



House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

## REVISE NURSING HOME SURVEY PROCESS

**House Bill 5460 as enrolled  
Public Act 171 of 2000  
Second Analysis (6-22-00)**

**Sponsor: Rep. Michael Green  
House Committee: Senior Health, Security  
and Retirement  
Senate Committee: Health Policy**

### ***THE APPARENT PROBLEM:***

In its role as the state's regulator of nursing homes, the Department of Consumer and Industry Services is required to make annual visits to each nursing home for the purpose of survey, evaluation, and consultation. In addition to these visits, survey teams return to nursing homes to follow up on citations issued and to ensure that corrective measures have been taken. Further, the department makes unannounced visits to investigate complaints.

Citations that are disputed by nursing home administrators can be reviewed by the Michigan Peer Review Organization in an informal deficiency dispute resolution process. The MPRO is a five-member group consisting of active and former nursing home professionals. If the home still disputes a citation after review by the MPRO, a formal appeal process is available, consisting of a hearing before an administrative law judge (at either the state or federal level, depending on the citation). A ruling by an administrative law judge may be appealed through the judicial system.

Depending on how serious and widespread the deficiencies found, regulators may impose sanctions ranging from repeat visits by surveyors, greater oversight, civil fines, and, most seriously, the loss of Medicaid certification, loss of authority to provide on-the-job training for nurses' aides (requiring training to be done at greater cost in other training programs), and ultimately, loss of licensure for the facility.

Representatives of nursing home administrators report that they see many inconsistencies in the way survey teams operate, and they believe these inconsistencies are due to differing interpretations of key terms used by regulators to cite deficiencies of care, and in some cases due to a lack of training and experience on the

part of surveyors. Reportedly, some surveyors do not give the reason for issuing citations, giving providers no opportunity to correct the deficiency. And, nursing home administrators argue, the interpretation of federal nursing home regulations by state regulators has been consistently out of step with the practice of other states, so much so that Michigan nursing homes are perceived as giving poor quality care (on the basis of number of citations issued) in comparison with other states, when other indicators of quality demonstrate that Michigan nursing homes perform at least at the national average. Nursing home industry representatives argue that this "highly subjective" regulatory climate contributes to high staff turnover, difficulties in training staff, difficulty in recruiting and retaining management staff, and denial of Medicare and Medicaid reimbursement, which in turn leads to major financial problems culminating in more cases of homes closing and nursing home care chains going bankrupt.

Industry representatives suggest that the current regulatory climate could be improved through instituting a more collaborative process, rather than a punitive one, to ensure quality of care in Michigan nursing homes.

### ***THE CONTENT OF THE BILL:***

The bill would amend the nursing home survey provisions of the Public Health Code to require certain experience among survey team members, require these surveyors to participate in training, require the Department of Consumer and Industry Services to report to the legislature on its survey process and results, require the department to clarify certain terms as they are applied in the regulatory process, and require nursing homes to post their survey results for public review.

House Bill 5460 (6-22-00)

Departmental consultation with providers. Current law requires licensees (nursing homes) to cooperate with the department in carrying out its responsibilities under the statute. Further, it allows the department to provide professional advice and consultation as to the quality of facility or agency aspects of health care and services provided by the licensee. The bill would amend this provision to require the department to provide such advice and consultation to nursing homes, to the extent allowed by law.

Survey team membership. The bill would amend the code to require that, within one year after the effective date of the bill, the department assure that each newly hired nursing home surveyor, as part of his or her basic training, was assigned full-time to a licensed nursing home for at least 10 days within a 14-day period to observe actual operations outside of the survey process, before beginning oversight responsibilities. Further, the bill specifies that a member of a survey team could not be employed by a nursing home or a nursing home management company doing business in the state at the time of conducting a survey. And, the department could not assign an individual to be a member of a survey team for a visit at a nursing home in which he or she had been employed within the preceding five years.

Continuing education. The department would be required to provide, semiannually, for joint training with nursing home surveyors and providers on at least one of the ten most frequently issued federal citations in the state during the past calendar year. And, the bill would require nursing home survey team members who are licensed health professionals to earn at least 50 percent of their required continuing education credits in the field of geriatric care. For pharmacists, the requirement would be at least 30 percent.

Departmental reports to the legislature. The bill would require the Department of Consumer and Industry Services to develop a protocol for the review of citation patterns compared to regional outcomes and standards and complaints regarding the nursing home survey process. The review would have to result in a report to the legislature.

In addition, the bill would require the department to report by March 1 of each year to the House and Senate appropriations subcommittees, the fiscal agencies, and the standing committees having jurisdiction over issues involving senior citizens on:

- the number of surveys conducted;
- the number requiring follow-up surveys;

- the number referred to the Michigan Public Health Institute for remediation;
- the number of citations per nursing home;
- the number of night and weekend complaints filed;
- the number of night and weekend responses to complaints conducted by the department;
- the average length of time for the department to respond to a complaint filed against a nursing home;
- the number and percentage of citations appealed; and
- the number and percentage of citations overturned and/or modified.

In addition, the department would have to report annually to the House and Senate Appropriations Committees and to the House and Senate standing committees having jurisdiction over issues involving senior citizens on the percentage of nursing home citations that are appealed, and the percentage of nursing home citations that are appealed and amended through the informal deficiency dispute resolution process.

