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BILL ANALYSIS

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House Bill 4789 (Substitute H-2 as passed by the House)  
Sponsor: Representative Barb Vander Veen  
House Committee: Senior Health, Security, and Retirement  
Senate Committee: Health Policy

Date Completed: 9-19-06

## **CONTENT**

### **The bill would amend the Public Health Code to do the following:**

- **Allow a nursing home to use a dining assistant to feed residents who needed assistance or encouragement with eating and drinking, but did not have complicated feeding problems, with the residents' consent.**
- **Require a nursing home to provide dining assistants with training through a program approved by the Department of Community Health (DCH), and prohibit a nursing home from paying a dining assistant until he or she successfully completed the program.**
- **Require a dining assistant to work under the supervision of a registered professional nurse (R.N.) or a licensed practical nurse (L.P.N.).**
- **Require nursing homes that had committed specified violations to obtain DCH approval before using dining assistants.**
- **Require the DCH to issue an interim report on the use of dining assistants, if the final report on the Michigan Dining Assistant Pilot Project were not completed by May 1, 2006.**

"Dining assistant" would mean an individual who met the bill's requirements and who was paid by the nursing home only to feed nursing home residents, or who was used under an arrangement with another agency or organization.

The bill would take effect on September 30, 2006, unless the Legislature concluded, after consulting with the DCH, reviewing the interim or final report, if completed, of the Dining Assistant Pilot Project, and holding at least one meeting open to the public for discussion of the report, that the use of dining assistants within a nursing home had a detrimental impact on patient care and well-being and repealed the section that the bill would add.

The bill is described below in further detail.

### **Dining Assistants**

Under the bill, except as otherwise provided, with the consent of a resident or his or her designated representative, a nursing home could use a dining assistant to feed residents who, based on the charge nurse's assessment of the residents and their most recent plan of care, needed assistance or encouragement with eating and drinking, but did not have complicated feeding problems, including difficulty swallowing, recurrent lung aspirations, tube or parenteral feedings, or behavioral issues that could compromise nutritional intake.

The charge nurse's assessment and plan of care would have to be documented in the residents' medical records. For residents who were assigned a dining assistant and were

not on a quarterly resident plan of care, the charge nurse would have to perform a special quarterly assessment to monitor the appropriateness of using the dining assistant.

### Training Program

A nursing home that chose to use dining assistants would have to give them training through its own dining assistant training program approved by the DCH, or by arranging for another approved program to provide the training. In order to be approved, the training program would have to include a one-hour practicum of direct resident contact, a written examination, and courses on each of the following totaling at least 15.5 hours:

- Dining assistants program overview.
- Resident rights.
- Communication and interpersonal skills.
- Appropriate responses to resident behavior.
- Recognizing changes in residents.
- Infection control.
- Assistance with feeding and hydration.
- Feeding techniques.
- Safety and emergency procedures.
- End of life.

The nursing home could not pay an individual as a dining assistant until he or she successfully completed a dining assistant training program. A nursing home could not allow a person younger than 17 to work as a dining assistant.

### Scope of Duties

A dining assistant would have to work under the supervision of an R.N. or an L.P.N. A dining assistant's sole purpose would be to provide feeding assistance to residents. He or she could not perform any other nursing or nursing-related tasks, such as toileting or transporting residents. Except as otherwise provided in the bill, a dining assistant could provide feeding assistance only under the direction of an R.N., L.P.N., or certified nurse aid.

("Supervision" would mean an R.N. or L.P.N. who oversaw the work of a dining assistant and designated a resident to whom feeding assistance was to be provided, and was physically present in the nursing home and immediately available to provide help in the event of an emergency. "Direction" would mean being within the field of vision of where the feeding assistance was being provided and immediately available to provide help in the event of an emergency. "Immediately available" would mean being capable of responding to provide help if needed to a dining assistant at any time either in person or by voice or call light system, radio, telephone, pager, or other method of communication during a feeding.)

A dining assistant would not be nursing personnel and could not be included in computing the ratio of patients to nursing care personnel or used to supplement or replace nursing personnel.

Except as provided below, a dining assistant could provide feeding assistance only in designated areas and could not feed residents in their rooms. A dining assistant could not be assigned more than three residents at one time. Because providing feeding assistance to residents would be providing direct services to residents, dining assistants would be subject to the criminal background checks under Section 20173. (That section provided for criminal history checks for employment applicants for nursing homes, county medical care facilities, and homes for the aged, but was repealed effective April 1, 2006.)

With the approval of the charge nurse, a dining assistant could feed a resident in his or her room if the resident were unable to make it into a designated dining area. An R.N. or L.P.N.

would not have to be physically present in the resident's room during the feeding, but would have to be immediately available to provide help if needed. A dining assistant who was feeding a resident in his or her room could not be assigned to assist another resident at the same time.

#### Written Records

A nursing home would have to maintain a written record of each person used as a dining assistant. The record would have to include, at a minimum, the complete name and address of the individual and the date he or she successfully completed the training program, along with a copy of the written record of the satisfactory completion.

#### DCH Approval

A nursing home could not use dining assistants without obtaining from the DCH written approval that included a monitoring plan to ensure the health, safety, and welfare of the facility's residents, if the nursing home met any of the following:

- Had received an actual harm dietary-related citation within the immediately preceding year.
- Had received a staffing level citation within the immediately preceding two years.
- Had a ban on admissions imposed within the immediately preceding two years.
- Had received an immediate jeopardy citation for nursing-related issues within the immediately preceding two years.
- Had received more than twice the statewide average number of citations on the two most recent surveys.
- Did not complete, or provided inaccurate, eating, hydration, and weight status information in residents' charts for the most recent survey.

#### Family Members & Friends

The bill specifies that nothing in it would prohibit a family member or friend from providing feeding assistance to a resident within the nursing home, or require a family member or friend to complete the dining assistant training program. A nursing home, however, could offer to provide the program to family members and friends.

#### DCH Report

If the final report on the merits of the Michigan Dining Assistant Pilot Project conducted by the DCH and Michigan State University were not completed by May 1, 2006, the DCH would have to issue an interim report on the use of dining assistants within a nursing home by June 1, 2006, and, by July 1, 2006, present it to the standing committees of the Senate and the House of representatives that reported the bill.

Proposed MCL 333.21794

Legislative Analyst: Julie Cassidy

#### **FISCAL IMPACT**

The addition of dining assistants would increase staffing costs beyond those mandated through nursing staffing ratios. As Medicaid nursing home rates are rebased each year, the bill would lead to an increase in State Medicaid costs.

Fiscal Analyst: Steve Angelotti

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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.