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Senate Bill 884 (as introduced 12-15-11)
Sponsor: Senator Goeff Hansen
Committee: Families, Seniors and Human Services

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CONTENT

The bill would amend Article 17 (Facilities and Agencies) of the Public Health Code to do the following:

- Revise requirements for newly hired nursing home surveyors, and require a criminal history check on all nursing home surveyors.
- Require that representatives from certain nursing facility provider organizations participate in the planning process for joint provider and surveyor training sessions.
- Require that at least one registered nurse be a member of each survey team.
- Require the Department of Licensing and Regulatory Affairs (LARA) to work with nursing facility provider organizations to train surveyors on electronic medical records software.
- Revise requirements for LARA to report to the Legislature.
- Require LARA to meet quarterly with representatives of certain nursing facility provider organizations.
- Delete a requirement for a clarification work group.
- Require LARA biennially to review and update clinical process guidelines.
- Require LARA to create a clinical advisory committee to review and make recommendations regarding the clinical process guidelines and outcome measures.
- Establish survey process requirements, including deadlines for review of a nursing facility's plan of correction and survey revisits.

- Specify that high-performing nursing facilities would be eligible for certain grants.
- Prescribe survey requirements for special focus facilities.
- Require enforcement penalties to be at the lowest-allowable level for findings directly related to a nursing facility's self-reported incidents.
- Require LARA to give strong consideration to informal dispute resolution conducted by the Michigan Peer Review Organization.

New Hires/Criminal History Check

Article 17 requires LARA to make annual and other visits to each health facility or agency for the purposes of survey, evaluation, and consultation. The Department must ensure that each newly hired nursing home surveyor, as part of his or her basic training, is 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 the trainee begins oversight responsibilities. The bill would require instead that each newly hired nursing home surveyor be assigned full-time to two separate nursing facilities that have different demographic profiles for at least two 10-day rotations to observe those operations.

The bill also would require the State to establish a process that ensured all of the following:

- A newly hired nursing home surveyor did not assume oversight responsibility during his or her training period.
- An observation made by the newly hired nursing home surveyor during the training period was not the sole basis of a deficiency citation against the nursing home.
- A nursing home surveyor was not assigned as a member of a survey team for a nursing home in which he or she received training for two standard surveys following the training received in that nursing home.

Beginning July 1, 2012, LARA would have to perform a criminal history check on all nursing home surveyors.

Planning Process/Surveyor Training/Survey Teams

Article 17 requires LARA to provide semiannually for joint training with nursing home surveyors and providers on at least one of the 10 most frequently issued Federal citations in the State during the past year.

The bill would require representatives from all nursing facility provider organizations to participate in the planning process for the joint provider and surveyor training sessions. The Department would have to include at least one representative from nursing facility provider organizations representing at least 30 facilities statewide in all routine surveyor training sessions with the intent to clarify regulatory policy, procedures, guidelines, and applications for survey performance.

The Department would have to make available online the general Civil Service position description related to the required qualifications for individual surveyors, and would have to use the required qualifications to hire, educate, develop, and evaluate surveyors.

The Department also would have to ensure that at least one registered nurse was a member of each survey team, and that additional survey team members included a variation of qualified health professionals, including social workers, therapists, dietitians, pharmacists, administrators, physicians, sanitarians, and others who had the expertise necessary to evaluate specific aspects of nursing home operation.

Use of Medical Records Software

Under Article 17, LARA must require periodic reports and a health facility or agency must give the Department access to books, records, and other documents to the extent necessary to carry out the purpose of Article 17 and rules promulgated under it. The bill would require LARA to work with the nursing facility provider organizations to identify and train surveyors on the most frequently used electronic medical records software.

Reports to the Legislature

Article 17 requires LARA to report annually to legislative appropriations subcommittees and standing committees having jurisdiction over issues involving senior citizens, and to the Senate and House Fiscal Agencies, on the initial and follow-up surveys conducted on all nursing homes in Michigan. The report must contain certain information, including the number referred to the Michigan Public Health Institute for remediation. The bill would refer instead to the number referred to the Michigan Peer Review Organization for remediation. The report also must include the number of citations per nursing home. The bill would refer instead to the average number of citations per nursing home for the most recent calendar year.

