

## COVID-19 RESPONSE IN NURSING HOMES

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**Senate Bill 1094 as enacted**  
**Public Act 231 of 2020**

Analysis available at  
<http://www.legislature.mi.gov>

**Sponsor: Sen. Peter J. Lucido**  
**House Committee: Ways and Means**  
**Senate Committee: Health Policy and Human Services**  
**Complete to 2-23-21**

### SUMMARY:

Senate Bill 1094 amends the Public Health Code to require the Department of Health and Human Services (DHHS), in consultation with the Department of Licensing and Regulatory Affairs (LARA), to provide all of the following regarding Michigan nursing homes: guidance on quality-of-life accommodations, visitation policies, a report on plans for improved testing, and a process for approving care and recovery centers and designated areas for coronavirus-positive individuals. It also prohibits admission or retention of *coronavirus*-positive individuals in nursing homes, with certain exceptions. The bill took effect October 22, 2020.

*Coronavirus* means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

### **The bill requires DHHS, in consultation with LARA, to do all of the following by November 15, 2020:**

Develop and submit to the House and Senate standing committees on health policy a report that is based on relevant guidance from the federal Centers for Disease Control and Prevention (CDC) and incorporates recommendations from the Michigan Nursing Homes COVID-19 Preparedness Task Force. The report must include updates to the final recommendations of the Michigan Nursing Home COVID-19 Preparedness Task Force in its August 30, 2020, report, the status on implementation of the recommendations, and a description of any barriers to their implementation. DHHS may use health care systems and hospital capacity data in preparing the report. The report must address each of the following quality-of-life recommendations from the task force:

- Outdoor visits.
- Small-group noncontact activities.
- Communal dining for residents.
- Indoor visitation participation opt-in.
- Resident small-group “pod” opt-in.
- Increased virtual visitation opportunities.
- Staff access to creative engagement ideas.
- Support for meaningful engagement activities.
- Ancillary service providers.
- Visitation volunteers.

- Off-campus health and wellness visits.
- Window visits.

Implement a statewide policy for nursing homes on providing in-person indoor and outdoor visitations. The policy may limit visitations for coronavirus-positive residents or if the nursing home or community is experiencing an outbreak.

Develop and submit a report to the House and Senate standing committees on health policy on DHHS's plan to identify laboratories to process and prioritize nursing home coronavirus tests. The report must include DHHS's plan for ensuring the processing of a high volume of tests, including rapid tests, and expedited results.

Implement a process for the creation of care and recovery centers (CRCs) within nursing homes to provide care to coronavirus-positive individuals who have not met the criteria for the discontinuation of transmission-based precautions from CDC. Nursing homes seeking to operate CRCs must apply to DHHS and meet the following requirements:

- Demonstrate each of the following to DHHS:
  - That the nursing home has at least a 3-star rating based on the Five-Star Quality Rating System established by the federal Centers for Medicare and Medicaid Services.
  - That the nursing home is not operating under a denial of payment for new admissions.
  - That the nursing home is not designated as a "red hand facility," indicating a citation for abuse.
  - That the nursing home meets capacity requirements to designate a dedicated area for coronavirus-positive individuals.
  - That the nursing home has dedicated staff to treat individuals in the CRC.
- Agree to comply with any facility requirements that DHHS considers appropriate to prevent the spread of coronavirus, including infection control safeguards, personal protective equipment, testing, and operational capacity.
- Agree to comply with the following if an individual tests positive for coronavirus and needs to be transferred to a care or recovery center or other location:
  - Provide a notice to the individual, his or her legal representative, and (if the individual consents) his or her emergency contact.
  - That a physician, nurse practitioner, or physician's assistant must provide timely documentation that the individual is medically stable for transfer.
- Any other requirement established by DHHS in consultation with LARA.

Implement a process for the approval of designated areas within nursing homes for coronavirus-positive individuals. A nursing home seeking to establish a designated area must apply to DHHS and meet the following requirements:

- Demonstrate the following to DHHS:
  - That it has a program for retaining and providing the appropriate care and meets other health and safety requirements.
  - That its area meets proper infection control safeguards.

