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## BILL ANALYSIS



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Senate Bill 64 (as enacted)

**PUBLIC ACT 155 of 2015**

Sponsor: Senator Goeff Hansen

Senate Committee: Families, Seniors and Human Services

House Committee: Health Policy

Date Completed: 3-31-17

**CONTENT**

The bill amended the Public Health Code to do the following:

- Delete and replace a requirement that the Department of Licensing and Regulatory Affairs (LARA) develop and adopt clinical process guidelines and compliance protocols with outcome measures for nursing homes in specific areas of care.
- Require that a nursing home use peer-reviewed, evidence-based, nationally recognized clinical process guidelines or best practice resources to develop and implement resident care policies and compliance protocols with measurable outcomes in specific practice areas.
- Allow LARA to include training on new and revised peer-reviewed, evidence-based, nationally recognized clinical process guidelines or best-practice resources in its joint provider and surveyor training.
- Require LARA to post on its website all peer-reviewed, evidence-based, nationally recognized clinical process guidelines and best-practice resources used in a training session.
- Require LARA's process for reviewing and authorizing the issuance of certain citations to assure the consistent and accurate application of Federal and State survey protocols.
- Require LARA to give grants and other awards to nursing homes to encourage the rapid implementation of policies and protocols from nationally recognized guidelines to promote performance excellence.
- Require LARA to maintain clear and uniform peer-reviewed, evidence-based best-practice protocols for the use and maintenance of bed rails and properly fitted mattresses.
- Revise the deadline for LARA's initiation of an investigation in response to a complaint.

The bill took effect on January 18, 2016.

**Development & Use of Guidelines & Best Practice Resources**

Article 17 (Facilities and Agencies) of the Code requires LARA to develop and adopt clinical process guidelines. The bill requires a nursing home to use peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based best practice resources to develop and implement resident care policies and compliance protocols with measurable outcomes specifically in the following clinical practice areas:

- Use of bed rails.
- Adverse drug effects.
- Prevention of falls.
- Prevention of pressure ulcers.
- Nutrition and hydration.
- Pain management.
- Depression and depression pharmacotherapy.
- Heart failure.
- Urinary incontinence.
- Dementia care.
- Osteoporosis.
- Altered mental states.
- Physical and chemical restraints.
- Person-centered care principles.

In an area of clinical practice that is not listed above, the bill permits a nursing home to use peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based best-practice resources to develop and implement resident care policies and compliance protocols with measurable outcomes to promote performance excellence.

Previously, the Department was required to establish and adopt clinical process guidelines and compliance protocols with outcome measures for the following areas and for other topics where it determined that clarification would 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.
- Culture change principles, person-centered caring, and self-directed care.

Also, LARA was previously required biennially to review and update all clinical process guidelines as needed and continue to develop and implement clinical process guidelines for topics that had not been developed from that list and other topics identified as a result of quarterly meetings with stakeholders that are required under the Code. The bill deleted that provision.

### Surveyor Training

The Code previously required LARA to include training on new and revised clinical process guidelines in the joint provider and surveyor training sessions as those guidelines were developed and revised. The bill instead allows LARA to include training on new and revised peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources that contain measurable outcomes, in the joint provider and surveyor training sessions to assist provider efforts toward improved

regulatory compliance and performance excellence and to foster a common understanding of accepted peer-reviewed, evidence-based best-practice resources between providers and the survey agency.

The bill requires LARA to post on its website all peer-reviewed, evidence-based, nationally recognized clinical process guidelines and peer-reviewed, evidence-based best-practice resources used in a training session for provider, surveyor, and public reference.

The Code previously required LARA to instruct and train surveyors in the clinical process guidelines adopted by the Department in citing deficiencies. The bill deleted that requirement.

The bill requires surveyors to consider peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based best-practice resources with measurable outcomes that are used by a nursing home to develop and implement resident care policies and compliance protocols when making compliance decisions.

### Review

The Code requires LARA to maintain the process by which it reviews and authorizes the issuance of a citation for immediate jeopardy or substandard quality of care before a statement of deficiencies is made final. Under the bill, the review must assure the consistent and accurate application of Federal and State survey protocols and defined regulatory standards. Previously, the review had to assure that the applicable concepts, clinical process guidelines, and other tools were being used consistently, accurately, and effectively.

### Grants & Awards

The bill requires LARA, if funds are available, to give grants, awards, or other recognition to nursing homes to encourage the rapid development and implementation of resident care policies and compliance protocols that are created from evidence-based, nationally recognized clinical process guidelines or best-practice resources with measurable outcomes to promote performance excellence. Previously, the Code required LARA, upon the availability of funds, to give grants, awards, or other recognition to nursing homes to encourage the rapid implementation or maintenance of the clinical process guidelines adopted by the Department.

### Bed Rails

The Code requires a nursing home to give each resident who uses a hospital-type bed, or the resident's legal guardian, patient advocate, or other legal representative, the option of having bed rails. The bill requires the Department to maintain clear and uniform peer-reviewed, evidence-based best-practice resources, to be used in determining what constitutes acceptable bed rails, proper maintenance of bed rails, properly fitted mattresses, and other hazards created by improperly positioned bed rails, mattresses, or beds. Previously, LARA was required to develop clear and uniform guidelines for this purpose.

The bill also requires LARA to maintain the protocols for bed rails in consultation with the long-term care stakeholders workgroup. Previously, the Department was required to develop the bed-rail guidelines in consultation with the long-term care workgroup.

### Complaint Investigation

The Code allows a person to request an investigation of a nursing home, if he or she believes that Part 271 (Nursing Homes) of the Code, a rule promulgated under Part 217, or a Federal certification regulation applying to a nursing home may have been violated. Upon receiving a complaint, LARA must determine whether Part 217, a rule promulgated under it or a Federal

certification has been, is, or is in danger of being violated. The Department must investigate the complaint according to the urgency it determines.

Under the bill, the initiation of a complaint investigation must begin within the time frame consistent with Federal guidelines for investigations of complaints against nursing homes. Previously, the Code required the initiation of a complaint investigation to be initiated within 15 days after the complaint was received.

MCL 333.20155 et al.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill had a minor, but likely negative fiscal impact on the Bureau of Health Care Services (BHCS) within LARA, and no fiscal impact on local units of government. Under the bill, nursing homes, which are surveyed by the BHCS, are required to use nationally recognized clinical process guidelines for clinical processes in those facilities. To the extent that this required the BHCS to change its internal policies and practices, which may have included training staff, changing forms, and making other changes, the bill introduced some new, but likely minor administrative costs to the BHCS. The bill also requires that resources relating to all of these guidelines be posted on LARA's website, which introduced additional minor administrative costs. These costs were likely one-time in nature and absorbed by existing resources.

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.