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**SFA****BILL ANALYSIS**

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Senate Bill 537 (as passed by the Senate)  
Sponsor: Senator John J.H. Schwarz, M.D.  
Committee: Health Policy

Date Completed: 7-21-99

## **RATIONALE**

The Public Health Code contains provisions that prescribe the certificate of need (CON) system, which gives the State a degree of control over the construction, conversion, and modernization of health facilities, equipment, and services. Essentially, the Code requires a health facility or person to obtain a CON from the State before making large capital expenditures for equipment or facilities, or to provide particular services. A CON application is granted or denied according to review standards developed by the CON Commission, a five-member bipartisan body appointed by the Governor and located in the Department of Community Health. The system is premised on the notion that controlling the supply of health facilities and services is an effective way of controlling health care costs, as well as assuring quality health care and the fair allocation of resources.

One of the CON requirements in the Code involves nursing home beds. Currently, replacement beds in a nursing home located in a nonrural county, that are proposed for construction on the original site, on a contiguous site, or within a two-mile radius of the original site, are not subject to comparative review. This means that if a nursing home proposes to move beds to a new site over two miles away, the proposed move is subject to the comparative review process in order to obtain a CON. ("Comparative review", while not defined in statute, is described in rules as a method of reviewing applications of a "comparative group"; that is, applications that have been grouped for the same type of project in the same planning area and that are being reviewed comparatively in accordance with the CON rules.) Reportedly, the Battle Creek Health System wants to move Mercy Pavilion, the only nursing home facility in the Battle Creek area, to a new location that is 2.8 miles from the existing facility. The health system cannot accomplish this, however, without obtaining approval through a comparative review process. It has been suggested that the two-mile radius may be too restrictive in some cases, and that provisions should be in place to allow a waiver of the limitation.

## **CONTENT**

The bill would amend Part 222 of the Public Health Code, which governs the certificate of need process, to allow the Director of the Department of Community Health to waive the two-mile radius limitation regarding replacement nursing home beds in a nonrural county, if he or she determined that the waiver would serve a good public health purpose.

MCL 333.22229

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

It is absurd that a nursing home facility that wishes to relocate beds to a new or better facility outside a two-mile radius must go through the comparative review process, which can drag on for months with no guarantee of success once the process is completed. This is particularly frustrating when, as in the situation in Battle Creek, the proposed move is less than three miles; the facility is not asking to increase the number of nursing home beds; and the nursing home is the only one in the area in question. The bill would offer a sensible approach to the two-mile restriction, by allowing the Director to waive the limitation if he or she determined that a move would serve the public.

### **Supporting Argument**

Currently, facilities may find themselves locked in place, forced to operate inefficient, aging structures in locations that reduce demand. This benefits neither the public nor the nursing home. Any business, including a nursing home, must be able to respond to population shifts and emerging community needs. Nursing home operators should be allowed to accommodate residential and commercial land-use trends, and to update obsolete structures, without regard to the overly restrictive two-

mile requirement. The bill at least would provide an alternative to the requirement.

### **Opposing Argument**

While it is easy to sympathize with the situation regarding the Battle Creek facility, the bill would be an inappropriate response to the problem. The CON process was put in place to contain health care costs and to help determine allocation of public health resources, and it has worked. By allowing the Director to waive a CON requirement based upon the notion that it would “serve a good public health purpose”, the bill could undermine the CON process based upon a vague, undefined idea. The bill would severely weaken the policy-making nature of the current process, and would invite others in the future to seek further waivers for any number of potential CON “problems”, by sidestepping the unbiased experts on the CON panel and giving waiver power to the Director. If a CON standard is problematic, the standard itself should be amended.

### **Opposing Argument**

There is no need for the bill. Even if a nursing home that wished to move beyond the two-mile limit were not required to go through a comparative review, it still would have to complete the rest of the CON process and be given approval for its proposal. The existing CON process should be allowed to proceed to conclusion, as it has for years for numerous other requests. Because it is deliberative, the CON process has sometimes angered those who wanted immediate answers to often complicated CON requests; nevertheless, it is highly preferable to the situation proposed by the bill, which would create the possibility that portions of the process could be avoided without due consideration.

**Response:** Apparently, when a proposal to replace nursing home beds undergoes comparative review, the beds are considered open and other nursing homes can bid on them.

Legislative Analyst: G. Towne

### **FISCAL IMPACT**

As the bill should not result in an increase in the total number of nursing home beds in the State, the bill would have no fiscal impact on State or local revenues or expenditures.

Fiscal Analyst: P. Graham

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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.