

NURSING HOME NAMES

**Senate Bills 525, 746, and 747 as passed
by the Senate
First Analysis (11-29-01)**

**Sponsor: Sen. Dale L. Shugars
Senate Committee: Health Policy**

**House Committee: Senior Health,
Security and Retirement**

THE APPARENT PROBLEM:

Part 217 of the Public Health Code provides for the licensing and regulation of nursing homes. Among other things, the code prohibits a nursing home from calling itself a “hospital”, a “sanitarium”, or a “rehabilitation center”, or using any substantially similar name. According to the Department of Consumer and Industry Services, this prohibition may have been originally designed to protect patients and prospective patients from fraud. Representatives of nursing homes point out that since the prohibition was added nursing homes have moved away from the model of chronic care and have worked to decrease the length of patients’ stays. Although contemporary nursing homes provide health care services, including rehabilitation services, and Medicare-certified nursing homes have been required to provide rehabilitation services since the 1980’s, the law continues to prohibit nursing homes from *calling* themselves rehabilitation centers.

Complicating matters further, according to an Attorney General’s opinion—AGO 6592 (1989)—a corporation formed under the Business Corporation Act “may not engage in activities that may only be performed by one of the learned professions”. The opinion identifies law, medicine, and divinity as the recognized “learned professions”. Moreover, the Limited Liability Company Act prohibits a limited liability company formed under the act from engaging in activities of the learned professions. (A separate Attorney General’s opinion—AGO 6770 (1993)—specifies that a nonprofit corporation is not subject to the learned professions doctrine.) In short, this means that nursing homes that are owned and operated by profit corporations or limited liability companies may not provide medical services. Although these provisions only delimit the *services* that nursing homes may provide, the acts also specify that the *name* of a for-profit corporation or limited liability company may not indicate or imply that the

entity is formed for a purpose other than those permitted by its articles of incorporation or articles of organization. Nevertheless, the Corporation and Land Division Bureau’s “Policy Statement on Names of Business Entities” states that CIS may allow a profit corporation or limited liability company to use a name that indicates or implies that the entity is formed to provide services in a learned profession under the following condition: the corporation’s or company’s articles must clearly state that the entity will not engage in activities that may only be performed by one of the “learned professions.” Some people believe that nursing homes should be allowed to use names that indicate the wide range of services that they actually provide.

THE CONTENT OF THE BILLS:

Senate Bill 525 would amend the Public Health Code (MCL 333.21712) to permit a nursing home to use the term “health center”, “health care center”, or “rehabilitation center” (or a term conveying substantially the same meaning as those terms) as long as those terms did not conflict with the terms prohibited under the code (i.e., “hospital” or “sanitarium”). However, the bill specifies that if a nursing home used the term “rehabilitation center” in its name, the home would have to have the capacity to provide rehabilitation services that include, at a minimum, physical therapy, occupational therapy, and speech therapy.

Senate Bill 746 would amend the Business Corporation Act (MCL 450.1213), and Senate Bill 747 would amend the Michigan Limited Liability Company Act (MCL 450.4204a), to similarly permit corporations or limited liability companies that are licensed as nursing homes to use those terms in their names. Both bills are tie-barred to Senate Bill 525.

Senate Bills 525, 746 and 747 (11-29-01)

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bills would have no fiscal impact on state or local government. (10-29-01)

The Michigan Association of Homes and Services for the Aging supports the bills. (11-27-01)

The Michigan Health and Hospital Association supports the bills. (11-27-01)

ARGUMENTS:

For:

Since nursing homes, whether they are nonprofit corporations, profit corporations, or limited liability companies, provide health care services, including rehabilitative services, and in many cases are required to do so, they should be allowed to adopt names that accurately reflect the services they provide. The bills would allow any nursing home to call itself a health center or health care center, in recognition of the fact that nursing homes do in fact provide medical services. The bills would also allow a nursing home to call itself a “rehabilitation center,” as long as it offered physical therapy, occupational therapy, and speech therapy services; this list of required services would ensure that nursing homes that *called* themselves rehabilitation centers actually *were* rehabilitation centers and would thus offer consumers continued protection against fraud. Further, by allowing nursing homes to change their names, the bills would help the industry to encourage prospective patients to look at nursing homes in a different light. Nursing homes wish to shed their outdated image as places where old people without family or close friends go to die. Instead they want people to know that the medical professionals and staff in nursing homes are working as hard as other medical professionals to help patients to recuperate and to live long, healthy, independent lives.

Response:

According to committee testimony, some nursing homes’ names currently do contain the terms “health center”, “health care center”, or “rehabilitation center”. The bills would expressly permit nursing homes to call themselves by such names, but they would not address the issue of whether a for-profit nursing home formed under the Business Corporation Act or the Limited Liability Company Act is allowed to provide medical services.

POSITIONS:

The Department of Consumer and Industry Services supports the bills. (11-27-01)

The Health Care Association of Michigan supports the bills. (11-27-01)

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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.