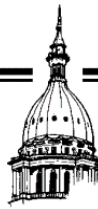




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BILL



ANALYSIS

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Senate Bill 884 (as enacted)
Sponsor: Senator Goeff Hansen
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

PUBLIC ACT 322 of 2012

Date Completed: 7-24-13

CONTENT

The bill amended Article 17 (Facilities and Agencies) of the Public Health Code to do the following:

- **Revise requirements for newly hired nursing home surveyors, and require a criminal history check on all nursing home surveyors.**
- **Require that representatives from all nursing home provider organizations and the State Long-Term Care Ombudsman be invited to participate in the planning process for joint provider and surveyor training sessions.**
- **Require the Department of Licensing and Regulatory Affairs (LARA) to include at least one representative from certain nursing home provider organizations in internal surveyor group quality assurance training.**
- **Require each annual survey team to consist of an interdisciplinary group of professionals, including at least one registered nurse.**
- **Require surveyors to use electronic resident information, whenever available, as a source of survey-related data.**
- **Require LARA to conduct a quarterly meeting and invite appropriate stakeholders.**
- **Authorize the participants in the quarterly meetings to designate advisory workgroups to develop recommendations on certain topics.**
- **Require LARA biennially to review and update clinical process guidelines, and include training on**

new and revised guidelines in joint provider and surveyor training sessions.

- **Establish survey process requirements, including deadlines for review of a nursing home's plan of correction and survey revisits.**
- **Allow LARA to accept a nursing home's evidence of substantial compliance instead of requiring a postsurvey on-site first or second revisit.**
- **Require LARA to develop an electronic system to support the coordination of survey process requirements.**
- **Require LARA to seek Federal approval of a grant program for five-star nursing homes to implement evidence-based quality improvement programs.**
- **Revise requirements for LARA to report to the Legislature.**

The bill took effect on October 9, 2012.

New Hires/Criminal History Check

Article 17 requires LARA to make annual and other visits to each health facility or agency for the purposes of survey, evaluation, and consultation. The Department must ensure that each newly hired nursing home surveyor, as part of his or her basic training, is assigned full-time to a licensed nursing home for at least 10 days within a 14-day period to observe actual operations outside of the survey process before the trainee begins oversight responsibilities.

The bill requires the State to establish a process that meets both of the following criteria:

- A newly hired nursing home surveyor must not make independent compliance decisions during his or her training period.
- A nursing home surveyor may not be assigned as a member of a survey team for a nursing home in which he or she received training for one standard survey following the training received in that nursing home.

Beginning November 1, 2012, LARA must perform a criminal history check on all nursing home surveyors.

The Department may not assign an individual to be a member of a survey team for a nursing home in which the individual was an employee within a certain number of years. The bill changed this time frame from five to three years.

Planning Process/Surveyor Training/Survey Teams

Article 17 requires LARA to provide semiannually for joint training with nursing home surveyors and providers on at least one of the 10 most frequently issued Federal citations in the State during the past year.

The bill requires representatives from all nursing home provider organizations and the State Long-Term Care Ombudsman to be invited to participate in the planning process for the joint provider and surveyor training sessions. The Department must include at least one representative from nursing home provider organizations representing at least 30 facilities statewide in internal surveyor group quality assurance training. The training must be provided for the purpose of general clarification and interpretation of regulatory requirements and expectations.

The Department must make available online the general Civil Service position description related to the required qualifications for individual surveyors, and use the required qualifications to hire, educate, develop, and evaluate surveyors.

The Department also must ensure that each annual survey team is composed of an interdisciplinary group of professionals,

including at least one registered nurse. Other members may include social workers, therapists, dietitians, pharmacists, administrators, physicians, sanitarians, and others who have the expertise necessary to evaluate specific aspects of nursing home operation.

Use of Medical Records Software

Under Article 17, LARA must require periodic reports and a health facility or agency must give the Department access to books, records, and other documents to the extent necessary to carry out the purpose of Article 17 and rules promulgated under it.

The bill requires surveyors to use electronic resident information, whenever available, as a source of survey-related data, and to request facility assistance to gain access to the system to maximize data export.

Quarterly Meetings with Provider Organizations

The bill requires LARA to conduct a quarterly meeting and invite appropriate stakeholders. Appropriate stakeholders must include: 1) at least one representative from each nursing home provider organization that does not own or operate a nursing home representing 30 or more nursing homes statewide; 2) the State Long-Term Care Ombudsman or his or her designee; and 3) any other clinical experts. The individuals who participate in these meetings, in conjunction with LARA, may designate advisory workgroups to develop recommendations on a range of discussion topics, which "should" include, at a minimum:

- Opportunities for enhanced promotion of nursing home performance, including programs that encourage and reward providers that strive for excellence.
- Seeking quality improvement to the survey and enforcement process, including clarifications to process-related policies and protocols that include at least improving the surveyors' quality and preparedness; enhanced communication; and ensuring fair enforcement and dispute resolution.
- Clinical process guidelines.