The bill also would require the annual report to include all of the following:

- Information regarding the progress made on implementing the administrative and electronic support structure to coordinate all nursing facility licensing and certification functions efficiently.
- The number of annual standard surveys of nursing facilities that were conducted during a period of open survey or enforcement cycle.
- The number of abbreviated complaint surveys that were not conducted on consecutive days.
- The percent of all form CMS-2567 reports of findings that were released to the nursing facility within the 10-working-day requirement.
- The percent of provider notifications of acceptance or rejection of a plan of correction that were released to the nursing facility within the 10-working-day requirement.

- The percent of first revisits that were completed within 60 days from the date of survey completion.
- The percent of second revisits that were completed within 85 days from the date of survey completion.
- The percent of letters of compliance notification to the nursing facility that were released within 10 working days of the date the revisit was completed.
- A summary of the discussions from the quarterly meetings with nursing facility provider organizations that would be required under the bill (described below).

(Form CMS-2567 is the Centers for Medicare & Medicaid Services' (CMS's) Statement of Deficiencies and Plan of Correction.)

In addition, Article 17 requires LARA to report annually to the standing committees on appropriations and the 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. The bill would require that report to include a summary of the quality assurance review of the amended citations and related survey retraining efforts to improve consistency among surveyors and across the survey administrative unit that occurred in the year being reported.

Quarterly Meetings with Provider Organizations

The bill would require LARA to meet quarterly with at least one representative from each nursing facility provider organization representing 30 or more nursing homes statewide. At the meetings, LARA and the organization representatives would have to discuss opportunities for enhanced promotion of nursing facility performance, including programs that encouraged and rewarded providers that strived for excellence.

At the meetings, the parties also would have to discuss seeking quality improvement to the survey and enforcement process, including clarifications to process-related policies and protocols that included at least improving the surveyors' quality and

preparedness; enhanced communication between regulators, surveyors, and providers; and ensuring fair enforcement and dispute resolution by identifying methods or strategies that could resolve identified problems or concerns.

In addition, at the meetings, LARA and the provider organization representatives would have to discuss promoting transparency across provider and surveyor communities, including applying regulations in a consistent manner and evaluating changes that had been implemented to resolve identified problems and concerns; providing consumers with meaningful information; and identifying positive and negative trends, and factors contributing to those trends, in the areas of resident care, deficient practices, and enforcement.

Clarification Work Group

The bill would delete a requirement that a clarification work group consisting of LARA, in consultation with a nursing home resident or a member or a nursing home resident's family, nursing home provider groups, the American Medical Directors Association, the State Long-Term Care Ombudsman, and the Federal Centers for Medicare and Medicaid Services, clarify certain terms as they are used in Federal law and applied by LARA, to provide more consistent regulation of nursing homes in Michigan.

Clinical Process Guidelines/Advisory Committee

Article 17 requires LARA to establish clinical process guidelines and compliance protocols with outcome measures for all of the following areas and for other topics where the Department determines that clarification will benefit providers and consumers of long-term care:

- Bed rails.
- Adverse drug effects.
- Falls.
- Pressure sores.
- Nutrition and hydration, including heat-related stress.
- Pain management.
- Depression and depression pharmacotherapy.
- Heart failure.
- Urinary incontinence.
- Dementia.

- Osteoporosis.
- Altered mental states.
- Physical and chemical restraints.

The bill would require LARA biennially to review and update all clinical process guidelines as needed and to continue to develop and implement clinical process guidelines for topics that had not yet been developed from the above list and other topics identified as a result of the quarterly meetings required under the bill. The Department would have to include training on new and revised clinical process guidelines in the joint provider and surveyor training sessions, as those clinical process guidelines were developed and revised.

Article 17 requires LARA to create a clinical advisory committee to review and make recommendations regarding the clinical process guidelines with outcome measures. Under the bill, beginning July 1, 2012, representatives from each nursing facility provider organization representing 30 or more facilities statewide would have to be permanent members of the clinical advisory committee.

Article 17 also requires LARA to appoint physicians, registered professional nurses, and licensed practical nurses to the clinical advisory committee, along with professionals who have expertise in long-term care services, some of whom may be employed by long-term care facilities.

The bill would require the Department, beginning July 1, 2012, to appoint representatives from each nursing facility provider organization as permanent members of the clinical advisory committee. At the quarterly meetings required under the bill, LARA and the representatives from the nursing facility provider organizations representing 30 or more facilities statewide would have to review the new and revised clinical process guidelines and outcome measures to make the final recommendations to the Department before the guidelines were adopted.

