



**House
Legislative
Analysis
Section**

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REGULATE NURSING POOLS

House Bill 6099 as passed by the House
Second Analysis (12-21-90)

Sponsor: Rep. David M. Gubow
Committee: Public Health

THE APPARENT PROBLEM:

The continuing problem of nursing shortages has resulted in hospitals, nursing homes, and other health care facilities turning to nursing pools to meet short term staffing needs caused by temporary staff absences and vacancies. Nursing pools, in fact, have become an integral part of the health care delivery system, accounting for about 18 percent of all nursing hours worked, according to a 1989 survey conducted by the Health Care Association of Michigan, an organization representing 240 long term care facilities. The same study also showed that nursing pools accounted for 25 percent of the nursing costs of long term care facilities.

Nursing pools developed and grew in response to the health care system's needs. But unlike health facilities and employment agencies, which are regulated by state statute, nursing pools are virtually unregulated.

This lack of regulation has resulted in a number of problems, both for facilities using nursing pool services and for employees of nursing pools. Legislation has been introduced to address these problems.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code, adding a new section to regulate "nursing pools," that is, businesses that provide temporary nurses (both registered professional nurses and licensed practical nurses) and nurses aides to health facilities or agencies.

More specifically, the bill would prohibit people from establishing or maintaining nursing pools without being registered under the bill, and would establish criminal penalties for those who violated the bill's provisions.

Application for registration. Application for registration would have to be on a form provided by the Department of Public Health, and would have to give any information considered necessary by the department. At the very least, an application would have to give the name and address of each owner and operator of the nursing pool and, if the applicant were a corporation, a copy of the corporation's articles of incorporation, its current bylaws, and the names and addresses of each officer and member of the board and of each shareholder owning more than five percent of the corporation's stock. In addition, applications would have to give the professional qualification of the people responsible for operating the pool and describe the services, facilities, and personnel of the pool.

The department would have up to 30 days after receiving an application to grant or refuse an application for registration. Each business location would have to be registered, including those outside of Michigan which provided services within the state.

Requirements. The department would have to promulgate and enforce rules establishing standards for the employment of

competent and qualified nurses by nursing pools, along with procedures regarding the registration (including registration renewal) and operation of nursing pools.

Nursing pools would have to comply with the bill's requirements and the department's rules regarding the qualifications of nurses employed in health facilities or agencies. In addition, nursing pools would have to have written policies and procedures concerning the handling of complaints against employee nurses and requiring personal interviews, reference checks, and annual evaluations of employee nurses.

Nursing pools would have to check every three months with facilities using the pool's employees, and would use the information regarding the employee's performance at the facility in the employee's annual evaluation. Nursing pools also would have to make sure that the nurses and aides that they employed met certain requirements. For example, employees would have to have valid licenses or registrations and meet the minimum licensing, registration, training, and continuing education standards for the position in which they would be working. In addition, the pool would have to make sure that each employee tested negative for tuberculosis, had an orientation to the facility at which they were to work, and gave each temporary employer proof of the employee's valid license or registration.

Nursing pools would not be able to restrict employment opportunities for their employees in any way nor could pools require their employee nurses (a) to recruit new nurse employees from nurses working at facilities where the employee is temporarily assigned, or (b) to pay the pool employment fees should the employee be hired by a facility as a permanent employee.

Every two years, nursing pools also would have to tell the department the average, minimum, and maximum hourly charges to nursing homes and hospital long-term care units for the services of the pool's employees. (The department would then make this information publicly available.)

Exemptions. "Nursing pool" would not include the following:

- individuals not connected with a nursing pool or other kind of employment agency who independently contracted to provide temporary services to health facilities;
- someone permanently employed by a health facility who was responsible for personnel decisions; and
- consultants who were paid by the health facility for management or consulting services and who employed nursing personnel in the course of providing the management or consulting services.

Certificates of registration. Certificates of registration would be valid for up to a year after they were issued (unless suspended or revoked), and would not be transferable. If ownership or management of a registered nursing pool was sold or

transferred, the registration would be voided and the new owner would have to apply for registration anew.

Liability insurance. Nursing pools would have to carry medical malpractice insurance or (in the case of referral services that do not provide their own employees for hire but merely refer self-employed, independent nurses) professional and general liability insurance. Referral services would have to require that the nurses they refer for temporary employment also carried professional and general liability insurance.

Fees. The application fee for registration would be \$100.

Penalties. Failure to register, or any other violation of the bill's provisions (including rules promulgated under the bill or orders issued under the bill), would be a misdemeanor, punishable by a fine of up to \$5,000 for each day of the violation.

Other provisions. The bill also would amend other sections of the health code to add nursing pools to existing provisions regarding license actions (suspensions, revocations, denial, limitations) by the department, including grounds for such action, notification, and hearing requirements.

MCL 333.0165 et al.

FISCAL IMPLICATIONS:

The Department of Social Services says that there may be an increase in operating costs of nursing staff pools for expenditures to meet standards, and that such increases may be passed on to facilities and agencies reimbursed by Medicaid. (11-13-90)

ARGUMENTS:

For:

The lack of regulation of nursing pools has resulted in a number of problems. Pools sometimes send untrained or inadequately trained personnel (a particular problem, reportedly, with nursing aides); facilities have been left short-staffed when their temporary employees failed to show up for work and pools have not responded to complaints that facilities have had with this and other problems with their temporary employees; the temporary employees provided by pools do not have an opportunity for orientation to the facility, with the result that they are unfamiliar with the patients, facility policies, and specific life safety procedures; because pools sometimes fail to screen their employees adequately, someone fired by one facility for improper practices can be hired by a pool and sent to that same (or another) facility; pool employees reportedly have been threatened with fines (charged by the pool) if the employee accepted permanent employment with a facility; and pool employees reportedly have actively recruited permanent employees of facilities to join the pool.

The bill would address all of these problems, regulating nursing pools and requiring that they be registered with the state. Just as health facilities now are held legally accountable for their employees, so, too, nursing pools should be held accountable for their employees.

For:

Under federal law passed in 1987, aides employed by nursing homes have to meet specific training and testing requirements, a process which currently is being put into place. The recently enacted federal budget reconciliation act further requires that

nursing pool aides used by facilities after January 1, 1991 have completed training before they can be employed. The bill would provide the state with a regulatory framework to enable it to comply with the new federal requirements regarding nursing aides.

POSITIONS:

The Department of Social Services supports the bill. (12-18-90)

The State Employees International Union/Michigan Council 35 supports the bill. (12-17-90)

The Health Care Association of Michigan supports the bill. (12-17-90)

The Michigan Non-Profit Homes Association testified in support of an earlier version of the bill before the House Committee on Public Health. (11-13-90)