The discussion topics also "should" include promoting transparency across provider and surveyor communities, including applying

regulations in a consistent manner and evaluating changes that have been implemented to resolve identified problems and concerns; providing consumers with meaningful information; and identifying positive and negative trends, and their contributing factors, in the areas of resident care, deficient practices, and enforcement.

Clinical Process Guideline Development

Article 17 required LARA to work in consultation with a clarification work group to develop and adopt clinical process guidelines that had to be used in applying certain terms as used in Title 18 and Title 9 of the Social Security Act (which govern Medicare and Medicaid). The bill instead requires LARA to develop and adopt clinical process guidelines.

Article 17 previously required LARA to create a clinical advisory committee to review and make recommendations regarding the clinical process guidelines with outcome measures. The Department had to appoint physicians, registered professional nurses, and licensed practical nurses to the clinical advisory committee, along with professionals with expertise in long-term care services. A clarification workgroup had to review the clinical process guidelines and outcome measures, and make final recommendations to LARA before the guidelines were adopted. The bill deleted these requirements.

As already required, the Department must establish clinical process guidelines and compliance protocols with outcome measures for all of the following areas and for other topics where the Department determines that clarification will benefit providers and consumers of long-term care:

- Bed rails.
- Adverse drug effects.
- Falls.
- Pressure sores.
- Nutrition and hydration, including heat-related stress.
- Pain management.
- Depression and depression pharmacotherapy.
- Heart failure.
- Urinary incontinence.
- Dementia.
- Osteoporosis.
- Altered mental states.

- Physical and chemical restraints.

The bill added to this list culture change principles, person-centered caring, and self-directed care.

The bill requires LARA biennially to review and update all clinical process guidelines as needed and to continue to develop and implement clinical process guidelines for topics that have not yet been developed from the above list and other topics identified as a result of the quarterly meetings required under the bill. The Department must consider recommendations from an advisory workgroup, and include training on new and revised guidelines in the joint provider and surveyor training sessions, as those clinical process guidelines are developed and revised.

The bill also requires representatives from each nursing home provider organization that does not own or operate a nursing home representing 30 or more nursing homes statewide and the State Long-Term Care Ombudsman, or his or her designee, to be permanent members of a clinical advisory workgroup. The Department must issue survey certification memoranda to providers to announce or clarify changes in regulation interpretation.

Article 17 previously permitted LARA to give grants, awards, or other recognition to nursing homes to encourage the rapid implementation of the adopted clinical process guidelines. Under the bill, upon availability of funds, the Department must give those grants, awards, or other recognition to nursing homes to encourage the rapid implementation or maintenance of the guidelines.

Survey Process

The bill requires nursing home health survey tasks to be facilitated by LARA's Bureau of Health Systems to ensure consistent and efficient coordination of the nursing home licensing and certification functions for standard and abbreviated surveys. The Department must develop and implement an electronic system to support coordination of these activities.

By November 1, 2012, LARA had to submit a report on the development of the electronic

system, including a proposed budget for implementation, to the legislative appropriations subcommittees for LARA, legislative standing committees with jurisdiction over issues involving senior citizens, and the Senate and House Fiscal Agencies. If funds are appropriated for the system, the Department must implement it within 120 days of the appropriation.

When preparing to conduct an annual standard survey, LARA must determine if there is an open survey cycle and make every reasonable effort to confirm that substantial compliance has been achieved by implementation of the nursing home's accepted plan of correction. The Department must make this determination before initiating the annual standard survey while maintaining the Federal requirement for standard annual survey interval and state survey average of 12 months.

All abbreviated complaint surveys must be conducted on consecutive days until complete. All form CMS-2567 reports of survey findings must be released to the nursing home within 10 consecutive days after completion of the survey. ("Consecutive days" means calendar days, but does not include Saturday, Sunday, or State- or federally recognized holidays. (Form CMS-2567 means the Federal Centers for Medicare & Medicaid Services' form for the statement of deficiencies and plan of correction or a successor form serving the same purpose.)

Departmental notifications of acceptance or rejection of a nursing home's plan of correction must be reviewed and released to the nursing home within 10 consecutive days of receipt of the plan. The completion date for a nursing home-submitted plan of correction in response to any survey must not be later than 40 days from the survey exit date. If a nursing home has not received additional citations before a revisit, LARA must conduct the first revisit within 60 days of the survey exit date. Letters of compliance notification to nursing homes must be released to a nursing home within 10 consecutive days of all survey revisit completion dates.

As the Department considers appropriate in accordance with the Federal Centers for Medicare & Medicaid Services (CMS) survey protocols, it may accept a nursing home's

evidence of substantial compliance in lieu of requiring a postsurvey on-site first or second revisit. A nursing home that requests consideration of this evidence must include an affidavit that asserts the nursing home is in substantial compliance as shown by the submitted evidence for that specific survey event. There may be no deficiencies with a scope and severity originating higher than level D. If there is no enforcement action, the nursing home's evidence may be reviewed administratively and accepted as evidence of deficiency correction.

