



**House
Legislative
Analysis
Section**

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NURSING HOME PREADMISSION CONTRACTS

House Bill 4458 (Substitute H-1) **RECEIVED**
First Analysis (10-8-87)

OCT 22 1987

Sponsor: Rep. Perry Bullard
First Committee: Public Health
Second Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

The Social Security Act prohibits Medicaid-approved nursing homes from evicting residents due to a change in the source of payment, and from demanding that a private-pay rate be paid for a specified period of time before Medicaid is accepted as payment in full. Despite substantial federal penalties for failure to comply, there are frequent reports, including reports in Michigan, of nursing homes requiring contracts that commit a family to private pay for a minimum term before Medicaid will be accepted and that threaten eviction for failure to comply with the contract. For better enforcement of the prohibitions, and to give families the ability to commence civil suits against nursing homes who violate the requirements, amendments to the state's Public Health Code are sought.

THE CONTENT OF THE BILL:

House Bill 4458 would prohibit certain nursing home preadmission practices that discriminate against people who are, or who will be, eligible for Medicaid reimbursement.

The bill would amend the Public Health Code to prohibit nursing homes that participate in the federal Medicaid program from requiring as a condition of admission or of continued stay in the nursing home that an applicant or patient (or his or her representative) agree either (a) to remain a private pay patient (or to pay the private pay rate) for a specified period of time before applying for Medicaid or (b) to make a gift or donation. Existing contracts with such requirements would become unenforceable upon the effective date of the bill, and within 30 days of the effective date of the bill nursing homes would have to notify each private pay patient with whom the nursing home had such a contract that the contract no longer was a bar to the patient applying for Medicaid. Anyone violating this prohibition against private pay requirements would be guilty of a misdemeanor, punishable by a jail term of up to one year, a fine of between \$1,000 and \$10,000, or both. The violator also would be liable to civil lawsuit for three times the amount of actual damages (or \$1,000, whichever was greater) plus costs and attorney fees.

The bill also would prohibit nursing homes from requiring applicants or patients to have appointed legal guardians or conservators or to have executed a durable power of attorney as a condition of the applicant's admission or the patient's continued stay.

Finally, the bill would require that if a patient who had made payments to a Medicaid-participating nursing home became a newly enrolled Medicaid recipient, the nursing home would be required to accept any retroactive payment from the Department of Social Services and to refund to the patient the private funds paid for care covered by Medicaid, less amounts determined to be required

copayments and payments for services not covered by Medicaid. For 90 days following receipt of a refund, the refund would not be considered income or an asset of the patient for the purposes of determining Medicaid eligibility.

MCL 333.21766 and 333.21799c

FISCAL IMPLICATIONS:

According to a Department of Social Services analysis dated June 19, 1987, the bill would cause an unknown increase in Medicaid expenditures for nursing homes as private pay arrangements were eliminated.

ARGUMENTS:

For:

The private-pay requirements imposed by many nursing homes are not only illegal under federal law, they unfairly limit access for and discriminate against those who are or may become eligible for Medicaid. At present, there is little the state, local law enforcement, or families can do to combat the practice, because it is federal law which prohibits it, and there is no provision for private suits. The bill would rectify this situation by establishing prohibitions and penalties in state law, and providing for civil suits that could recover treble damages. The bill also would prevent nursing homes from unfairly abridging patient rights by requiring that a guardian be appointed or a durable power of attorney be executed as a precondition of admission.

Against:

Nursing homes impose private-pay requirements out of necessity, so that they may be assured adequate income to offset inadequate Medicaid payments, and timely cash flow to pay for care given. Requirements for guardians or powers of attorney similarly assure that someone will be responsible for a resident, so that decisions of various sorts — whether financial, medical, or something else — may be made in a timely manner. By prohibiting such requirement, the bill would unfairly burden nursing homes.

POSITIONS:

The League of Women Voters of Michigan supports the bill. (10-6-87)

The Michigan Nonprofit Homes Association supports the bill. (10-6-87)

H.B. 4458 (10-8-87)