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BILL ANALYSIS



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Senate Bill 286 (as reported without amendment)
Sponsor: Senator Hoon-Yung Hopgood
Committee: Health Policy

Date Completed: 5-2-17

RATIONALE

The Department of Licensing and Regulatory Affairs (LARA) defines a certified nurse aide (CNA) as an individual who provides nursing or nursing-related services to residents in a long-term care facility who is not a licensed health professional, a registered dietician, or a volunteer who provides such services without pay. To become a CNA, a candidate must complete a Michigan-approved training course and pass a knowledge and clinical skills test. In May 2016, because it was not supported by State law, LARA suspended a policy that granted reciprocity to out-of-State CNAs or CNA candidates who had completed their training in another state. Many people believe that rescinding the reciprocity policy has had a negative effect on facilities that operate in Michigan near the borders of Indiana, Ohio, and Wisconsin. Evidently, these facilities often fill vacant positions from pools largely made up of out-of-State candidates, and often have direct care staffs consisting largely of CNAs from other states. Additionally, some people have expressed concerns about this State's inability to regulate CNAs in certain circumstances and investigate complaints against CNAs. To address these concerns about staffing shortages and this State's lack of regulatory authority, it has been suggested that the State codify standards for CNAs practicing in Michigan and reestablish the reciprocity policy.

CONTENT

The bill would add Part 219 (Nurse Aide Training and Registration Program) to the Public Health Code to do the following:

- **Require the Department of Licensing and Regulatory Affairs to administer a nurse aide training and registration program.**
- **Allow LARA to grant registration to an individual as a nurse aide, grant a permit to a person as a nurse aide trainer or nurse aide training program, and grant registration to an individual from another state.**
- **Prescribe the following biennial fees for an original or renewal registration or permit: nurse aide, \$20; nurse aide trainer, \$40; and nurse aide training program, \$300 per site, or \$100 per site if offered by a secondary education institution or a skilled nursing facility.**
- **Prescribe a \$125 fee for a nurse aide competency examination.**
- **Create the "Nurse Aide Registration Fund" and require the State Treasurer to credit the collected fees to the Fund.**
- **Permit LARA to promulgate and enforce rules to implement Part 219.**

Nurse Aide Training & Registration Program

The bill would require the Department of Licensing and Regulatory Affairs to administer a nurse aide training and registration program in Michigan.

An individual would not be allowed to engage in practice as a nurse aide unless he or she held a registration or was in compliance with 42 CFR 483.35. (That Federal regulation prescribes requirements for certain facilities providing nursing services. Among other things, a facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in a plan of care.) A person would not be allowed to offer a nurse aide training program or provide training or instruction to a nurse aide candidate unless the person held a permit.

"Practice as a nurse aide" would mean providing nursing or nursing-related services to a patient or resident. It would not be the practice of nursing as that term is defined in the Code (the systematic application of substantial specialized knowledge and skill, derived from the biological, physical, and behavioral science, to the care, treatment, counsel, and health teaching of individuals who are experiencing changes in the normal health processes or who require assistance in the maintenance of health and the prevention or management of illness, injury, or disability).

"Nurse aide" would mean an individual who held a registration. It would not mean a health professional licensed under Article 15 (Occupations) of the Code, a registered dietician, or someone who volunteered to provide nursing or nursing-related services without pay.

The Department could grant registration as a nurse aide to an applicant who met all of the following requirements:

- Submitted an application on a form and in a manner prescribed by LARA.
- Paid a prescribed fee.
- Demonstrated to LARA that he or she had successfully completed a nurse aide training program and a competency examination approved by LARA.
- Met the requirements for registration in promulgated rules.

The Department could grant a permit as a nurse aide trainer to an applicant who met all of the following requirements:

- Submitted an application on a form and in a manner prescribed by LARA.
- Paid a prescribed fee.
- Was a registered professional nurse licensed under Article 15 who met the requirements of 42 CFR 483.152(a)(5)(i) and (ii) or who met the requirements for a permit in promulgated rules.

(Under that Federal regulation, the training of nurse aides must be performed by or under the supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one of which must be in the provision of long-term care facility services, and who completed a course in teaching adults or has experience in teaching adults or supervising nurse aids.)

The Department could grant a permit as a nurse aide training program to an applicant who met all of the following requirements:

- Submitted an application on a form and in a manner prescribed by LARA.
- Paid a prescribed fee.
- Met the requirements for a permit in promulgated rules.
- Demonstrated to LARA that the applicant's curriculum was consistent with other nurse aide training programs as provided by promulgated rules.

"Nurse aide training program" would mean an instructional program that prepared a nurse aide candidate with the knowledge and ability to practice as a nurse aide and that was offered by a person that held a permit. "Nurse aide trainer" would mean an individual who held a permit to provide training to a nurse aide candidate who was enrolled in nurse aide training program.

A registration or permit would not be transferable. A certificate of registration or certificate of permit would have to state the people to whom it applied.

The Department could grant registration to an applicant who was from another state if the applicant met either of the following requirements:

- The applicant passed a training program that LARA determined was equivalent to or exceeded a nurse aide training program offered in Michigan and the applicant passed a competency examination approved by LARA.
- The applicant's status as a nurse aide in the other state was in good standing, as verified by that state's nurse aide registry, and LARA determined that the other state's training program was equivalent to or exceeded a nurse aide training program offered in Michigan.

A registration or permit would be effective for not more than two years after the date it was granted.