Clarification of terms. The Department of Consumer and Industry Services, in consultation with nursing home provider groups, the American Medical Directors Association, the Department of Community Health, the state long term care ombudsman, and the federal Health Care Finance Administration, would be required to clarify certain terms, as those terms are used in Title XVIII and Title XIX of the federal Social Security Act and as applied by the department to provide more consistent regulation of nursing homes in Michigan. The terms to be defined are: a) “immediate jeopardy”; b) “harm”; c) “potential harm”; d) “avoidable”; and e) “unavoidable”. Further, the department would be required to instruct and train surveyors in the use of these clarifications in citing deficiencies.

Nursing home requirements. The bill would require nursing homes to post their survey reports in a conspicuous place within the home for public review.

(Note: Enrolled House Bill 5252, which became Public Act 170 of 2000, also amends Section 333.20155 of the Public Health Code, and addresses hospital inspections. In order to preserve the changes made by Public Act 170, Enrolled House Bill 5460 (Public Act 171) contains the same amendatory language. For further

information, see the House Legislative Analysis Section's analysis of House Bill 5252, dated 5-4-00.)

MCL 333.20151 and 333.20155

***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bill has no fiscal implications. (5-30-00)

***ARGUMENTS:***

***For:***

Nursing homes are among the most highly regulated facilities overseen by state government. Those who administer nursing homes face the enormous challenge of providing high quality, humane care to a population that is increasingly medically fragile, where chronic underfunding, difficulties in attracting and retaining qualified staff, and intense scrutiny from regulators, media, and the public are constant factors. Michigan nursing home administrators cite many examples of overzealous state regulators who, instead of helping to improve nursing home care, simply make a difficult task more difficult. Proponents of the bill provide examples such as: citations issued for a home failing to hang pictures in a resident's room, when the resident did not desire pictures to be displayed; for having a coffee pot in the family visiting lounge; for certain bathroom heating fixtures purported to be a burn hazard, though no resident had ever been injured by them in 25 years; for not locking the door to a room containing fire alarm equipment, though the local fire inspectors required the door to be unlocked; and for paint peeling off a wall in an administrator's office. These examples demonstrate a regulatory attitude that is focused less on quality of care issues than on a desire to punish or intimidate providers. What is needed, industry officials say, is more understanding between parties of what is expected during survey visits, and a more collaborative approach to achieving quality care.

The bill would move the state's nursing home regulators in this direction by, among other things, requiring new survey team members to spend part of their basic training time working in a nursing home setting; requiring joint training between surveyors and providers on frequently issued citations; and requiring that surveyors who are licensed health professionals (nurses, dietitians, sanitarians, and the like) include courses in geriatric care among their continuing education requirements. These requirements would improve the level of understanding among surveyors about what it is like to work in and run a nursing home,

and help them to make sounder judgments about whether so-called offenses are actually problems that threaten resident safety or care. Industry officials say that citations ought to be focused on serious, quality of care issues, and not on cosmetic or other frivolous matters. In addition, the bill would help to reign in those individual surveyors who are overzealous. It would require the department to develop a protocol to review the citation patterns of the Michigan nursing home survey process in comparison to regional patterns, and would require a report to the legislature on these matters.

Finally, a significant aspect of the bill is its requirement that certain terms be clarified, so all concerned with nursing home quality may have greater understanding of the terms and how they are to be applied by regulators in assessing the quality of care in nursing homes. For example, clarification of terms such as "avoidable" and "unavoidable", as they are applied to a decline in a resident's health, will help those providing treatment in a home and surveyors to come to a common understanding about methods of assessment and care. The bill would require the department to clarify the terms in consultation with nursing home providers, nursing home medical directors, the Department of Community Health, the state long term care ombudsman, and federal regulators.

***Against:***

Of the 3,919 nursing home citations issued by DCIS surveyors in 1999, only 709 were submitted to the peer review organization for review, and of those, 79 percent were supported in full, 11 percent were amended in some way, and 10 percent were deleted (or overruled). This amounts to only 3.8 percent of the total number of citations issued being amended or overruled – and 96 percent upheld or not appealed. This kind of record directly refutes arguments that surveyors are issuing too many unsupported citations. It should be noted that the review panel that looks at disputed citations is composed of active and retired nursing home administrators - peers of the people who are being regulated. This organization upholds the department's surveyors in the great majority of cases. And, it should be noted, citations are not issued by individual surveyors, but are issued by the department after review by the entire survey team and by supervisors.

What is more, the department is already engaged in joint training with the regulated providers, and these training sessions have been well attended and well received by all those who have attended.

Although considerably improved over earlier proposals, this legislation can be viewed as an attempt to intimidate regulators into issuing fewer citations. It would tip the scale – which many would argue is already skewed – even further in the direction of the industry. Yes, Michigan’s nursing homes are cited for violations more frequently than in many other states. But other states reportedly issue more fines, or higher fines, than does Michigan. This may simply reflect the manner in which Michigan has chosen to administer its regulatory program, as states are given broad latitude by the federal Health Care Financing Administration to design their regulatory programs. The state has placed its emphasis on attaining compliance with standards, rather than on being punitive. In fact, state regulators report that they are pressured by the federal HCFA and by consumer and advocacy groups to provide stricter enforcement, not less. Indeed, a recent federal General Accounting Office (GAO) study was critical of the state’s complaint investigation process, calling it inadequate to protect residents from abuse, neglect, preventable accidents, and medication errors. Rather than directing efforts at “regulating the regulators”, the legislature should be attending to serious quality of care issues and taking substantive steps toward serious solutions.

Analyst: D. Martens

---

■ 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.