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NURSING HOME RESIDENT REPRESENTATIVE

House Bill 5844 as passed by the House Second Analysis (8-3-00)

Sponsor: Rep. Bruce Patterson
**Committee: Senior Health, Security and
Retirement**

THE APPARENT PROBLEM:

Often when a nursing home resident has a question or concern, he or she is not sure who to direct it to. Simply telling a staff member does not necessarily ensure resolution. Some people believe that it could be helpful to require nursing homes to designate individuals as resident representatives. Residents of nursing homes, or their designated decision makers, could then direct questions or concerns to the resident representative. By having specifically designated individuals to bring questions or concerns to, it is hoped that nursing home residents could have their concerns addressed in a more consistent and efficient manner.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to require a nursing home to designate an individual to serve as a resident representative. A resident representative would act as a liaison between a nursing home and a resident or his or her surrogate decision maker to resolve complaints or to respond to inquiries or requests on an informal basis. One or more current employees of a nursing home could be designated as a resident representative. A resident representative would have to be on duty and on site not less than 24 hours per day, seven days a week. As long as that requirement were met, if, in an emergency, a resident representative could not perform his or her duties, a nursing home could designate another employee to act as a temporary resident representative until such time as the resident representative could resume his or her duties. A resident representative would have to respond to an inquiry from a resident or surrogate decision maker in a timely manner and to a complaint in accordance with departmental rules (R 325.20113 of the Michigan Administrative Code, which requires a nursing home to adopt a written procedure for the investigation and resolution of complaints). In addition, the name and work hours of each resident representative for that day would have to be posted and

the resident representative would have to wear an identification badge.

To assist the nursing home resident representative in performing his or her duties, the Department of Consumer and Industry Services (CIS) would have to post the following information on its Internet website:

- links to federal and state regulations and rules governing the nursing home industry;
- any scheduled training sessions concerning nursing home or elderly care issues that sponsored by CIS;
- a list of long-term care contact phone numbers that would have to include the CIS 24-hour hotline, the CIS nursing home licensing division, any commonly known nursing home provider groups, the state long-term care ombudsman, and any commonly known nursing home patient care advocacy groups;
- information on the availability of e-mail access to file complaints concerning nursing home violations directly with the CIS; and
- any other information that the CIS believes would be helpful to a resident representative in responding to complaints, requests, and inquiries of nursing home residents or their surrogate decision makers.

MCL 333.21723

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would not directly impose any new responsibilities on the state. However, it could increase staffing costs for nursing homes. To the extent that staffing costs are increased, state Medicaid payments to nursing homes could increase. (7-28-00)

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ARGUMENTS:**For:**

Residents of nursing homes do not always know who to address their questions or concerns to. The tendency is to ask anyone who comes near the same question, hoping that someone may be able to help. Staff members, who work under very demanding circumstances, may not know the answers or may have little spare time to try to help a resident find the solution he or she desires. The bill would help rectify problems currently encountered by residents and their family members by requiring a nursing home to designate a person, who could be an employee, to act as a resident representative. A nursing home would have to have at least one individual in the capacity of a resident representative on site at all times. Instead of a resident asking several nurse aides, nurses, or other employees the same question, or relating the same complaint to multiple persons, the resident would know who was the one person on each shift to whom to direct such concerns.

The resident representative would have to respond to each inquiry and request in a timely manner. In the case of a complaint, the resident representative would have to follow the nursing home's written procedures as required by departmental rules. The rules set time lines for the investigation and resolution of complaints, as well as establish an appeals process for the resident who is not satisfied with the investigation or resolution of his or her complaint. Instead of many people trying to find answers to one resident's concerns, under the bill, there would be a few people who were easily identified as those able to address a resident's concerns in an efficient manner.

Against:

The bill could increase costs to nursing homes (and therefore Medicaid costs for the state) if additional staff had to be added, many of which are already struggling to stay solvent in light of decreased Medicare and Medicaid reimbursements. Departmental rules already require a written procedure to be in place, copies of which must be given to residents and their families, of the resident's rights, responsibilities, and procedure to follow in regard to complaints. Therefore, the bill may not be needed.

Response:

In some ways, the bill really is not creating a new requirement for nursing homes, just clarifying how current requirements would be carried out. Since nursing homes already must have written policies developed for the resolution of complaints and written

procedures to implement patient rights and responsibilities, costs to nursing homes should not be significant. Clarification, though, is needed, for patients and their family members often are confused about who to direct questions and requests to, or with whom to file complaints. Having a few people in the nursing home who are clearly identified as the ones to go to should alleviate the confusion and frustration currently being experienced by residents. Further, it should help relieve other staff members who are subjected to many requests from many residents. Under the bill, staff members could direct residents to the designated resident representative who is on duty at that time.

Against:

If a nursing home appointed an employee to serve as a resident representative, it could create a conflict of interest. The employee serving in such a capacity may be hesitant to file complaints against the nursing home with the Department of Consumer and Industry or to make waves with his or her employer for fear of being fired. Further, many nursing home employees, especially nurse aides and nurses, are typically very busy providing nursing care, and may have little extra time to attend to requests or complaints by residents. And, it may not be suitable for a kitchen worker or members of housekeeping, who may be unfamiliar with the laws regulating the nursing care staff, to be appointed as a resident representative, though there is nothing in the bill to prevent such an appointment. Unless the position was filled by a person who was capable of understanding often complicated state and federal laws, and who could advocate freely on the behalf of residents, little may actually be accomplished from this legislation.

POSITIONS:

The Health Care Association of Michigan (HCAM) testified in support of the bill. (8-2-00)

The Michigan Association of Homes and Services for the Aging (MAHSA) supports the bill. (7-28-00)

The Department of Consumer and Industry Services supports the concept of the bill. (7-28-00)

Analyst: S. Stutzky

■ 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.