

REQUIRE BIENNIAL REPORTS ON CERTAIN FACILITIES

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House Bills 5659 (H-1) and 5660 (H-1) as reported

Sponsor: Rep. Jeff Yaroeh

Committee: Oversight

Complete to 3-15-22

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bills 5659 and 5660 would require biennial reports containing feedback and input from inspectors of entities regulated by the Bureau of Community Health Systems regarding state and federal guidelines for those entities. The reports would be submitted to the appropriation subcommittees for Department of Licensing and Regulatory Affairs (LARA), the House and Senate Fiscal Agencies, and the state budget director.

FISCAL IMPACT: House Bills 5659 and 5660 would not have an appreciable fiscal impact on any unit of state or local government. LARA would be required to submit additional reports under the bills, but any costs associated with this activity would likely be sufficiently absorbed by existing departmental appropriations and resources.

THE APPARENT PROBLEM:

When policies that affect the public are being developed by public entities, some feel that the decision making is all too often done at a distance and that those at the front, who would be implementing those decisions, have little or no opportunity to provide input as to what could work and what would not. For instance, in the early days of the COVID-19 pandemic, executive orders affecting nursing homes were issued, but those workers who inspect nursing homes were not consulted or given an opportunity to provide feedback as to whether the proposed actions would achieve the desired end or if they would conflict with regulatory requirements that must be followed. Legislation has been offered to require any input or feedback provided by inspectors in the Bureau of Community Health Systems to be included in reports that would be submitted to the legislature and the state budget director.

THE CONTENT OF THE BILLS:

The bills would amend different acts to require LARA to submit biennial reports containing feedback and input from individuals who perform inspections for entities regulated by the Bureau of Community and Health Systems, or a successor agency in the department, regarding the adequacy of federal and state guidelines pertaining to the areas the individual inspects for the entities described in the new requirement. The reports would have to be submitted to the appropriation subcommittees for LARA, the House and Senate Fiscal Agencies, and the state budget director.

House Bill 5659 would add the above requirement to Article 17 (Facilities and Agencies) of the Public Health Code to apply to entities regulated by the Bureau of Community and Health Systems under that article.

Currently, Article 17 provides for the regulation of certain *health facilities or agencies*, defined to include county medical care facilities, hospitals, nursing homes, freestanding surgical

outpatient facilities, homes for the aged, hospices or hospice residences, health maintenance organizations, and any of these that are located in a university, college, or other educational institution. In addition, Article 17 also provides for the regulation of mobile dental facilities and certain laboratories.

Proposed MCL 333.20158

House Bill 5660 would add the above requirement to the Adult Foster Care Facility Licensing Act to apply the requirement to adult foster care facilities.

MCL 400.711

ARGUMENTS:

For:

Reportedly, in the early days of the COVID-19 pandemic, under authority of executive order and the Public Health Code, the Department of Health and Human Services (DHHS) developed a Long-Term Care COVID-19 Plan. As part of the state's COVID-19 response, DHHS launched the COVID-19 Regional Hub strategy, in which certain facilities cared for residents of long-term care facilities who had been infected with COVID-19 but no longer needed to be hospitalized. Although the plan also included an emphasis on infection prevention and control, apparently, when developing the plan, input from the state inspectors tasked with inspecting the state's nursing homes to ensure compliance with state and federal regulations regarding infection prevention and control was not sought, nor was an opportunity given for inspectors to offer feedback. Some feel that since the inspectors were the state's "experts" on what works and what doesn't regarding infection control in long-term care facilities, their input and feedback should have been considered when developing the plan and also as needed if any parts of the plan did not work as intended.

The bills would address the issue by soliciting input from inspectors employed by the Bureau of Community Health Systems and requiring that input to be passed along to the appropriations subcommittees for LARA in the House and Senate, both fiscal agencies, and the state budget director. Such advice from those in the field as to regulations that work for the public good and those that do not could lead to funding and policy changes and decisions that could increase health and safety to residents and staff who reside or work in the state's long-term care facilities.

Against:

Although discussion on the bills in committee centered on obtaining feedback regarding state and federal regulations affecting long-term care facilities such as nursing homes, the bills are not restricted in scope to only those facilities. As written, House Bill 5659 would likely apply to all of the entities regulated under Article 17 of the Public Health Code, which includes hundreds of hospitals and surgery centers and about 300 homes for the aged, among other facilities, and House Bill 5660 would apply to about 4,000 adult foster care homes. Concerns also were raised that the bills lack specificity. For example, no guidance is provided as to how the feedback and input would be solicited or used to inform state or legislative policy decisions. The parameters regarding the nature of the feedback and input (i.e., the adequacy of federal and state guidelines pertaining to the areas that the individual inspects) are also vague. For example, would the bill as written require all input provided to be included in the report, or

could any be excluded if it were deemed not to be germane to a regulation? Would the feedback be anonymous? If not, would inspectors worry about reprisals? In addition, many of the regulations that medical and long-term care facilities must comply with are requirements imposed for certification to participate in Medicare and Medicaid or guidance issued by the Centers for Disease Control and Prevention (CDC) and cannot be changed by state law.

POSITIONS:

The Health Care Association of Michigan (HCAM) indicated opposition to the bills. (1-21-22)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.