

## NURSING HOME BED RAILS

### House Bill 6094 (Substitute H-2) First Analysis (11-30-00)

**Sponsor: Rep. Wayne Kuipers**  
**Committee: Senior Health, Security and Retirement**

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

Hospital-type beds that are used in nursing homes typically are equipped with side rails (or bed rails, as they are often called). The use of bed rails in nursing homes is fraught with controversy. Though ostensibly used to keep frail or disabled patients from falling out of bed, these devices are blamed for several deaths in Michigan nursing homes and nationwide. A February 8, 2000 *Detroit Free Press* article reported that at least five Michigan nursing home residents died in incidents involving bed rails during the previous year. Studies by the U.S. Food and Drug Administration and by the federal Consumer Products Safety Commission cite more than 200 bed rail deaths nationwide since 1985, and federal officials believe that many incidents go unreported. Injuries and deaths have occurred when people become trapped or entangled in the rails, or between the mattress and the rails, or when they fall over the rails when attempting to get out of bed.

The federal Health Care Financing Administration (HCFA) requires that nursing homes that receive Medicaid and Medicare funding limit the use of bed rails. Under the federal nursing home reforms passed as part of the 1987 Omnibus Budget Reconciliation Act (OBRA), nursing home residents are granted freedom from restraints used for the purposes of discipline or convenience and which are not required to treat medical symptoms. Bed rails are considered to be "restraints" and can be used only when necessary to treat a resident's medical symptoms.

Thus, according to the Department of Consumer and Industry Services, bed rail use in Michigan nursing homes is limited to those situations where a documented comprehensive assessment of medical necessity has been made by a team of health professionals. The resident or his or her legal representative must consent to the use of bed rails, after being provided with information about the risks and benefits associated with restraints. Further, the resident's attending physician must approve of the use of bed rails. Despite these requirements, apparently

bed rail use in some nursing homes has remained routine.

Federal and state regulators, consumer advocates, and others have made efforts to reduce the use of bed rails through research, education, and advocacy of alternative means for protecting residents from falls. The Department of Consumer and Industry Services issued an alert on May 12, 2000 concerning the use of bed rails, which summarized and re-emphasized several previous federal notices on the issue. Apparently in response to this alert, the heightened publicity regarding the dangers of bed rails, and because of several recent deaths of Michigan nursing home residents, some nursing homes have removed all bed rails and prohibited their use. Others report having been cited by DCIS survey teams, both for excessive use of bed rails, and for failing to allow their use in certain cases.

At the same time, many residents and their family members are alarmed at the removal of bed rails that they have relied upon to protect the residents from falling out of bed, and in some cases, as a means of improving mobility. Bed rails are important to many patients, who use them as grab bars to move into different positions or to sit up in bed, and especially to those who feel insecure about falling out of bed. Testimony before the House committee on Senior Health, Security and Retirement indicated that many nursing home residents benefit from having bed rails and have suffered fear, indignity, and physical injury as a result of their removal. They object to the alternatives that have been supplied (such as lowering beds close to the floor). They report that nursing homes have made the decision to remove bed rails without any input or consent of the residents or their families. Nursing home administrators, trying to balance the safety of residents, the desires of family members, and the responsibility to meet regulatory standards, are also frustrated with the current state of affairs.

Legislation has been introduced to allow nursing home residents and their family members to make the decision as to whether bed rails will be used. In addition, since it is evident that more study is required to adequately address this issue, it is proposed that an advisory commission be established to make further recommendations for legislative and administrative action.

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

The bill would amend the Public Health Code to require a nursing home to give each resident who uses a hospital-type bed (or the resident's legal guardian, patient advocate, or other legal representative) the option of having bed rails. A nursing home would have to offer the option to new residents upon admission, and to other residents upon request. The bill further states that a resident or his or her representative would have the right to request and consent to bed rails for the resident. Upon receipt of a request for bed rails, the nursing home would have to inform the resident or his or her representative of alternatives to, and the risks involved in, using bed rails. Further, a nursing home that provided bed rails would have to document that the requirements of the bill had been met, monitor the resident's use of the bed rails, and, in consultation with the individual who consented to the bed rails, reevaluate the resident's need for the bed rails.

If a resident or his or her representative chooses to use bed rails, the nursing home would be allowed to require the person to sign a statement waiving the right to file a civil action for damages for an injury caused by the use of the bed rails, if the injury was not the result of negligence on the part of the nursing home or its employees.

Further, the Department of Consumer and Industry Services would be required to establish an advisory commission on bed rails used in nursing homes. The advisory commission would be charged with developing clear and uniform standards to be used in determining what constitutes an acceptable bed rail for use by nursing homes in the state. The advisory commission would have to submit its recommendations to the department and to the legislature no later than six months after the effective date of the bill. The department would be required to promulgate rules based on the recommendations.

The advisory commission would have ten members appointed by the department, as follows:

- four members representing nursing homes, including two who represent for-profit homes and two who represent nonprofit homes;
- one member representing county medical care facilities;
- two members representing the department;
- one member representing manufacturers of bed rails;
- one member with expertise in the installation and use of bed rails; and
- the Michigan long-term care ombudsman, or his or her designee.

The bill provides that a nursing home that complied with the bill's requirements, and with the rules promulgated by the department based upon the advisory commission's recommendations, would not be subject to administrative penalties imposed by the department based solely on providing bed rails.

