as the loss of Medicaid certification, that can lead to closure of the home. It is far better to remove inadequate providers from troubled homes than to force relocation of vulnerable residents, who will likely suffer increased morbidity and mortality after such trauma. The department has used this approach in several cases, including 9 cases in which temporary managers were appointed, and 17 cases in which clinical advisors were appointed. Most of these have had successful outcomes; i.e., a struggling nursing home was helped to come into regulatory compliance and residents were spared the trauma of transfer to new facilities. The bill would simply grant clear authority, in statute, for this regulatory tool to be used.

Against:

Concerns have been raised about requiring troubled nursing homes to pay the cost of state-approved temporary managers. Would this force financially troubled facilities over the brink into bankruptcy? Shouldn't the state assume this cost in the interest of the health and safety of residents?

Response:

It has been pointed out that the appointment of a skilled temporary manager could minimize financial harm to a business that has been mismanaged. If regulatory problems continue, the end result will be more serious regulatory sanctions, including loss of Medicaid certification, and possible closure. Additionally, some of the costs paid for temporary managers may be reimbursable by Medicaid.

Against:

While current practice has been to apply the option of appointing temporary managers in the case of troubled nursing homes, the language of the bill would have broader applicability. It would apply to a "health facility or agency", and that term includes an ambulance operation, clinical laboratory, county medical care facility, freestanding surgical outpatient facility, health maintenance organization, home for the aged, hospital, hospice, or hospice residence, in addition to a nursing home. Some have questioned whether it is necessary or advisable to grant such broad authority to the department.

Against:

While the concept of appointment of temporary managers for troubled nursing homes is generally supported by consumer groups, it has been suggested that the bill could provide stronger protection for residents. For instance, it would be helpful to define the terms "temporary administrative manager", "temporary clinical advisor", and "temporary manager", and more specifically clarify what authority would be granted to these individuals, in order to minimize future administrative appeals and litigation. Further, the bill should clearly state that a temporary manager had authority to take any actions necessary to protect residents and prevent closures, including hiring and firing staff, making necessary expenditures, and entering or terminating contracts with providers or suppliers. Moreover, it should be clear that facility administrators would be required to fully cooperate

with the temporary manager and provide access to records and information. And, there should be language in the bill creating a presumption in favor of keeping homes open whenever possible with appropriate safeguards to ensure residents' needs are met.

Against:

Language added in committee to require the department to explore all other options before appointing a temporary manager seems unnecessary and counterproductive. It has been pointed out that appointment of a temporary manager is actually a *less drastic* step than some of the other regulatory actions listed in the provision. The language could be viewed as placing obstacles in the path of regulators trying to deal with emergency situations.

POSITIONS:

The Department of Consumer and Industry Services supports the bill. (5-4-00)

The Michigan Assisted Living Association has not yet taken a position on the bill. (5-5-00)

Analyst: D. Martens

■ 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.