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NURSING HOME QUALITY OF LIFE COMMISSION

House Bill 5805 (Substitute H-1) First Analysis (5-25-00)

Sponsor: Rep. Patricia Lockwood
Committee: Senior Health, Security and Retirement

THE APPARENT PROBLEM:

Under current law, nursing homes must be inspected regularly and are subjected to unannounced investigations of complaints. When a survey team from the Department of Consumer and Industry Services becomes aware of a violation, or “deficiency”, the facility usually receives a citation. Citations vary in seriousness, and are ranked by the impact on the health and safety of residents. Depending on the seriousness of the citations, a facility could face various sanctions, including fines, loss of Medicaid certification, or loss of licensure.

Many in the nursing home industry have maintained for years that there are many inconsistencies between the survey teams in evaluating and citing facilities. Legislation to address many of the concerns pertaining to nursing home survey teams has recently been passed by the House and is waiting Senate action. (For more information, see the House Legislative Analysis Section’s analysis of House Bill 5460 dated 4-25-00.) However, some feel that the survey teams would benefit from the input of a citizen commission.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to create a “Nursing Home Quality of Life Review Commission” within the Department of Community Health.

The commission would have nine members, appointed by the governor:

- one member from the Department of Community Health, knowledgeable in federal guidelines for nursing homes as issued by the federal Health Care Financing Authority;
- one member from the Department of Consumer and Industry Services, representing nursing home surveyors (regulators);
- one physician specializing in geriatric medicine;

- two members representing nursing home reform or nursing home patient advocacy groups;
- two members representing nursing homes;
- one nursing home resident; and
- one family member of a nursing home resident.

Members of the commission would serve staggered four-year terms, and vacancies would be filled by the governor. The governor could remove a member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The initial members of the commission would have to be appointed within 120 days of the bill’s effective date. The first meeting would be called by the director of the Department of Community Health. The commission would elect a chairperson and other officers as necessary, and would meet at least quarterly. The commission would be subject to the Open Meetings Act and the Freedom of Information Act. Members would serve without compensation, but could be reimbursed for expenses.

The commission could appoint advisory committees as considered necessary by the commission. Members of advisory committees would not be compensated but could be reimbursed for their expenses. The Department of Community Health would be required to provide office space, supplies, clerical assistance, administrative assistance, and other staff as necessary for the commission in the performance of its duties.

With the assistance of the Department of Community Health, the commission would have to do all of the following:

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- request and review all reports resulting from surveys of nursing homes (regulatory inspections conducted by the Department of Consumer and Industry Services);
- establish review criteria for the surveys using the guidelines issued by the federal Health Care Financing Authority;
- conduct quarterly meetings with the survey teams from the Department of Consumer and Industry Services to discuss frequently cited violations, nursing homes that were cited for violations significantly more often than other nursing homes, and possible remedies to these two concerns;
- present an initial written report within one year to the Departments of Community Health and Consumer and Industry Services, the governor, the legislature, and the attorney general (the report would have to include findings detailing problems, abuses, efficiencies, and successes of the survey process; a financial audit and recommendations for funding of the survey process; and an examination of the state's compliance with federal guidelines for nursing home surveys);
- provide an annual written report of the commission's activities, findings, and recommendations; and
- review nursing home survey reports twice per year for changes reflecting the latest developments in geriatric social and medical practice.

MCL 333.21769

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

According to members of the nursing home industry, most of the citations issued by the survey teams have no relation to quality of care. Unnecessary citations harm patients by siphoning off money that could be directed to patient services but go instead to fines for such things as peeling paint found in an administrative office that patients had no access to. House Bill 5460, which previously passed the House, would help resolve many inconsistencies caused by the subjectivity of survey teams. House Bill 5805 would add to this process by creating an opportunity for concerned citizens to have a greater opportunity for input into the functioning of the survey teams.

Under the bill, a commission that includes a physician, resident of a nursing home, a family member of a nursing home resident, and members representing nursing home reform or advocacy groups could bring a unique perspective and fresh ideas to improve the survey process. Technical expertise would be provided by representatives of nursing homes and employees of the Departments of Community Health and Consumer and Industry Services. It is hoped that the commission's tasks of reviewing survey reports; establishing review criteria; meeting with the survey teams; and reporting problems, abuses, efficiencies, and successes of the survey process will lead to recommendations that could help resolve current tensions between survey teams and nursing homes.

Against:

The bill is not needed, as most of what the bill relegates to the commission is currently being provided by others. For instance, the survey teams are subject to oversight by the Health Care Finance Administration (HCFA). HCFA inspectors review all paperwork on citations issued by the survey teams and on enforcement action taken, and do independent surveys of facilities for comparisons with the CIS survey team reports. Apparently, some feel that the strong suit of the bill would be the commission's input to help resolve conflicts and disputes between survey teams and nursing home administrators. Currently, CIS already provides an informal dispute resolution process by an independent review organization. Reportedly, the only new thing that the bill would add is the recommendations of the commission, except that HCFA already does make recommendations to the survey teams.

Another concern is that the bill may prove problematic to implement. The commission would be made up of nine people, only one of whom had any medical training. Yet, the commission would be charged with reading through thousands of reports containing medical terminology, building-related violations, and so on, not to mention having to also make note of whether or not the survey reports reflect the latest developments in geriatric social and medical practice. In addition, the requirement to include a financial audit in the first report does not make clear if the commission is to hire an accountant or rely on departmental audits. If the commission were to conduct an independent audit, this would be an expensive, time consuming, and redundant activity, as both HCFA and the department are required to conduct audits. Making recommendations for funding is moot because Medicare and Medicaid money fund the surveys.

Further, the bill would require the Department of Community Health to provide a person who had expertise in HCFA survey guidelines, but oversight of survey teams, and thus expertise, resides with the Department of Consumer and Industry Services. Therefore, CIS would be better suited to provide office space and other needed assistance to commission members for the performance of their duties. In short, the volume of reports to review (over 3,000 complaint reports and 450 annual survey reports), a content too foreign, and meeting every three months with 113 surveyors, in addition to the requirements of the report to be made to the governor, legislature, and state agencies, is simply too much for a nine-member commission.

POSITIONS:

The Health Care Association of Michigan supports the bill. (5-24-00)

The Michigan Association of Homes and Services to the Aging supports the bills. (5-24-00)

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.