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FUNDING FOR NURSING HOME STAFFING REQUIREMENTS

House Bill 4615

Sponsor: Rep. Wayne Kuipers

Committee: Senior Health, Security and
Retirement

Complete to 4-30-01

A SUMMARY OF HOUSE BILL 4615 AS INTRODUCED 4-18-01

The bill would amend the Public Health Code to address funding issues that nursing homes may face in complying with a proposal to increase staff-to-patient ratios. Specifically, the bill would do the following:

Funding. If the nursing home's costs of operation were increased in order to comply with the new staffing ratios, the home could advise the Department of Consumer and Industry Services in writing of the increased costs and request a reimbursement. The department would have to immediately adjust the home's Medicaid reimbursement sufficient to cover the increased costs, regardless of previously applied cost limits. (Note: under Article 7 of the Public Health Code, "department" generally refers to the Department of Consumer and Industry Services. However, it is not clear whether the bill refers to the DCIS or the Department of Community Health, which administers the Medicaid program. Further, the bill contains references to Title XVIII of the federal Social Security Act; apparently the reference should be to Title XIX. Title XVIII governs the Medicare program, while Title XIX governs Medicaid.) If the department did not adjust the Medicaid reimbursement rates, all of the following would occur:

*The home would be exempt from the new staffing ratios until the reimbursement rate was adjusted.

*The home would staff according to the staffing requirements in place before Section 21720a of the Public Health Code (MCL 333.21720a), which regulates staff-to-patient ratios, was amended. (The bill incorrectly identifies Section 21720a as being amended in 2000.)

*The home would have to return to the bill's staffing ratios within 30 days of being notified that the reimbursement rate would be adjusted.

If the department failed to increase the reimbursement within the 30-day time period, the department would have to file a written report with the House and Senate Appropriations Committees and appropriate subcommittees that included its reasons for not adjusting the home's reimbursement rate. The department would also have to determine if the home's operating costs were actually increased or not during its audit of the home's annual cost report. If the department determined that the home's costs were not increased, the department could retroactively disallow the increased costs claimed by the home. Such a retroactive disallowance would be considered an "adverse action" as defined under administrative rules (R 400.3401), and would be subject to appeal.

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A nursing home could also file a petition for temporary, emergency rate relief from either the new 15 to 1 staffing ratio, or the new 3.0 hours of direct patient care ratio, or both. The department could grant the home's petition if the home demonstrated that the new ratios had a substantial effect on the nursing home's operating costs. A decision on the petition would have to be issued within 90 days. If the petition were denied, the department would have to notify the home in writing of the reasons. A failure to rule on the petition within 90 days would constitute a granting of the petition.

A nursing home could appeal a denial for temporary, emergency relief. The department would also have to hold an informal hearing on the appeal. The department would have to issue a written decision of the appeal within 30 days of the hearing. A denial of an appeal would have the effect of creating an emergency under provisions in the federal Social Security Act.

A nursing home could appeal an adverse decision in response to an appeal to the circuit court for the county in which the home was located, or the circuit court for Ingham County. If the nursing home prevailed in court, the court could award the home compensatory damages for the cost of providing care to its residents during the petition and appeal process, and could also award court costs.

Further, a recommendation for extra funds would have to be included in the Department of Community Health's annual budget request. The increased funding would have to be an amount sufficient to cover the predicted and actual costs of increased Medicaid reimbursements to nursing homes whose costs increased due to the bill's increased staffing requirements. A copy of the recommendation would have to be provided to all members of the House and Senate appropriations committees, the standing committees that oversee senior citizen issues, and to the House and Senate Fiscal Agencies.

Legislative intent. The bill would state that the exemption was not intended to allow the department to reimburse a home at a rate lower than what was needed to maintain the new 3.0 hours of direct care per patient per day. Further, the bill would state that the intent was for the department to sufficiently increase the Medicaid reimbursement rate so that homes could meet the new staffing requirement.

Patient/family notification. A nursing home would have to post the name of the direct patient care provider assigned to a particular patient either in a conspicuous place near the nurse's station or outside the patient's door near the patient's name.

The bill would take effect October 1, 2001. The bill is tie-barred to a bill that has not yet been introduced.

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.