(Citation levels used in these bills mean citation levels as defined by the CMS's survey protocol grid defining scope and severity assessment of deficiency.)

Informal dispute resolution conducted by the Michigan Peer Review Organization must be given strong consideration upon LARA's final review.

Grants

The bill requires LARA to seek approval from the CMS to develop a program to provide grants to nursing homes that have received a five-star quality rating from the CMS. The Department must get approval from the CMS in order for nursing homes to be eligible for a grant. A grant may be up to \$5,000 per nursing home from the Civil Monetary Fund. A grant must be used to implement evidence-based quality improvement programs within the nursing home. Each nursing home that receives a grant must submit to LARA a report that describes the final outcome from implementing the program.

Reports to the Legislature

Article 17 requires LARA to report annually to legislative appropriations subcommittees and standing committees having jurisdiction over issues involving senior citizens, and to the Senate and House Fiscal Agencies, on the initial and follow-up surveys conducted on all nursing homes in Michigan. The bill modified several of the report requirements.

Previously, the report had to include the number referred to the Michigan Public Health Institute for remediation. The bill deleted this item.

The bill requires the report to include the number of Michigan Peer Review

Organization-referred reviews and, of those reviews, the number of citations that LARA has overturned.

Previously, the report had to include the number of citations per nursing home. The bill refers instead to the average number of citations per nursing home for the most recent calendar year. The bill also requires the report to include the number and percentage of citations disputed through informal dispute resolution and independent informal dispute resolution, instead of the number and percentage of citations appealed.

The Code requires LARA to develop a protocol for the review of citation patterns compared to regional outcomes and standards and complaints regarding the nursing home survey process. The bill requires this review to be included in the annual report.

The bill also requires the annual report to include all of the following:

- Implementation of the clinical process guidelines and the impact of guidelines on resident care.
- Information regarding the progress made on implementing the administrative and electronic support structure to coordinate all nursing home licensing and certification functions efficiently.
- The number of annual standard surveys of nursing homes that were conducted during a period of open survey or enforcement cycle.
- The number of abbreviated complaint surveys that were not conducted on consecutive surveyor workdays.
- The percentage of all form CMS-2567 reports of findings that were released to the nursing home within the 10-working-day requirement.
- The percentage of provider notifications of acceptance or rejection of a plan of correction that were released to the nursing home within the 10-working-day requirement.
- The percentage of first revisits that were completed within 60 days from the date of survey completion.
- The percentage of second revisits that were completed within 85 days from the date of survey completion.

- The percentage of letters of compliance notification to the nursing home that were released within 10 working days of the date the revisit was completed.
- A summary of the discussions from the quarterly meetings with nursing home provider organizations required under the bill.
- The number of nursing homes that participated in a recognized quality improvement program (described below).

Previously, Article 17 required LARA to report annually to the standing committees on appropriations and the standing committees having jurisdiction over issues involving senior citizens on 1) the percentage of nursing home citations that are appealed, and 2) the percentage of nursing home citations that are appealed and amended through the informal deficiency dispute resolution process. The bill, instead, requires LARA to report these committees annually on 1) the percentage of nursing home citations that are appealed through the informal dispute resolution process and 2) the number and percentage of nursing home citations that are appealed and supported, amended, or deleted through the informal dispute resolution process.

The bill also requires this report to include a summary of the quality assurance review of the amended citations and related survey retraining efforts to improve consistency among surveyors and across the survey administrative unit that occurred in the year being reported.

The bill allows LARA to consolidate all information provided for the required reports into a single report.

Previously, Article 17 required LARA to assess the effectiveness of Public Act 218 of 2001, which enacted the requirements for the citation of a clarification work group, the development of clinical process guidelines, and other related matters. The Department also had to file an annual report with the Legislature on the implementation of clinical process guidelines and their impact on resident care. The bill deleted these requirements.

MCL 333.20155 & 333.20155a

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill will have an indeterminate but likely slightly negative effect on the State's finances. To the extent that the surveyor hiring practices required under the bill were not already being practiced by the Bureau of Health Systems, some new personnel costs may be associated with ensuring that all survey teams have at least one registered nurse and that other members of the teams contain a variety of other health professionals as specified in the bill.

The bill also will result in some new administrative costs associated with required meetings with nursing facility provider organizations, and reviewing and updating clinical process guidelines biennially.

Finally, nursing facilities that have no survey deficiencies above Level D in the current survey and the previous year's survey results may be eligible to receive a grant of up to \$5,000 to participate in a recognized quality improvement program. Funding for these grants will be from the Civil Monetary Fund, which receives revenue from civil fines collected from nursing facilities that are found to be in violation of applicable State laws and rules.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.