Article 17 authorizes LARA to give grants, awards, or other recognition to nursing homes to encourage the rapid implementation of the adopted clinical process guidelines. Under the bill, upon availability of funds, the Department would have to give those grants, awards, or other

recognition to nursing homes for rapid implementation or maintenance of the guidelines.

Survey Process

The bill would require nursing home health survey tasks to be facilitated by one administrative unit of LARA's Bureau of Health Systems to ensure consistent and efficient coordination of the nursing home licensing and certification functions for standard and abbreviated surveys. By December 31, 2013, LARA would have to develop and implement an electronic system to support coordination of these activities.

When scheduling annual standard surveys, LARA would have to avoid overlap with any other open survey and enforcement cycle by closing out any open enforcement cycle before starting an annual standard survey while maintaining the Federal requirement for standard survey interval.

All abbreviated complaint surveys would have to be conducted on consecutive days until complete. All form CMS-2567 reports of survey findings would have to be released to the nursing facility within 10 working days after completion of the survey.

Departmental notifications of acceptance or rejection of a nursing facility's plan of correction would have to be reviewed and released to the nursing facility within 10 working days of receipt of the plan.

All survey first revisits would have to be conducted within 60 days after the date the survey was completed, and all second revisits would have to be conducted within 85 days after that date. Letters of compliance notification to nursing facilities would have to be released to the nursing facility within 10 working days of all survey revisit completion dates.

The bill would require LARA to accept a nursing facility's evidence of substantial compliance instead of requiring a postsurvey revisit as the Department considered appropriate. A desk review could be made available depending on the scope and severity assessment of the deficiency. ("Desk review" would mean administrative review by LARA in lieu of an on-site revisit.)

If there were no deficiencies contested with a scope and severity assessment higher than Level 2 and if there were no enforcement action, the nursing facility's evidence of substantial compliance would have to be conducted as an office review of deficiencies and of written information submitted by the nursing facility. ("Level 2 citation" would mean that term as defined by the CMS's survey protocol grid defining scope and severity assessment of deficiency.)

Grants

Under the bill, high-performing nursing facilities would be eligible to receive a grant, up to \$5,000 per nursing facility each two consecutive standard survey cycle periods. The grant would be from the Civil Monetary Fund and could be used for participation in a recognized quality improvement program. A "high-performing nursing facility" would be a nursing facility for which all surveys conducted in the previous two consecutive standard survey cycles had not had a survey deficiency citation above Level 2.

Special Focus Facilities

The bill would require special focus facilities to be surveyed every six months. The Department would have to expand use of the special focus facility designation as described in the Centers for Medicare and Medicaid Services' Survey and Certification Memorandum, #10-32-NH to assist special focus facilities with achieving and maintaining substantial compliance with Federal performance requirements. (According to that CMS memo, special focus facilities are nursing homes that have a track record of substandard quality of care.)

Enforcement Penalties/Dispute Resolution

Under the bill, enforcement penalties selected for imposition or applied in any nursing facility, as a result of findings directly related to a nursing facility-reported incident, would have to be at the lowest level allowed under Federal certification enforcement protocols.

Informal dispute resolution conducted by the Michigan Peer Review Organization would have to be given strong consideration upon final review by LARA. In the annual report to the Legislature, LARA would have to

include the number of reviews referred by the Michigan Peer Review Organization and, of those reviews, the number of citations that LARA overturned.

MCL 333.20155 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate but likely slightly negative effect on the State's finances. To the extent that the surveyor hiring practices required under the bill are not already being practiced by the Bureau of Health Systems, some new personnel costs could be associated with ensuring that all survey teams had at least one registered nurse and that other members of the teams contained a variety of other health professionals as specified in the bill.

The bill also would result in some new administrative costs associated with required meetings with nursing facility provider organizations, and from reviewing and updating clinical process guidelines biennially.

Finally, the bill would make nursing facilities that had no survey deficiencies above Level 2 in the previous two survey cycles eligible to receive a grant of up to \$5,000 to participate in a recognized quality improvement program. Funding for these grants would be from the Civil Monetary Fund, which receives revenue from civil fines collected from nursing facilities that are found to be in violation of applicable State laws and rules.

Fiscal Analyst: Josh Sefton

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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.