



**House
Legislative
Analysis
Section**

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HOSPITAL EMERGENCY ROOM CLOSINGS

RECEIVED

House Bill 4413 (Substitute H-4)
First Analysis (11-17-87)

DEC 10 1987

Sponsor: Rep. Floyd Clack
Committee: Public Health

Mich. State Law Library

THE APPARENT PROBLEM:

A series of newspaper articles published early in 1987 reported that critically ill and injured ambulance patients in Detroit and its suburbs were being turned away from the closest or most appropriate emergency rooms because these facilities had been temporarily closed to life-threatening emergencies (also known as "priority one" cases). Detroit Emergency Medical Service (EMS), a city-owned ambulance service, delivers ambulance patients to 15 hospitals, but its drivers regularly are told not to bring certain kinds of emergency cases (usually severe trauma cases) to certain hospitals because their emergency rooms are too busy to handle such cases. Since EMS drivers have no way of knowing ahead of time when a hospital emergency room will be closed temporarily to certain kinds of patients, valuable time—and patients' lives—may be lost while a driver tries to find an emergency room that will accept critically ill or injured patients.

THE CONTENT OF THE BILL:

The bill would add two new sections to the Public Health Code (a) to prohibit hospital emergency departments from transferring patients with emergency medical conditions or in active labor solely because of the patient's inability to pay for medical treatment and (b) to require hospitals to have written policies, approved by the Department of Public Health, regarding closure of their emergency facilities and transfer of emergency patients. The bill also would impose penalties (including possible license revocation) on hospitals that violated either of these two new sections.

Transfer procedures for emergency patients. Under the bill, when someone came to an emergency room requesting examination or treatment, he or she could not be refused treatment or be transferred to another hospital until a physician (or other qualified emergency department staff) had determined whether an emergency condition existed or whether the patient was in active labor. If a patient had an emergency condition or was in active labor, the physician would be required to provide appropriate stabilizing treatment and could then transfer the patient to another facility if such a transfer were medically appropriate. Physicians could transfer patients in active labor or with emergency conditions without first stabilizing them only if the physician certified in writing that the benefits of the transfer outweighed the increased risks to the patient. In any case, patients with emergency conditions or in active labor could not be transferred solely because of an inability to pay for medical treatment.

Temporary closings of emergency rooms and rerouting of patients. Within 60 days of the effective date of the bill, hospitals would be required to have written policies approved by the Department of Public Health concerning the temporary closing of the hospital's emergency department and rerouting of patients. Specific referral arrangements among hospitals would be coordinated either by the department or by the Medical Control

Authority for that area. Policies would have to include descriptions of circumstances that justify a closing, the types of patients who would be affected by a temporary closing, the people involved in authorizing a closing, other available emergency facilities in case of a closing, and how the hospital would inform other providers (including ambulance companies and emergency medical services) of the closing.

Penalties. Penalties, ranging from warnings to license revocations, would be added for failure to follow the procedures required in the bill.

MCL 333.21514 and 333.21514a

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The problem of temporary closings of hospital emergency rooms is a serious one, so serious, in fact, that lives are being endangered and lost because of it. Last March, for example, the Detroit News reported that a 17-year-old Detroiter with a knife in his chest died because he was refused entry to the closest hospital, despite the pleas of the ambulance driver. According to Detroit's EMS supervisor, the day that the 17-year-old died, 11 hospital emergency rooms were closed to certain kinds of patients. And a past president of the Wayne County Medical Society has been quoted as saying that "on any given night, most if not all emergency rooms are closed to severe trauma cases." The bill would address this problem by requiring that patients coming to emergency rooms be examined and, if the patient had an emergency condition, that the patient be stabilized before being transferred. In addition, hospitals would be required to coordinate the closings of their emergency rooms and to provide EMS services and ambulance companies with information on closings and rerouting of patients that would better serve emergency patients and possibly save lives.

For:

The bill would bring state law into conformity with federal regulations presently governing emergency room closings and rerouting of patients. Not only would the bill provide an ongoing structure should federal standards change or be repealed, but it also would allow state level enforcement should federal enforcement prove inadequate, as the present situation in the greater Detroit area would seem to indicate.

Against:

The bill doesn't address the real problem, which is that of providing medical care for indigent patients. Poverty is the problem, not the transferring of patients. Patients who can

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pay don't get "dumped;" patients who can't, do. What is needed is a mechanism for funding indigent care.

Response: The problem of indigent patient care is indeed serious and in need of urgent attention. However, the situation giving rise to the bill is a slightly different one. A number of emergency care providers testified that all emergency room patients presently are being examined by physicians or other qualified emergency room personnel, if only to lessen the likelihood of malpractice lawsuits. The problem arises when an emergency room closes temporarily (at least to certain patients) or transfers certain patients for reasons other than what is medically appropriate for the patient. Emergency room closings or restrictions result from a combination of factors, including a lack of critical care nurses, a shortage of emergency beds, and malpractice lawsuits that make doctors reluctant to treat critically ill or injured patients. Although the bill would solve none of these problems, it would provide for greater accountability and for a better organized (if still overburdened) system of emergency care.

Reply: By prohibiting the transfer of patients with emergency conditions solely because of their inability to pay, the bill does recognize that the "dumping" of indigent patients is part of the problem. Sooner or later this issue will have to be addressed.

Against:

Suspension of hospital licenses for failure to comply with the bill's requirements would not be in anyone's best interests. Instead of removing all hospital care because of inadequate emergency room care, other sanctions for violations should be considered.

Against:

It is wellknown that many poor or indigent patients use hospital emergency rooms inappropriately for primary care, thus taking up valuable resources that are intended for truly emergency medical conditions. Forcing hospitals to take patients who abuse the system will only contribute to the further breakdown of an already overburdened system.

Response: The bill does not force hospitals to take patients. It merely requires that they have written, coordinated policies regarding when they will not accept certain patients, and that if they do accept a patient in the emergency room that they do not refuse treatment or transfer a patient with an emergency condition until the patient has been stabilized.

POSITIONS:

The Department of Public Health supported an earlier version of the bill, but has not yet analyzed Substitute H-4. (11-17-87)