



**House
Legislative
Analysis
Section**

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

**HEALTH FACILITY COMPLAINT
FORM**

**House Bill 4079 as enrolled
Public Act 3 of 2003
Sponsor: Rep. Gary Woronchak**

**Committee: Senior Health, Security and
Retirement
Second Analysis (4-17-03)**

THE APPARENT PROBLEM:

The Public Health Code and administrative rules promulgated under the code include rights and responsibilities of health facility patients and their families, including a process to register complaints. Any person who believes that laws or regulations of nursing homes, hospitals, or other health facilities have been violated can make a complaint to the Department of Consumer and Industry Services (CIS) requesting that an investigation take place. The provision says that the request must be made as a written complaint or the department will assist a person making an oral complaint to turn the request into a written complaint within seven days.

In addition, the Department of Consumer and Industry Services (CIS) offers a consumer pamphlet entitled "A Citizen's Guide to Filing a Complaint Against a Health Care Facility." The pamphlet lists the types of facilities for which the department investigates a complaint, the types of complaints investigated (e.g., abuse, neglect, concerns with quality of care, etc.), the process of filing a complaint (in writing or by phone), and includes a toll-free complaint hotline number and address for written complaints. Under the health code, this pamphlet must be conspicuously displayed in the patient waiting areas or other common areas of each health facility.

Further, Public Act 11 of 2002 was enacted to amend the health code to require a nursing home to post, in an area accessible to residents, employees, and visitors, the name, title, location, and telephone number of a staff person in the nursing home who is responsible for receiving complaints and conducting complaint investigations, and a procedure for communicating with that individual. This staff person must be on duty 24 hours a day, 7 days a week and must respond to each complaint, inquiry, or request using the procedures adopted by the nursing

home according to administrative rule R 325.20113. (See *Background Information*.)

Despite these attempts to make the complaint process easier for residents and their families to navigate, some believe that the process could be further improved. For example, some have complained that the pamphlet is difficult and confusing to read. Also, a downloadable complaint form is provided on the department's web site, but not all residents or their family members have access to or knowledge of the Internet. Further, though the pamphlet gives the address for where a written complaint can be mailed, there is only a generalized guideline about what information should be included in the complaint. It has been recommended that, for the purpose of clarification and simplification, the provisions relating to this complaint process be revised once again.

THE CONTENT OF THE BILL:

House Bill 4079 would amend the Public Health Code to revise provisions for the pamphlet that the Department of Consumer and Industry Services is required to develop regarding the procedure for filing a complaint against a health facility or against a licensed health professional employed by a health facility. Under the Public Health Code, health facilities and agencies are required to conspicuously display in patient waiting areas copies of a pamphlet provided by the Department of Consumer and Industry Services outlining the procedure for filing a complaint with the department against a health facility or against a licensed health professional employed by a health facility. (Under the code, "health facility or agency" includes a clinical laboratory, a county medical care facility, a freestanding surgical outpatient facility, an HMO, a home for aged, a hospital, a nursing home, a hospice or hospice residence, and certain facilities or agencies

House Bill 4079 (4-17-03)

located in an institution of higher education.) The law requires the department to print the pamphlet in languages that are appropriate to the ethnic composition of the patient population in the vicinity.

The bill would make a number of revisions to the provisions pertaining to the pamphlet. Currently, the department is responsible for printing the pamphlets and providing the pamphlets to the health facilities; under the bill, the department would be relieved of this responsibility, but would still have to develop the pamphlets after consultation with appropriate professional associations. The bill would also amend these provisions to require that the pamphlet use large, easily readable type and nontechnical, easily understood language, and to require the department to periodically distribute copies of the pamphlet to each health facility or agency and to each unlicensed health facility that holds itself out as providing medical services.

In addition, the bill would require the department to include in the pamphlet a model standardized complaint form. The department could also develop a separate model standardized complaint form that is specific to a particular health facility or agency or category of health facilities and agencies. However, the department would have to develop a model standardized complaint form specific to nursing homes.

This model form for nursing homes would have to include, at a minimum, simple instructions on how to file a complaint with a nursing home and the department, and with the state long-term care ombudsman; the Michigan Protection and Advocacy Service, Inc.; and the health care fraud unit of the Department of Attorney General. The complaint form would also have to include a telephone number for making oral complaints. The department would be required to distribute copies of the model standardized complaint form simultaneously with copies of the required pamphlet. A nursing home would have to conspicuously display and make available multiple copies of the pamphlet and model standardized complaint form with the complaint information required to be posted under Section 21723 of the code in patient waiting areas or other common areas of the nursing home that are easily accessible to patients and visitors. A copy of the pamphlet and complaint form would also have to be provided to each nursing home resident or his or her surrogate decision maker upon admission to the facility.

