

Legislative Analysis



HOMES FOR THE AGED: WAIVER OF AGE LIMITATION

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Senate Bill 635 (Substitute H-2)
Sponsor: Sen. Bev Hammerstrom
House Committee: Senior Health, Security and Retirement
Senate Committee: Health Policy

First Analysis (3-16-04)

BRIEF SUMMARY: The bill would provide new criteria for the Director of the Family Independence Agency to use in granting a waiver of the age limitation for admission into a home for the aged.

FISCAL IMPACT: The bill would have a minimal impact on costs to the state.

THE APPARENT PROBLEM:

Homes for the aged, which are licensed and regulated by the Family Independence Agency (FIA), provide 24-hour room, board, and supervised personal care to 21 or more unrelated, nontransient individuals who are at least 60 years of age. Residents of homes for the aged include people who, due to age, mental illness, physical disability, dementia, or Alzheimer's Disease, need assistance with bathing, grooming, dressing, eating, walking, toileting, or the administration of medicine. Homes for the aged do not provide skilled nursing care; individuals needing skilled nursing services are served by nursing homes or private nursing care.

Under provisions of the Public Health Code, a waiver may be granted by the FIA director to an individual younger than 60 if he or she deems the waiver to be in the best interest of the home and the individual making the request. Some believe that the law should be amended to instead require a waiver to be granted if certain criteria are met.

THE CONTENT OF THE BILL:

Currently, under the Public Health Code, a home for the aged cannot admit an individual under the age of 60. Upon the request of a home for the aged, however, the FIA director may waive the age limitation if he or she determines that a waiver would be in the best interests of 1) a resident of the home for the aged and 2) the individual for whom the waiver is sought.

Senate Bill 635 would instead require the FIA director to waive the age limitation if the individual, his or her guardian or legal representative, and the owner, operator, and governing body of the home for the aged, upon consultation with the individual's physician, agreed on each of the following:

- The home for the aged was capable of meeting the individual's medical, social, and other needs as determined in his or her plan of service;
- he or she would be compatible with the other residents; and,
- placement in that home would be in his or her best interest.

In addition, the owner, operator, and governing body of the home for the aged would have to submit, with its request for a waiver, documentation to the director that supported each of the above points. The director would then have to, within five days of receiving the documentation from the home for the aged, 1) determine if the documentation collectively substantiated each of the required points of agreement; and 2) approve or deny the waiver. A written notice of the denial and the reasons for the denial would have to be sent to the requesting party.

MCL 333.21311

HOUSE COMMITTEE ACTION:

The committee substitute would revise the criteria in the Senate version of the bill for which a waiver would have to be granted. In addition to the waiver being in the best interest of the individual and compatibility of the individual with the home's other residents, the House substitute would require the home for the aged to be capable of meeting the medical, social, and other needs of the individual as determined by the individual's plan of service. Rather than have the individual's physician be one of the persons listed as having to agree on the waiver request, the physician would just have to be consulted by the other parties. Lastly, the substitute would require supporting documentation to be submitted along with the waiver request by the owner, operator, and governing body of the home for the aged.

FISCAL INFORMATION:

Minimal administrative costs would be incurred by the Family Independence Agency as the bill requires home for the aged documentation to be reviewed for approval or denial of waiver of the age limitation for admission to the home.

ARGUMENTS:

For:

The bill would give greater choice to consumers who because of age, physical or mental disabilities, mental illness, or dementia can no longer live on their own. Homes for the aged provide a wide range of personal services such as assistance with grooming, meals, administration of medications, housekeeping, and laundry. Since skilled nursing care is not provided, homes for the aged provide an affordable option for those needing 24-hour supervision and assistance. Some homes offer private rooms with a private bathroom,

and the cost is generally half that of a nursing home. Depending on where an individual currently resides, or where his or her family is located, a home for the aged may be the nearest facility providing the needed level of care. However, current law restricts residency to individuals who are at least 60 years old. A waiver may be granted if the director of the Family Independence Agency decides that it is in the best interest of an individual and a particular home for the aged. Some feel that a better approach would be to make the waiver mandatory if certain criteria are met.

Rather than leaving the decision to issue the waiver up to a single person, the bill would require agreement between the individual, his or her guardian or legal representative, and the home's owner, operator, and governing body (after everyone consulted with the individual's physician) that the home is capable of meeting the individual's needs, the individual is compatible with other residents (currently, a home may deny residency to a person whose behavior disturbs other residents), and that placement is in the individual's best interest. Documentation would have to be provided by the facility, and the director would be required to respond in a timely manner, including giving the reasons for denying a waiver. (Though not specified in the bill, Section 1205 of the Public Health Code grants a person, after an opportunity for a hearing, the right to a contested case hearing under the Administrative Proceedings Act.)

The bill would give more flexibility to the FIA director and more options to those under 60 who need some care but wish to maintain as much independence as possible for the longest period of time.

POSITIONS:

Representatives of the following organizations indicated support for the bill on 2-19-04:

The Michigan Assisted Living Association.
The Michigan Association of Homes and Services for the Aging.
The Michigan Center for Assisted Living.
Heritage Property Management.
Alterra Healthcare.

Legislative Analyst: S. Stutzky
Fiscal Analyst: Margaret Alston

■ 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.