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BILL ANALYSIS



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Senate Bill 286 (as enacted)
Sponsor: Senator Hoon-Yung Hopgood
Senate Committee: Health Policy
House Committee: Health Policy

PUBLIC ACT 172 of 2017

Date Completed: 12-1-17

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 the 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 adds 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 biennial fees for an original or renewal registration or permit, and prescribe a 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, including investigating allegations against a nurse aide, nurse aide trainer, or nurse aide training program.**

The bill will take effect on February 19, 2018.

Nurse Aide Training & Registration Program

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

An individual will not be allowed to engage in practice as a nurse aide unless he or she holds a registration or is 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 will not be allowed to offer a nurse aide training program or provide training or instruction to a nurse aide candidate unless the person holds a permit.

The bill defines "practice as a nurse aide" as providing nursing or nursing-related services to a patient or resident. It is not 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).

The bill defines "nurse aide" as an individual who holds a registration. It does not mean a health professional licensed under Article 15 (Occupations) of the Code, a registered dietician, or someone who volunteers to provide nursing or nursing-related services without pay.

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

- Submits an application on a form and in a manner prescribed by LARA.
- Pays a prescribed fee.
- Demonstrates to LARA that he or she has successfully completed a nurse aide training program and a competency examination approved by LARA.
- Meets the requirements for registration in promulgated rules.

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

- Submits an application on a form and in a manner prescribed by LARA.
- Pays a prescribed fee.
- Is a registered professional nurse licensed under Article 15 who meets the requirements of 42 CFR 483.152(a)(5)(i) and (ii) or 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 may grant a permit as a nurse aide training program to an applicant who meets all of the following requirements:

- Submits an application on a form and in a manner prescribed by LARA.
- Pays a prescribed fee.
- Meets the requirements for a permit in promulgated rules.
- Demonstrates to LARA that the applicant's curriculum is consistent with other nurse aide training programs as provided by promulgated rules.

The bill defines "nurse aide training program" as an instructional program that prepares a nurse aide candidate with the knowledge and ability to practice as a nurse aide and that is offered by a person that holds a permit. "Nurse aide trainer" means an individual who holds a permit to provide training to a nurse aide candidate who is enrolled in a nurse aide training program.

A registration or permit will not be transferable. A certificate of registration or certificate of permit must state the people to whom it applies.

The Department may grant registration to an applicant who is from another state if the applicant meets either of the following requirements:

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

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

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

A registration or permit will be renewable if the applicant pays the prescribed fee, submits an application for renewal on a form and in a manner prescribed by LARA, and demonstrates that he or she has 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, will continue in effect without further action by the individual until discharge or leaving the service as long as the individual remains 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 has 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 must 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, will 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 will be required to pay a nurse aide competency examination fee of \$125, per examination.

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

Nurse Aide Registration Fund

The bill creates the Nurse Aide Registration Fund within the State Treasury.

The State Treasurer will be required to credit the fees collected to the Fund and may receive money or other assets from any source for deposit into the Fund. The State Treasurer will 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 must remain in the Fund and not lapse to the General Fund. The Department will be the administrator of the new Fund for auditing purposes. The Department may spend money from the Fund, upon appropriation, only to implement the Nurse Aide Training and Registration Program.

Rules Administration

The Department may promulgate and enforce rules to implement Part 219, including rules establishing requirements for the following:

- Surveying a nurse aide training program.
- Investigating allegations against a nurse aide in a health facility or agency or another setting where a nurse aide engages in the practice as a nurse aide.
- Investigating allegations against a nurse aide trainer, or nurse aide training program.
- Enforcing Part 219.

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

Rules promulgated under Part 219 that apply to health facilities or agencies must be uniform, as far as that is reasonable.

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

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, the State itself has had 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 does the same for Michigan and addresses several concerns that have been raised.

In particular, the bill resolves an issue that has limited 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 has not had 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 allows LARA to promulgate rules that may include protocols for investigating allegations against CNAs or certified nurse aide trainers.

The bill also will 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 will 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 will 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 establishes 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 will generate revenue of about \$40,000 each year, not including revenue from the nurse aide licenses. This revenue will be used to offset a portion of the cost to regulate nurse aide training programs. The remainder of these costs will 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 will have the authority to charge the same fee, albeit on a biennial basis rather than an annual one. Depending on whether the current vendor contract is maintained, the revenue will 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 will 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 will 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.