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NURSING HOME QUALITY OF LIFE COMMISSION

House Bill 5805 as passed by the House Second Analysis (8-8-00)

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.

Some in the nursing home industry have maintained for years that there are many inconsistencies between the survey teams in evaluating and citing facilities. Legislation that addresses many of the concerns pertaining to nursing home survey teams has recently been enacted as Public Act 171 of 2000. (For more information, see the House Legislative Analysis Section’s analysis of House Bill 5460 dated 6-22-00.) 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:

- request and review all reports resulting from surveys of nursing homes (regulatory inspections conducted by the Department of Consumer and Industry Services);
- establish a satisfaction survey that would be distributed to all nursing home residents and which would be designed to elicit feedback from the residents regarding staff performance and conditions in the nursing home;
- 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:

According to the House Fiscal Agency, the bill would increase costs for the Department of Community Health (DCH) by an indeterminate amount. The commissioners would be compensated for expenses, and DCH would have to provide office space, supplies, and staff assistance. A significant amount of DCH staff time would be necessary to supply support to the commission to carry out its responsibilities under the bill. Existing DCH staff may not be able to accommodate the support needs of the commission. The staff support that would be required would include clerical, administrative, and professional staff. Further, an additional cost would be added by the bill's

requirement that a financial audit be included as part of a report that must be completed after one year. The cost of the audit to the state would depend on the scope of the audit and who performed it. (8-1-00)

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 has been enacted as Public Law 171 of 2000, will 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 an 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. However, 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 bill is neither feasible nor practical. The volume of reports to review (over 3,000 complaint reports and 450 annual survey reports) is simply too much for a nine-member commission, not to mention a content involving foreign terminology, meetings every three months with 113 surveyors, and a report to be made to the governor, legislature, and state agencies.

Against:

The bill would require that a satisfaction survey be developed by the commission and distributed by a nursing home to all of its residents in order to elicit feedback on staff performance and conditions in the facility. This provision would be difficult and costly to implement as many nursing home residents lack sufficient cognitive functioning to respond appropriately to such a questionnaire. Nursing homes are caring for an increasingly larger number of patients with dementia and Alzheimer's disease, as well as stroke victims and persons in comas. Rather than directing a survey at the residents, it could be more beneficial to survey the family members. In fact, the

nursing home industry currently publishes a pamphlet, the "Consumer Guide to Michigan Nursing Homes", every two years. The guide contains information on the care a particular nursing home specializes in, the number and type of violations cited during the home's annual survey inspection, and the family satisfaction score - a compilation of data from a 29-question survey distributed to the family members of nursing home residents. Family members generally keep a close eye on conditions in a nursing home, treatment of their relative by nursing home staff, food quality, and so on, and may be able to provide a more accurate picture of the quality of care provided by a particular facility than the residents could.

POSITIONS:

The Michigan Association of Homes and Services to the Aging (MAHSA) supports the bill. (7-28-00)

The Health Care Association of Michigan (HCAM) supports the concept of the bill. (8-2-00)

The Department of Consumer and Industry Services does not support the bill. (8-8-00)

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.