



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

NURSING HOME QUALITY OF LIFE COMMISSION

House Bill 4451 (Substitute H-1) First Analysis (3-21-01)

Sponsor: Rep. Patricia Lockwood
Committee: Senior Health, Security and Retirement

THE APPARENT PROBLEM:

Under current law, nursing homes must be inspected regularly and are subjected to unannounced investigations of complaints. When a survey team from the Department of Consumer and Industry Services becomes aware of a violation, or “deficiency”, the facility usually receives a citation. Citations vary in seriousness, and are ranked by the impact on the health and safety of residents. Depending on the seriousness of the citations, a facility could face various sanctions, including fines, loss of Medicaid certification, or loss of licensure.

Some in the nursing home industry have maintained for years that there are many inconsistencies between the survey teams in evaluating and citing facilities. Legislation that addresses many of the concerns pertaining to nursing home survey teams has recently been enacted as Public Act 171 of 2000. (For more information, see the House Legislative Analysis Section’s analysis of House Bill 5460 dated 6-22-00.) However, some feel that the survey teams would benefit from the input of a citizen commission to oversee the quality of their work, with the goal of improving the collaboration between regulators and providers in order to improve the quality of care provided to nursing home residents.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to create a “Nursing Home Quality of Life Review Commission” within the Department of Community Health.

The commission would have nine members, appointed by the governor:

- * one member from the Department of Community Health, knowledgeable in federal guidelines for nursing

homes as issued by the federal Health Care Financing Authority;

- * one member from the Department of Consumer and Industry Services, representing nursing home surveyors (regulators);

- * one physician specializing in geriatric medicine;

- * two members representing nursing home reform or nursing home patient advocacy groups;

- * two members representing nursing homes (one of these members would have to be a supervisor, registered nurse, or licensed practical nurse who is directly involved in patient care – and not a director of nursing);

- * one nursing home resident; and

- * one family member of a nursing home resident.

Members of the commission would serve staggered four-year terms, and vacancies would be filled by the governor. The governor could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The initial members of the commission would have to be appointed within 120 days of the bill’s effective date. The first meeting would be called by the director of the Department of Community Health. The commission would elect a chairperson and other officers as necessary, and would meet at least quarterly. The commission would be subject to the Open Meetings Act and the Freedom of Information Act (except that confidential medical, social, personal, or financial information identifying a patient would not be available for public inspection in a manner that

House Bill 4451 (3-21-01)

identified the patient). Members would serve without compensation, but could be reimbursed for expenses.

The commission could appoint advisory committees as considered necessary by the commission. Members of advisory committees would not be compensated but could be reimbursed for their expenses. The Department of Community Health would be required to provide office space, supplies, clerical assistance, administrative assistance, and other staff as necessary for the commission in the performance of its duties.

With the assistance of the Department of Community Health, the commission would have to do all of the following:

- * request and review all reports resulting from surveys of nursing homes conducted by the Department of Consumer and Industry Services, and from surveys conducted by the federal Health Care Financing Administration;
- * establish a satisfaction survey that would be distributed to all nursing home residents and their family members and representatives, and which would be designed to elicit feedback from the residents regarding staff performance and conditions in the nursing home (this survey would be conducted in those nursing homes that were not subject to or were not already participating in a substantially similar survey);
- * establish review criteria for the surveys using the guidelines issued by the federal Health Care Financing Authority;
- * conduct quarterly meetings with the survey teams from the Department of Consumer and Industry Services to discuss frequently cited violations, nursing homes that were cited for violations significantly more often than other nursing homes, and possible remedies to these two concerns;
- * present an initial written report within one year to the Departments of Community Health and Consumer and Industry Services, the governor, the legislature, and the attorney general (the report would have to include findings detailing problems, abuses, efficiencies, and successes of the survey process; a financial audit and recommendations for funding of the survey process; and an examination of the state's compliance with federal guidelines for nursing home surveys);
- * provide an annual written report of the commission's activities, findings, and recommendations; and

* review nursing home survey reports twice per year for changes reflecting the latest developments in geriatric social and medical practice.

MCL 333.21769

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would increase costs for the Department of Community Health (DCH) by an indeterminate amount. The commissioners would be compensated for expenses, and DCH would have to provide office space, supplies, and staff assistance. (3-20-01)

ARGUMENTS:

For:

According to members of the nursing home industry, most of the citations issued by the survey teams have no relation to quality of care. Unnecessary citations harm patients by siphoning off money that could be directed to patient services but go instead to fines for such things as peeling paint found in an administrative office that patients had no access to. House Bill 5460, which has been enacted as Public Act 171 of 2000, will help resolve many inconsistencies caused by the subjectivity of survey teams. House Bill 4451 would add to this process by creating an opportunity for concerned citizens to have an input into the functioning of the survey teams.

Under the bill, a commission that includes a physician, a resident of a nursing home, a family member of a nursing home resident, and members representing nursing home reform or advocacy groups could bring a unique perspective and fresh ideas to improve the survey process. Technical expertise would be provided by representatives of nursing homes and employees of the Departments of Community Health and Consumer and Industry Services. It is hoped that the commission's tasks of reviewing survey reports; establishing review criteria; meeting with the survey teams; and reporting problems, abuses, efficiencies, and successes of the survey process will lead to recommendations that could help resolve current tensions between survey teams and nursing homes.

Response:

It has been suggested that nursing home residents, family members, and advocacy groups should make up the majority on the commission, as regulators and industry representatives have other avenues for having their views considered.

Against:

The bill is unnecessary; most of the functions of the proposed commission are already being done by others. For instance, the survey teams are subject to oversight by the Health Care Finance Administration (HCFA). HCFA inspectors review all paperwork on citations issued by the survey teams and on enforcement action taken, and do independent surveys of facilities for comparisons with the CIS survey team reports. And, under the provisions of Public Act 171 of 2000, a workgroup composed of representatives of state and federal regulators and provider groups is already at work, making efforts to develop a common set of clearly understood definitions of such terms as “immediate jeopardy”, “harm”, “potential harm”, “avoidable”, and “unavoidable”, as those terms are used in citing nursing homes for deficiencies in operations.

The bill would require the Department of Consumer and Industry Services to pull survey team staff from the field to meet with the commission, which would make it difficult for them to accomplish their mission within required timeframes. It would also require department staff to develop a survey instrument to measure consumer satisfaction for those facilities that do not already participate in an industry-sponsored survey; this may not be the best use of the department’s resources.

The bill is neither feasible or practical. It would charge the commission with an enormous task, that quite possibly could not be accomplished. It would ask a nine-member (unpaid) citizen advisory commission, meeting quarterly, to review over 2,000 nursing home surveys and complaint investigations, keep abreast of complex federal and state regulations, review the medical literature for changes in geriatric social and medical practice, complete a financial audit, and make recommendations and report annually to the legislature and others.

POSITIONS:

The Health Care Association of Michigan (HCAM) supports the bill. (3-20-01)

The Michigan Association of Homes and Services to the Aging supports the concept of the bill. (3-20-01)

Citizens for Better Care supports the concept of the bill, but would support amendments to increase the consumer representation on the commission, and to focus the commission’s work on other aspects of quality of care. (3-20-01)

The Campaign for Quality Care and the Michigan Advocacy Project would support the bill only if it provided for a majority of consumers on the commission. (3-20-01)

The Department of Consumer and Industry Services opposes the bill. (3-20-01)

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.