- That there is no longer capacity at CRCs, unless DHHS determines that there are rare and unique circumstances that must be taken into account, or measures that must be taken, to protect the health and safety of an individual.
- Agree to continually evaluate and ensure its ability to meet each requirement for the approval of a designated area.
- Any other requirements established by DHHS in consultation with LARA.

**Prohibition on admitting or retaining certain coronavirus-positive individuals in a nursing home**

An individual cannot be admitted or retained for care in a nursing home if the home is unable to provide for certain care or needs. The bill adds that an individual may not be admitted or retained in either of the following instances:

- The individual has tested positive for coronavirus, is currently receiving treatment at a hospital, and has less than 72 hours remaining in his or her isolation period, according to CDC guidelines. (This provision does not apply if the hospital has determined that it has reached surge capacity.)
- Beginning November 15, 2020, the individual has tested positive for coronavirus, unless the person has since recovered, the nursing home is a CRC, or the nursing home demonstrates to DHHS that it meets the requirements to accept the individual into its approved designated area for coronavirus-positive individuals.

If, by November 15, 2020, DHHS had not implemented a process for the creation of CRCs, the bill would have allowed a nursing home to admit or retain a coronavirus-positive individual until that process was implemented and for up to 30 days thereafter. However, the following document from October 6, 2020, provided the requisite guidance and protocols before the November 15 deadline:

[Guidance and Protocols for MDHHS Designated Care and Recovery Centers 10.9.2020\\_704747\\_7.pdf \(michigan.gov\)](https://www.michigan.gov/documents/coronavirus/Nursing_Home_Final_Report_701082_7.pdf)

MCL 333.21717 and proposed MCL 333.5145

**BACKGROUND:**

Care of individuals in nursing homes has been a subject of intense interest throughout the COVID-19 pandemic. Beginning with Executive Order 2020-50<sup>1</sup> on April 15 and continuing through five intervening EOs to the most recent rules in Executive Order 2020-179,<sup>2</sup> Governor Whitmer issued guidance specific to protections for residents and staff of long-term care facilities. Additionally, the governor established a nursing home preparedness task force intended to guard against a second wave. Their recommendations were issued August 31.<sup>3</sup>

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<sup>1</sup> <http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-50.pdf>

<sup>2</sup> <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-179.pdf>

<sup>3</sup> [https://www.michigan.gov/documents/coronavirus/Nursing\\_Home\\_Final\\_Report\\_701082\\_7.pdf](https://www.michigan.gov/documents/coronavirus/Nursing_Home_Final_Report_701082_7.pdf)

Likewise, the House and Senate passed Senate Bill 956, which addressed assessment and reporting on the state's response to COVID-19 and preparation for a potential second wave of infections. Governor Whitmer vetoed the bill on July 31, 2020.

In her veto message, the governor listed the steps she and her administration had taken to protect nursing home residents, including expedited infection control surveys and ensuring adequate tests and personal protective equipment. Additionally, she pointed to the then-pending task force recommendations.<sup>4</sup>

## **FISCAL IMPACT:**

Senate Bill 1094 would have cost implications in the current fiscal year for DHHS for planning and implementation of policies and procedures, and monthly reporting to the legislature. These activities are not unlike similar tasks that DHHS has undertaken during 2020 related to the COVID-19 pandemic. It is likely that costs for these administrative tasks would be supportable under the current DHHS budget and possibly by federal funds received by the state for costs related to COVID-19 response.

Senate Bill 1094 would be unlikely to have a significant fiscal impact on LARA. Any additional costs incurred under the bill (which would be mainly for administrative costs) would likely be minor and sufficiently offset by existing departmental appropriations and resources.

On a short-term basis, Senate Bill 1094 would have a minimal Medicaid services savings to the state from fewer Medicaid recipients being admitted into a nursing home. Local units of government that own and operate a nursing home could see fewer individuals admitted on a short-term basis as well, which could mean less revenue from nursing home occupancies. Any Medicaid-related savings would be shared approximately 70% federal and 30% state.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>4</sup> [https://content.govdelivery.com/attachments/MIEOG/2020/07/31/file\\_attachments/1508841/SB%20956%20Veto%20Letter.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/07/31/file_attachments/1508841/SB%20956%20Veto%20Letter.pdf)