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HOMES FOR THE AGED: REQUIRE BACK-UP GENERATORS

House Bill 4766 as passed by the House
Second Analysis (1-15-04)

Sponsor: Rep. John Pastor
Committee: Senior Health, Security and
Retirement

THE APPARENT PROBLEM:

Nursing homes are required under federal and state laws and regulations to have back-up generators available for use during power outages. However, homes for the aged do not have such a requirement. Homes for the aged serve persons 60 years and older, have more than 20 beds, and provide 24-hour supervision and protection. Services such as help with social activities, dressing, feeding, bathing, and transfer into and out of wheelchairs are provided, but not skilled nursing care. Some homes serve a very disabled population or persons with dementia, where others may serve a very diverse and mobile population.

In case of a power outage, it is imperative that a facility be able to maintain lighting of exits sufficient to safely evacuate residents, and to maintain critical safety systems such as telephones, fire detection and suppression systems (such as smoke alarms and sprinklers), and refrigeration units for safe handling of food and medications. Therefore, some believe that homes for the aged should be required to maintain similar emergency generator systems as required for nursing homes.

THE CONTENT OF THE BILL:

The bill would add two new sections to the Public Health Code to require a home for the aged seeking a license or a license renewal to have an emergency generator system and for nursing homes to comply with state and federal laws and regulations regarding emergency generator systems. During an interruption of the normal electrical supply, the emergency generator system would have to, at a minimum, be capable of the following:

- Provide not less than four hours of service.
- Generate enough power to provide lighting at all entrances and exits and to operate equipment to maintain fire detection, alarm, and extinguishing

systems, telephone switchboards, heating plant controls, and other critical mechanical equipment essential to the safety and welfare of the residents, personnel, and visitors.

A home for the aged that was licensed as of the bill's effective date would not have to comply with the above requirement for an emergency generator system until the home underwent any major building modification as defined in the bill. However, the home would still be required to have, at a minimum, an executed written contract for the use of a generator in the event of an interruption of the normal electrical supply until such time as the facility underwent any major building modification. The home would also have to notify the local medical control authority and the local law enforcement agency that it did not have an emergency generator on site.

A copy of the contract would have to be provided to the Department of Consumer and Industry Services upon request. The department would have to develop clear and uniform rules to be used in determining what constituted an acceptable contract for the purpose of compliance. Further, additional rules for the operation and maintenance of an emergency electrical system in a home for the aged could be developed by the department.

(Note: Oversight of homes for the aged lies with the Bureau of Family Services, formerly within the Department of Consumer and Industry Services. Executive Order 2003 – 18, which took effect December 7, 2003, transferred the Bureau of Family Services from CIS to the Family Independence Agency and renamed CIS the Department of Labor and Economic Growth.)

A facility that failed to comply with the bill's requirements would be subject to a civil penalty of not more than \$2,000 for each violation. Each day a violation continued would be considered a separate offense and would have to be assessed a civil penalty

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of not less than \$500 for each day during which the failure continued.

In addition, a licensed nursing home would be required to have, at a minimum, an emergency generator system that complied with existing state and federal law, including state and federal rules and regulations. Failure to comply would subject the nursing home to a civil penalty as provided under existing state and federal law, including state and federal rules and regulations.

The bill would take effect six months after it was enacted.

MCL 333.21435 and 333.21735

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would require licensed homes for the aged to have an emergency generator system to run critical electrical systems in the event of a power outage. The requirement would be virtually identical to that required of nursing homes, except that due to the smaller size of homes for the aged and the typically low-income population they serve, these facilities would not have to have an emergency generator on site. Compliance with the bill could be accomplished by having a contract in force with a company that would supply a home – on a priority basis – with a generator if a power outage should occur. The provision pertaining to nursing homes merely places in statute a reference to current federal and departmental rule requirements.

Response:

As written, the bill appears to only allow a contract for the use of a generator during a power outage for those homes in existence at the time the bill takes effect. Even if a new home is built or an existing home significantly remodeled, depending on its size and location, it may not be practicable to have an on-site generator due to the amount of fuel that would also have to be stored. All homes for the aged should be allowed to have a contract in force for use of a generator in lieu of an on-site generator at the discretion of the Department of Consumer and Industry Services (or the Family Independence Bureau after December 7, 2003).

POSITIONS:

The Department of Consumer and Industry Services supports the bill. (11-7-03)

A representative from the state's Long-term Care Ombudsman Office indicated support for the bill. (11-6-03)

A representative from the AARP indicated support for the bill. (11-6-03)

A representative from the Health Care Association of Michigan/Michigan Center for Assisted Living indicated a neutral position on the bill. (11-6-03)

Analyst: S. Stutzky

■ 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.