



SENIOR HOUSING ESTABLISHMENTS; CONTRACTS

House Bill 4128 as passed by the House
Revised Second Analysis (12-18-00)

Sponsor: Rep. Judith Scranton
Committee: Senior Health, Security and
Retirement

THE APPARENT PROBLEM:

According to research by the Public Policy Institute of Washington, D.C., assisted living is the fastest growing type of senior citizen housing in the United States. Assisted living accounted for 75 percent of new senior housing in 1998. For frail older persons and adults with disabilities who need some assistance to live independently, or who no longer wish to remain at home, assisted living provides an option for meeting their personal and supportive care needs.

While definitions of assisted living vary from state to state, an assisted living facility is generally defined as a residential setting that provides or coordinates personal care services, 24-hour supervision, services such as housekeeping, laundry, and prepared meals, social activities, and some health-related services. Assisted living provides a homelike atmosphere and is designed to accommodate residents' changing care needs and preferences, though this type of housing may not accommodate persons whose declining health requires them to have intensive nursing services and other kinds of medical intervention. These populations are often served by adult foster care facilities, homes for the aged, and nursing homes.

In Michigan, there is no one model of assisted living facility - such establishments are not licensed or regulated by the state and may vary widely in design, services offered, costs, and amenities. For example, some senior housing facilities are essentially apartment complexes, and may offer such amenities to residents as 24-hour security, some prepared meals, housekeeping and laundry services, on-site banking, organized social activities, religious services, transportation to shopping and medical appointments, and so forth. Others may be rooms rented in private homes. Residents may contract with other providers, such as home health care services, for nursing care or other needs.

As the population ages, the demand for assisted living and other types of specialized senior housing has rapidly escalated in Michigan and across the country. While state licensure of facilities for the frailest of the elderly population provides some modicum of consumer protection, much of the unregulated senior housing that is being developed is not subject to state oversight, except for general statutory protections afforded to renters. Legislation has been proposed to provide greater consumer protection for senior citizens who choose to live in "housing with services establishments".

THE CONTENT OF THE BILL:

The bill would create a new act to regulate "housing-with-services establishments" for senior citizens. A housing-with-services establishment would be defined to mean a facility that offers sleeping accommodations to adult residents, at least 80 percent of whom are 55 years of age or older, and providing or offering health-related services (nursing care, nurse aide services, home aide care) or other supportive services (such as laundry, arranging for medical services or social services, transportation, and having a person on-site at all times to assist in an emergency). However, housing-with-services establishments would not include adult foster care facilities or health facilities licensed under the Public Health Code (such as hospitals, medical facilities, nursing homes, hospices, and homes for the aged).

Contracts. The bill would prohibit a facility from operating as a housing-with-services establishment except under a written contract with each resident. A contract would have to include:

- The housing-with-services establishment's name, street address, and mailing address.
- The owner's name and mailing address.

- The name and address of the managing agent.
- The name and address of a person authorized to accept service of process on behalf of the owner and managing agent.
- A statement describing whether the establishment was regulated by a local, state, or federal agency.
- The term of the contract, in months or years.
- A description of the services provided in exchange for the base-rate paid by the resident.
- A description of additional services available for an additional fee, and fee schedules for those services.
- A statement describing the establishment's policy regarding the outside contracting of services by a resident.
- A description of the process for modifying, amending, or terminating the contract, including the conditions under which a contract could be terminated by the resident or the establishment.
- A description of the establishment's complaint resolution process.
- The resident's designated representative, if any.
- The establishment's referral procedure in the event the contract was terminated.
- Billing and payment procedures and requirements.

A housing-with-services establishment would be required to keep contracts (or copies of them) and related documents for current residents on site, and would have to keep those documents for at least three years after each contract was terminated.

Exclusions. The bill specifies that it would not require a housing-with-services establishment to provide a minimum core of services, to serve a specific number of residents, nor to provide any specific type of physical plant or facility so long as the establishment was in compliance with applicable state and local codes.

Rights and responsibilities. A contract executed in violation of the bill would be voidable at the option of the resident. However, the bill states that its provisions could not be used as a means to avoid a resident's payment obligations if the contract was not executed in

violation of the bill. Further, the bill would prohibit a housing with services establishment from bringing, maintaining, or defending an action to collect compensation for the performance of a contract determined by a court to be in willful violation of or noncompliance with the bill.

Finally, the bill states that it would not limit a person's rights or responsibilities under any other applicable state housing or renting act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could result in an indeterminate fiscal impact on state and local governments. The bill would likely impose some new administrative costs on the owners of the affected establishments, and it is possible that some of these costs could be borne by state or local housing authorities. (5-1-00)

ARGUMENTS:

For:

Generally, the rights of tenants in rental housing are protected under several Michigan statutes, including: the Truth in Renting Act, which lists provisions that may not be included in rental agreements; the landlord-tenant act, which governs security deposits; the Revised Judicature Act, which governs eviction proceedings; and other statutes that cover maintenance, civil rights, and other matters. Local housing codes also provide certain protection, and the Michigan Consumer Protection Act provides offers protection against deceptive business practices. However, the bill would provide an increased level of consumer protection for senior citizens who choose as a housing option an establishment that offers services geared to this particular age group, which may extend beyond simply providing housing. The bill would require a written contract for residents that would have to disclose certain information, and to specifically list the services provided, costs and billing procedures, whether residents may individually contract with outside service providers, the establishment's complaint resolution process, and so forth. Since these kinds of establishments do business exclusively with the senior population, some of whom may be more vulnerable to scams or fraudulent practices than the general population, the bill would serve a worthy public purpose. And, since this market is evolving daily, current statutory protections may not explicitly cover the new kinds of arrangements offered by these establishments.

Response:

As originally introduced, the bill offered stronger protections to senior citizens. It would have allowed residents to sue for recovery of damages for violations of the bill, and would have allowed a court to award treble damages for willful violations. This provision was removed from the bill during committee deliberations; without it, the only recourse for violations would be whatever remedies are available under other landlord-tenant law. Some believe that this provision should be retained, in order to deter those who would prey on vulnerable senior citizens.

Further, the Department of Community Health's Michigan Aging Services System recommends asking the following questions when choosing an assisted living placement:

- Does the establishment have a consumer rights policy?
- Does it have policies and procedures for responding to complaints of abuse, neglect and exploitation of vulnerable residents?
- Does it provide written assurance that the establishment takes full responsibility for the conduct and actions of its employees?
- Does the establishment carry a surety bond to cover any resident deposits or provider-held trust accounts?

Perhaps the bill could be strengthened by adding language to require these items (or at least information as to whether the establishment complies with them) in the written contract.

POSITIONS:

The Michigan Association of Homes and Services for the Aging supports the bill. (6-20-00)

The Department of Consumer and Industry Services supports the concept of the bill. (6-20-00)

The Michigan Assisted Living Association supports the bill. (6-26-00)

The Health Care Association of Michigan supports the bill. (6-20-00)

The Michigan Center for Assisted Living supports the bill. (12-18-00)

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#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.