MCL 333.21734

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would result in an indeterminate cost increase for the Department of Consumer and Industry Services. The cost is attributed to the creation of an advisory commission to study the use of bed rails in nursing homes. (11-30-00)

### ***ARGUMENTS:***

#### ***For:***

While there has been an outcry about the dangers of bed rails, and while it is of course a tragedy that deaths have occurred, it seems to many patients, family members, and nursing home administrators and staff members that state and federal regulators have overreacted in this matter. Many patients benefit greatly from having bed rails, and wish to continue their use. The *lack* of bed rails is also responsible for injuries, and perhaps even deaths, among nursing home residents who have fallen out of bed. In addition, the fear of falling causes these frail patients great stress and anxiety, which also takes a physical toll. In some cases, patients who have been accustomed to using bed rails to aid their mobility have lost this assistive device, resulting in a deterioration of their physical strength. Alternatives used in some nursing homes, including

placing mattresses directly on the floor or lowering beds close to the floor and using protective mats around them, are not satisfactory in many cases. Beds placed very low to the floor make it difficult for family members and staff to interact with and care for the residents, and mats may be a safety hazard for staff people going in and out of rooms.

Nursing homes are placed in the difficult position of trying to reconcile the needs and wishes of their residents (and the residents' families) with their responsibilities to comply with state and federal regulations. Regulators, particularly state survey teams who issue citations to nursing homes, have not been consistent on this issue. While federal law grants patients the right to refuse treatment or to disregard medical advice with informed consent, apparently the individual resident does not have the ability to choose to use bed rails unless that option is considered to be medically necessary, after an assessment by an interdisciplinary team and upon a physician's orders.

What is needed, many believe, are clear and consistent standards for types of bed rails or other protective devices that can be used for nursing home patients, and for standards for how they may be used. The bill would establish an advisory commission to provide those standards. Further, the bill would place in the hands of the patient and his or her family the decision about whether the advantages of bed rail use outweigh the risks. If a family, after being informed of the risks of using bed rails and alternatives to their use, chooses that option for their elderly family member, that option ought to be respected. And if that choice is freely made by a resident or his or her family, a nursing home ought not to be held liable for accidents that may occur, and certainly ought not to be subject to regulatory sanctions.

### ***For:***

Michigan should join the other states, including Minnesota and Wisconsin, that have begun to address this issue. A 1998 Minnesota statute specifically allows competent nursing home residents (and family members of those who are not competent) to request and consent to the use of a physical restraint to treat the medical symptoms of the resident. Under the Minnesota law, "medical symptoms" include a concern for the safety of the resident, and physical and psychological needs expressed by a resident, including the fear of falling. Nursing homes must inform people requesting restraints (bed rails) of the risks and alternatives to their use, but must provide such restraints upon receiving a signed consent form and a physician's written order.

### ***Against:***

The bill would be a step backwards in reducing the use of bed rails in nursing homes. Indeed, the bill would probably result in an *increase* in bed rail use, as nursing homes would be required to offer their use to all new patients. This requirement, along with the bill's grant of immunity from liability for nursing homes for accidents caused by bed rails and its prohibition on regulatory sanctions for the use of bed rails, would seem to make it easier for nursing homes to fall back on the over-use of bed rails as a means of restraining patients – just the opposite of the recent positive trend toward reducing this dangerous practice. Bed rails must not be used to substitute for adequate staffing levels, constant monitoring of patients, and other indicators of quality nursing care.

Use of bed rails has been determined to be dangerous for frail elderly patients. Many studies and reports have documented the dangers. Among the potential hazards are asphyxiation caused by entrapment between the rail and the mattress, accidental release of the rail resulting in compression of the patient's neck and throat, and falls resulting from the patient trying to climb over the rail to get out of bed. The Department of Consumer and Industry Services reports that there have been nearly 60 reported incidents involving inappropriate use of bed rails in Michigan nursing homes this year, and three deaths have resulted. Federal authorities have received reports of over 200 deaths nationwide in the past 15 years, and many incidents appear to go unreported. Bed rails typically are divided, either vertically or horizontally, with slats spaced about six or more inches apart – a distance just large enough to trap a person's head or neck. In addition, though some beds, mattresses, and side rails are designed to fit together, often in actual use those pieces are bought separately and replaced at different times, so that the pieces do not fit tightly together, leaving gaps that can trap a person between the mattress and the rail.

Decisions about the use of bed rails for individual patients ought to be made by health professionals who have been educated about these risks, and about the feasible alternatives to their use. Several Michigan nursing homes, and nursing homes in Pennsylvania and other states, have devised creative solutions to this problem and have worked diligently to educate their staff, their patients, and their patients' families about alternatives. In these facilities the transition away from the routine use of bed rails has been more successful than in homes that have simply removed all bed rails quickly and without such education efforts. When efforts to remove bed rails are coupled with the use of

alternative devices, more monitoring of individual patient's habits and schedules for getting out of bed, the use of monitors that alert staff to patients' movements out of bed, and so forth, the transition has been easier for all concerned. Efforts to address the problem of bed rail use in nursing homes ought to be aimed at replicating these successful, innovative programs, rather than going backward.

***Against:***

The bill appears to conflict with federal law. Unlike the Minnesota law, which requires the involvement of a resident's attending physician, the bill would eliminate from Michigan law the requirement for a doctor's order for the use of bed rails. Federal law clearly prohibits the use of bed rails as a restraint, and requires that their use be medically necessary. By eliminating the physician's involvement, the bill would seem to put the state at risk of being in violation of federal law. Some people believe that Medicaid and Medicare funding could be jeopardized.

***POSITIONS:***

The Health Care Association of Michigan supports the bill. (11-29-00)

The Michigan Association of Homes and Services for the Aging supports the bill. (11-29-00)

The Department of Consumer and Industry Services does not support the bill. (11-29-00)

A representative of Michigan Protection and Advocacy Service testified in opposition to the bill. (11-29-00)

The Michigan Advocacy Project indicated opposition to the bill. (11-29-00)

The Michigan Campaign for Quality Care opposes the bill. (11-29-00)

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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.