If a nurse aide did not renew his or her registration, the nurse aide would not be allowed to practice as a nurse aide until LARA renewed his or her registration. If a nurse trainer did not renew his or her permit, the nurse trainer would not be allowed to provide training to a nurse aide candidate until LARA renewed his or her permit. If a person did not renew its permit as a nurse aide training program, the nurse aid training program would not be allowed to provide instruction to a nurse aide candidate until LARA renewed the permit.

A registration or permit would be renewable if the applicant paid the prescribed fee, submitted an application for renewal on a form and in a manner prescribed by LARA, and demonstrated that he or she had met the requirements for renewal in promulgated rules.

The registration of an individual while in active service in the military service of the United States, an auxiliary branch of the military service of the United States, or the United States Public Health Service, who was registered at the time of induction or entering into service, would continue in effect without further action by the individual until discharge or leaving the service as long as the individual remained in compliance with a specific federal law (i.e., if, since the individual's most recent completion of a training and competency evaluation program, there had been a continuous period of 24 consecutive months during which the individual did not perform nursing or nursing-related services for monetary compensation, he or she would have to complete a new training and competency evaluation program, or a new competency evaluation program).

Fees

An applicant for registration or a permit, or a renewal of a registration or permit, would be required to pay the following biennial fees:

- Nurse aide, \$20.
- Nurse aide trainer, \$40.
- Except as provided below, nurse aide training program, \$300, per site.
- Nurse aide training program offered by a secondary education institution or a skilled nursing facility, \$100, per site.

In addition to those fees, an applicant for registration would be required to pay a nurse aide competency examination fee of \$125, per examination.

The prescribed fees would be payable to LARA or LARA's contractor at the time an application for an initial or renewal registration or permit was submitted to LARA. If an application for registration or permit were denied, or if registration or permit were revoked before its expiration date, LARA would not be allowed to refund the paid fees.

Nurse Aide Registration Fund

The bill would create the Nurse Aide Registration Fund within the State Treasury.

The State Treasurer would be required to credit the fees collected to the Fund and could receive money or other assets from any source for deposit into the Fund. The State Treasurer would be required to direct the investment of the Fund and credit to it interest and earnings from Fund investments.

Money in the Fund at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund. The Department would be the administrator of the proposed Fund for auditing purposes. The Department could spend money from the Fund, upon appropriation, only to implement the Nurse Aide Training and Registration Program.

Rules Administration

The Department could promulgate and enforce rules to implement Part 219. The rules could include the following:

- Establishing requirements for surveying a nurse aide training program.
- Investigating allegations against a nurse aide, nurse aide trainer, or nurse aide training program.
- Enforcing Part 219.

The rules also could establish eligibility requirements to renew a registration or permit, competency requirements, and examination requirements for registration.

Rules promulgated under Part 219 that would be applicable to health facilities or agencies would have to be reasonably uniform.

The Department could enter into one or more contractual agreements for the administration of Part 219.

Proposed MCL 333.21901-333.21925

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

According to LARA's website, the Bureau of Community and Health Systems has regulatory oversight of the Michigan Nurse Aide Registry. The website describes the requirements for a person to become a certified nurse aide, and states that the Bureau contracts with a company called Prometric to administer the required tests and maintain the Michigan CNA Registry. Although there are Federal regulations that apply to CNAs in long-term care facilities, however, the State itself has no administrative rules or statutory provisions that govern CNAs, who often work in other types of facilities, or CNA training programs. Evidently a number of other states have decided to regulate this occupation in state statute. The bill would do the same for Michigan and address several concerns that have been raised.

In particular, the bill would resolve an issue that limits LARA's ability to investigate complaints against a CNA. Under Federal law, CNAs are restricted to working in long-term care facilities. In Michigan, CNAs are practicing in hospitals and home-based health care settings, so they do not fall under the Federal definition of a CNA. Because of this, LARA does not have the authority to investigate complaints or allegations against CNAs working outside of a long-term care facility. In addition to defining CNA in state statute, the bill would allow LARA to promulgate rules that could include protocols for investigating allegations against CNAs or certified nurse aide trainers.

The bill also would address a staffing shortage by reinstating reciprocity for applicants who have passed a training program in another state or applicants whose certification as a nurse aide in another state is in good standing. Many facilities located near the border states of Indiana, Ohio, and Wisconsin often have direct care staffs that largely consist of out-of-State CNAs and fill vacancies from pools mainly consisting of nonresident candidates. The amendments would strengthen the workforce and help make CNAs more available to meet Michigan's increasing demand in the field.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a short-term negative fiscal impact on the Department of Licensing and Regulatory Affairs, an indeterminate fiscal impact on LARA in the long term, and no fiscal impact on local units of government. The bill would establish a registration program for nurse aides as well as nurse aide trainers and training programs. According to information obtained from LARA, the license fees in the bill would generate revenue of about \$40,000 each year, not including revenue from the nurse aide licenses. This revenue would be used to offset a portion of the cost to regulate nurse aide training programs. The remainder of these costs would be borne by Federal Medicare and Medicaid dollars as well as State General Fund money that LARA has identified as being available for this purpose. The total cost to regulate nurse aide trainers and training programs is estimated to be about \$930,000 annually.

Under current law, nurse aides pay a \$20 registration fee each year for Federal registry, and that revenue is received by the vendor that provides registration services. Under the bill, LARA would have the authority to charge the same fee, but on a biennial rather than annual basis. Depending on whether the current vendor contract were maintained, the revenue would be able to offset about half of LARA's costs related to maintaining the registry, or pay the vendor with those fees. Any remaining costs would be borne by the State General Fund or Federal funds available for that purpose. According to LARA, there are approximately 52,400 nurse aides active in Michigan, so total revenue generated by the registration fees would be about \$525,000 each year.

Fiscal Analyst: Josh Sefton

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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.