



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 1026 (Substitute S-1 as reported)  
Senate Bill 1027 (Substitute S-1 as reported)  
Senate Bill 1028 (Substitute S-1 as reported)  
Senate Bill 1029 (Substitute S-1 as reported)  
Senate Bill 1030 (Substitute S-1 as reported)  
Sponsor: Senator Bill Hardiman (S.B. 1026)  
Senator Alan L. Cropsey (S.B. 1027)  
Senator Alan Sanborn (S.B. 1028)  
Senator Bev Hammerstrom (S.B. 1029 & 1030)  
Committee: Families and Human Services

Date Completed: 2-13-06

### **RATIONALE**

About 50,000 adults in Michigan live in assisted living facilities, which include adult foster care facilities and homes for the aged. These facilities provide care for individuals over 60 who are unable to live alone because of developmental or physical impairment or mental illness, but who do not need the level of care provided in a nursing home. In 2005, in response to concerns about the quality of care provided to residents of these facilities, the Governor asked the Department of Human Services (DHS) and the Department of Community Health (DCH) to review the administrative rules regulating assisted living providers. Although no rule changes have been officially promulgated, seven sets of proposed revisions were drafted and circulated. An advisory workgroup consisting of industry representatives, providers, and others was formed to consider the rules beginning on August 25, 2005. After meeting eight times over two months, the group was dissolved on October 13, 2005.

Some members of the workgroup and others have raised concerns about various aspects of the draft proposals. Among other things, the proposals would require providers to report certain employment information, including wages, benefit structures, turnover rates, employee retention information, and Social Security numbers and employment records for each employee. The draft rules

would require the DHS or the DCH to take these factors into account when issuing a license, but would consider a collective bargaining agreement with employees to be evidence of compliance with certain requirements. Some have expressed concern that the rules would give preferential treatment to facilities with collective bargaining agreements, and could create the impression that the State was encouraging organized labor as a means of compliance with the rules. To address these concerns, it has been suggested that rules favoring or discriminating against employers with collective bargaining agreements should be prohibited.

### **CONTENT**

**The bills would amend various statutes to prohibit the promulgation of a rule or exception to a rule under the Public Health Code, the Social Welfare Act, the Adult Foster Care Licensing Act, and the Mental Health Code that discriminated for or against providers, facilities, or employers based on whether they had a collective bargaining agreement with employees; or that used collective bargaining status, level of wages, or fringe benefits to demonstrate or excuse compliance with State licensing or regulatory requirements.**

The bills are described below.

## **Senate Bill 1026 (S-1)**

The bill would amend the Administrative Procedures Act to specify that a rule or exception to a rule promulgated under the following statutes could not discriminate in favor of or against any provider, facility, or employer based on the presence or lack of a collective bargaining agreement with employees, and collective bargaining status, level of wages, or fringe benefits could not be used to demonstrate or excuse compliance with State licensing or regulatory requirements under the following statutes:

- The Public Health Code.
- The Social Welfare Act.
- The Adult Foster Care Facility Licensing Act.
- The Mental Health Code.

## **Senate Bills 1027 (S-1)-1030 (S-1)**

Senate Bills 1027 (S-1), 1028 (S-1), 1029 (S-1), and 1030 (S-1) would amend the Adult Foster Care Facility Licensing Act, the Social Welfare Act, the Public Health Code, and the Mental Health Code, respectively, to specify that a rule or an exception to a rule promulgated under the Act or Code could not discriminate in favor of or against any provider, facility, or employer licensed under the Act or Code based on the presence or lack of a collective bargaining agreement with employees, and collective bargaining status, level of wages, or fringe benefits could not be used to demonstrate or excuse compliance with State licensing or regulatory requirements.

MCL 24.232 (S.B. 1026)  
400.710 (S.B. 1027)  
400.1 & 400.6 (S.B. 1028)  
333.2233 (S.B. 1029)  
330.1114 & 330.1114a (S.B. 1030)

## **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**

Drafted rules for adult foster care facilities and homes for the aged would give preferential status to providers that had a collective bargaining agreement with their employees. The rules would establish increased administrative and reporting

requirements for all licensed facilities in the State, but would consider the existence of a collective bargaining agreement to signify compliance with the requirements. The rules would favor facilities using organized labor, and could send the signal that the easiest way to comply with the rules would be to enter into a collective bargaining agreement. The State should not be in the position of either encouraging or discouraging organized labor. The government's role should be neutral, and the bills would ensure that the State maintained a neutral position.

The proposed rules would use wages and benefits as evidence of compliance with certain licensing requirements, implying that wages are a measure of the quality of care in a facility. There is no evidence to indicate that is the case. Many workers in these facilities take great personal pride in their work, and have entered the field because of a desire to serve others. Higher paid employees do not necessarily provide a higher level of care. The employers have to balance the costs of wages and benefits with the cost to their residents. Increasing wages could drive up the cost of care and harm the elderly people living in these facilities. The licensing agencies should be focused on quality of care in assisted living facilities, not on wage and benefit packages. Those are issues that should be negotiated between the employer and employee, and are already regulated by the Department of Labor and Economic Growth.

### **Opposing Argument**

Reportedly, some assisted care facilities that are licensed by the State have refused to recognize unions, fired workers for engaging in union activities, and otherwise disregarded the rights of their workers. The proposed rules would help to prevent those activities.

**Response:** It is not the place for the DHS and DCH to be regulating labor relations or wages and benefits. The market, not the government, should determine wage levels. In addition, if employers violate the law by engaging in unfair labor practices, there are legal recourses available. Licensing agencies should not be enforcing labor laws, but should focus on the quality of care in assisted living facilities.

Legislative Analyst: Curtis Walker

## **FISCAL IMPACT**

Long-term care advocates have expressed concern that final administrative rules regulating the provision of adult foster care services would include a provision exempting facilities with collective bargaining agreements with their employees from some administrative responsibilities. It is not known what the fiscal impact of this exemption would be on the State and local units of government. Since final administrative rules for adult foster care facilities have not, as yet, been promulgated by the State, these bills would have no fiscal impact on State or local government.

Fiscal Analyst: David Fosdick

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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.