The department could continue to distribute the complaint pamphlets within its possession on the effective date of the bill until the stock is exhausted or until October 1, 2003, whichever is sooner. Beginning October 1, 2003, the department could only distribute the complaint forms and pamphlets complying with the bill's provisions.

The department would have to make the complaint pamphlet and the standardized complaint form available to the public on its web site. The department would also be required to take affirmative action toward developing and implementing an electronic filing system that would allow individuals to file complaints through the web site.

The bill would also add language to provisions governing the filing of complaints that specifically permits the use of the model standardized complaint form for filing a complaint, including filing a complaint via the Internet.

Finally, the bill would replace outdated references to the former Department of Public Health with references to the Department of Consumer and Industry Services.

MCL 333.20194 and 333.21799a

BACKGROUND INFORMATION:

Administrative rule R 325.20113 requires a nursing home to adopt written policies and procedures to implement patient rights and responsibilities as required by the Public Health Code. The rule requires that the policy be available, before and following the patient's admission, to the patient, his or her next of kin, the attending physician, members of the patient's family (or guardian, designated representative, or person or agency responsible for placing and maintaining the patient in the home), employees of the home, and the public.

The procedures must include a procedure for the initiation, investigation, and resolution of complaints, subject to Department of Consumer and Industry approval, and, at a minimum:

- A statement that a patient may have the alternative to complain either to the home or the department about any condition, event, or procedure in the home without citing a specific violation of the code or the rules.
- A procedure for submitting written complaints to the home identifying potential violations of law or

rule, including a procedure to assist a complainant in reducing an oral complaint to writing if the oral complaint is not resolved to the satisfaction of the complainant. If there is a standard complaint form, a copy must be provided to each patient at the time of admission, and additional copies must be provided upon request.

- The name, title, location, and telephone number of the individual in the home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.
- A requirement that all complaints be investigated within 15 days following receipt of the complaint by the home, and a requirement that, within 30 days following receipt of the complaint, the home deliver to the complainant a written report of the results of the investigation or a written status report indicating when the report may be expected.
- A mechanism for appealing the matter to the administrator of the home if the complainant is not satisfied with the investigation or resolution of the complaint.

The rule also requires nursing homes to maintain complaints and investigation reports for three years, and to make their records available to the department upon request.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, since the DCIS already distributes an information pamphlet and model complaint form largely consistent with House Bill 4079's provisions, the bill should have little or no fiscal impact on the department. However, the department has not yet developed an online system for complaint filing. While the bill makes no specific mandate on the development of such a system, it does require the department to "take affirmative action" towards the development of such a system. This could result in new state costs to the department. (3-13-03)

ARGUMENTS:

For:

The provisions of Public Act 11 of 2002 have greatly helped many nursing home residents and their family members to resolve complaints at the facility level. Further, the pamphlet currently provided by the Department of Consumer and Industry Services to health facilities has helped many to file a complaint.

However, according to consumer advocates, this pamphlet can be confusing and difficult for some to read. For example, the pamphlet contains only general guidelines about preparing a written complaint, such as including the nature of the complaint and the date of the incident. Unfortunately, a generalized instruction can lead to long, rambling letters containing superfluous information or letters so short that important information is left out. Moreover, parts of the pamphlet contain very small print; such print can be difficult to read if a person's vision is diminished by age or illness.

The bill would address these concerns by requiring a standardized complaint form to be developed and included with the pamphlet, including a form specific to nursing homes. Also, the pamphlet would have to be printed in large, easily readable type and be written with easy to understand, nontechnical terms. Both the pamphlet and complaint form would have to be readily available to consumers at each health facility under provisions of the health code and also be available on the department's web site. In addition, the bill would require the department to take affirmative action toward developing a system by which complaints could be filed over the Internet.

An additional concern regarding the pamphlets is that the current budget shortage is making it more difficult for the department to continue to bear the printing and distribution costs. Under the bill, the department would be relieved of the requirement to print and provide the pamphlets to the health care facilities, though the department would have to still distribute some on a regular basis to the facilities.

Furthermore, though after October 1, 2003, the current pamphlets in existence could no longer be used, and though the down-loadable version of the pamphlet and complaint form will eventually become the standard method of distribution, a representative of the department stated that the department will still print some pamphlets to fill requests by those who may not have access to the Internet.

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.