

NURSING HOMES

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House Bill 5609 as introduced
Sponsor: Rep. Bronna Kahle
Committee: Health Policy
Complete to 2-10-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5609 would amend the Public Health Code to do all of the following regarding licensure, inspection, and reporting requirements for nursing homes:

- Revise a requirement that each survey team of the Department of Licensing and Regulatory Affairs (LARA) include one registered nurse to instead require one registered professional nurse and one registered professional nurse who is contracted to serve as a quality assurance monitor through the federally designated regional quality improvement organization.
- Revise a criterion for a visit waiver for health facilities and nursing homes from a finding of substantial compliance or an accepted plan of correction on a standard federal certification survey in the last 9 to 15 months to such a finding on the most recent standard annual federal certification survey.
- Remove a requirement that LARA maintain a record of whether a visit and inspection were announced or unannounced and that survey findings from the inspection be taken into account in licensure decisions.
- Generally maintain a prohibition on delegating survey, evaluation, or consultation functions to nongovernmental agencies, except that the bill would allow LARA to contract with the federally designated quality improvement organization to facilitate the survey process for a priority 3 or priority 4 facility-reported incident.
- Amend data points from the information LARA is required to provide annually to the House and Senate, including both of the following:
 - Remove reporting on the number of night and weekend complaints, the average length of time for LARA to report to a nursing home complaint, and the number of citations disputed through informal dispute resolution, among others.
 - Add reporting on the number of nursing home complaints and facility-reported incidents received by LARA, grouped by county. (This would have to be shared as part of the quality assurance process and reviewed by an advisory workgroup.)
- Eliminate references to a clarification workgroup.
- Eliminate a requirement that nursing homes use peer-reviewed, evidence-based nationally recognized clinical process guidelines or best practice resources to develop policies and protocols for specified clinical practice areas.
- Eliminate a requirement that LARA seek approval from the Centers for Medicare and Medicaid Services (CMMS) for a grant program for nursing homes that have achieved a 5-star quality rating from CMMS.

Nursing home grant

The bill would also provide that, beginning January 1, 2022, LARA must provide a nursing home with a grant equal to the amount of civil monetary penalties imposed against that nursing home by the CMMS through the CMMS civil monetary penalty reinvestment program.

The grant would have to be used for enhanced quality improvement activities. In order to receive the grant, the nursing home would have to agree to the activities and the process by which they will be reported to LARA and results will be assessed.

Quality improvement officer

Under the bill, LARA would have to employ an individual to serve as a quality improvement officer, who would have to report criteria by which LARA's certification process will be measured to ensure fairness, accuracy, and timeliness of the survey and enforcement process and share the criteria with an advisory workgroup for review, discussion, and concurrence.

The quality improvement officer also would have to conduct tasks formerly designated to advisory workgroups, including seeking quality improvement to the survey and enforcement process and promoting transparency across provider and surveyor communities.

Finally, the quality improvement officer would have to present findings and actions taken toward improved quality of the survey and enforcement process to an advisory workgroup at each semiannual training session for nursing home surveyors and providers and review and confirm the accuracy of the annual report required under the act.

Citation for immediate jeopardy

The bill would provide that, upon the discovery of a potential *immediate jeopardy*, a member of the survey team must communicate with the nursing home administrator, the director of nursing for the nursing home, or the medical director of the nursing home, if available, to review the issues of concern and give the nursing home an opportunity to share any data or documentation that may have an impact on the LARA director's decision to authorize the issuance of a citation for immediate jeopardy. If a citation for immediate jeopardy were issued, at least one nursing home surveyor would have to remain on-site at the nursing home until the immediate jeopardy was abated.

Immediate jeopardy is described by the CMMS as a situation in which entity noncompliance has placed the health and safety of recipients in its care at risk for serious injury, serious harm, serious impairment or death.¹

Surveys

At the start of any survey, the surveyor would have to conduct an entrance conference with a nursing home administrator's designee to identify the purpose, intent, and focus of the study and any documents needed by the surveyor. At the end of any survey, the surveyor

¹ https://www.cms.gov/Regulations-and-guidance/Guidance/Manuals/downloads/som107ap_q_immedjeopardy.pdf

would have to conduct an in-person exit conference with the nursing home administrator and designee, at which LARA would provide the nursing home with a draft of the CMMS critical element pathway form.

If requested, LARA also would have to provide the nursing home with the surveyor notes at the exit interview or when the survey finding report is released to the nursing home within 10 days of the survey exit date. LARA could not include any interview forms and would have to redact identifying information from the notes to protect the confidentiality of those who provided information to the surveyor.

Dispute resolution

The bill would require that LARA's process for informal dispute resolution include an option for a nursing home to select a review and recommendation from the federally designated regional quality improvement organization of a citation with a scope and severity of level G or higher.

Reporting requirements

The bill would require LARA to develop and implement statewide reporting requirements for facility-reported incidents for any category required by federal regulations and at least all of the following additional categories:

- Elopements.
- Bruising.
- Repeated statements from residents with mental health behaviors.
- Resident-to-resident incidents with no harm.

These reporting requirements would have to exclude the following:

- A resident-to-resident altercation if there is no change in emotional status or physical functioning of each resident involved in the altercation, including no change in range of motion, toileting, eating, or ambulating.
- An injury of unknown origin if there is no change in emotional status or physical functioning of the resident with the injury, including no change in range of motion, toileting, eating, or ambulating.
- An allegation made by a resident who has been diagnosed with a mental illness, including psychosis or severe dementia, if the resident has a history of making false statements that are not based in reality and are documented in the resident's care plan, with interventions to protect the resident.
- An allegation if a thorough assessment does not substantiate the allegation.
- An allegation if the resident or the resident's legal guardian or other legal representative has been informed of the allegation, does not wish for the nursing home to report the allegation, and has received information on how to file a complaint with LARA.

MCL 333.20155 et seq. and proposed MCL 333.21771a

FISCAL IMPACT:

House Bill 5609 would have significant fiscal implications for the Department of Licensing and Regulatory Affairs. Specifically, the requirement regarding contracted registered professional nurses to serve as quality assurance monitors would create significant costs for LARA. The department indicated that given the number of surveys LARA conducts and the duration of these surveys, tens of thousands of hours of third-party contractual services would be required to comply with the bill, likely at a cost of millions of dollars. Total costs would depend on the required number of contracted hours and the contract rate, both of which are presently indeterminate.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.