House Legislative Analysis Section

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

HOSPITAL "SWING BED" PROGRAM

House Bill 4525 as enrolled
Second Analysis (9-12-88)

Sponsor: Rep. Charlie Harrison, Jr.
House Committee: Public Health
Senate Committee: Health Policy

THE APPARENT PROBLEM:

Many hospitals, especially those located in rural areas, are facing a two-pronged problem: difficulty in placing patients in skilled nursing home beds within the community, and a decrease in overall occupancy rates. Federal law permits the granting of a certificate of need (CON) for alternative bed use by small rural hospitals. (Under the CON process, proposals for new health care services are reviewed in an effort to restrain rising costs and achieve a more equitable allocation of health care resources.) Under the federal program, rural hospitals that meet certain criteria are reimbursed through Medicare for operating "swing beds." This program permits an acute care facility to designate a certain percentage of beds for rendering a type of intermediate care to patients who are no longer in the acute phase of their illness. Michigan, however, currently has no law allowing the designation of swing beds. Some people believe that permitting hospitals to develop alternative uses for acute beds would provide patients with an intermediate level of care between acute medical-surgical care and nursing home care, while alleviating some of the financial difficulties facing small rural hospitals.

THE CONTENT OF THE BILL:

The bill would amend the Certificate of Need Act within the Public Health Code to allow a hospital with under 100 licensed beds to be granted a certificate of need for a short-term nursing care (or "swing bed") program under which up to ten beds could be used for patients who had been discharged from acute care and for whom places could not be found in a nursing home or long-term care unit located within a 50-mile radius of home. A participating hospital would have to agree to transfer a patient to a nursing home or long-term care unit located within 50 miles of the patient's residence within five business days of being notified, orally or in writing, of a bed's availability.

There would be no fee for this special certificate of need, which would be granted to any applicant that met the criteria for the certificate as specified in the bill, among which is compliance with federal "swing bed" requirements. Also, participating hospitals could not have any uncorrected licensing, certification, or safety deficiencies for which a plan of correction had not been accepted by either the Department of Public Health or the state fire marshal, or both, and the hospital would have to provide satisfactory evidence of its difficulty placing patients in skilled nursing home beds during the previous 12 months. The 100-bed maximum would not include beds used for newborns, psychiatric patients, or inpatient substance abuse patients. The criteria for approval could be modified beginning two years after taking effect by the Certificate of Need Standards Commission (to be created by a related bill, House Bill 5145).

A hospital would have to operate a swing bed program in compliance with the requirements of Title XVIII of the federal Social Security Act, including those establishing reasonable charges for short-term nursing care services, as well as with the requirements of the state act. Hospitals could not discharge a patient from an acute care bed and admit the patient to the short-term nursing care program unless it was determined medically necessary by a physician, and could only admit patients pursuant to an admissions contract approved by the public health department. Hospitals could not charge for, or otherwise try to recover the cost of, a length of stay exceeding 20 days, and could not allow the total number of patient days for the program to exceed the equivalent of 1,825 patient days for a single state fiscal year. (A one-year variance of the patient-days limit could be granted to a hospital that demonstrated to the department the existence of an immediate need for skilled nursing beds within a 100-mile radius.) Hospitals would have to provide the health department with data the department considered necessary, including the number of patients and patient days, and the types of care to which patients are released. Within two years after the bill's effective date, the department would have to report to the legislature on the status of short-term nursing care programs and recommend whether they should be continued.

The bill would require hospitals with swing bed programs to incorporate into its policies regarding patients rights and responsibilities those rights the health code provides to residents of nursing homes, such as the right to associate and communicate privately with people they choose, the right to retain and use personal clothing and possessions, the right to participate in the planning of their own treatment, and the right to discharge themselves. Hospitals would have to permit representatives of approved organizations access to short-term care patients for certain purposes, including assisting patients in asserting their rights and providing personal, social, and legal services. Further, hospitals would have to assist patients who had been denied coverage for services received in the program in filing an appeal with the Medicare Recovery Project operated by the state's Office of Services to the Aging.

A hospital with a certificate of need for a swing bed program that violated the bill's provisions would be subject to the health code's penalty provisions for the denial, limitation, or revocation of a license or registration.

The bill would take effect October 1, 1988, and would be repealed five years after its effective date. The bill is tie-barred to Senate Bill 64 and House Bills 5145 and 5575, which make other changes to the state's CON program. House Bill 5575 has become Public Act 309 of 1988; the other bills have yet to be enacted.

MCL 333.22208 and 333.22210

FISCAL IMPLICATIONS:

The Senate Fiscal Agency says the bill will result in increased costs to the Department of Public Health but in an amount that cannot be determined. The increase in

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costs would depend on the number of hospitals that seek a certificate of need for a short-term nursing care program and the impact of the additional workload on the department's resources. (6-21-88)

ARGUMENTS:

For:

Michigan is one of only six of 46 eligible states that do not authorize rural hospitals to participate in the federal swing bed program. This restriction creates a hardship for small hospitals already hard hit by the new Diagnostic Related Group (DRG)-based payment system, which designates an expected length of stay for various medical procedures and establishes a set payment for those procedures. Implementing swing bed programs would allow qualified hospitals to provide intermediate care to patients no longer in the acute phase of an illness. Swing beds would help ease financial burdens for hospitals that must now absorb the costs of keeping patients awaiting nursing home placement and providing support care to the terminally ill. According to a recently released survey by the Michigan Hospital Association, small and rural hospitals are in financial trouble and many face closure in the next five years unless the state allows more flexibility to meet the needs of service areas. Small rural hospitals cannot continue to withstand federal and state budget cuts aimed at health care providers. Restrictions should be removed to allow these hospitals greater flexibility in providing services. Swing bed programs would permit them to provide a period of care not now available for transitional patients before nursing home placement.

Response: If there are service needs not being met for which hospital beds could be used, the needs should be verified by health planning agencies and the Department of Public Health so that economically efficient, high quality services can be provided. Alternative uses of hospital beds should not be allowed merely as a method of bailing out some financially troubled hospitals.

For:

Some physicians reportedly have had difficulty in providing their patients with an intermediate level of care that is short of acute-medical care but not as extensive as long-term care offered in a nursing home. Furthermore, some physicians feel it is insensitive to release terminally ill patients from the hospital and subject them to the trauma of a transfer to an extended care facility, which may be located a great distance from their family and physician, for the short time they have remaining. In addition, some nursing homes reportedly are not accepting people who need special care but do not have to be in a hospital to receive it, such as patients requiring feeding tubes, intermittent intravenous medication, and intermittent chemotherapy. Swing beds would provide an intermediate level of care for these types of patients, especially those residing in areas of the state where there is a shortage of long-term care beds.

Against:

Mechanisms should be established to ensure appropriate implementation of alternative use programs. Controls are needed to prevent hospitals from targeting only the most desirable patients for swing beds or otherwise using the program to avoid alleged financial losses. Furthermore, it is not certain that specialized care units are needed for patients who have exceeded the number of treatment days alloted under DRG payment systems since Medicare regulations reportedly provide — through "alternative placement days" — for additional payments for patients who cannot be discharged due to temporary unavailability of skilled nursing facility beds in an area.

Against:

Supporters of alternative uses of hospital beds argue that a short-term nursing care program would satisfy unmet demands for nursing home care in some areas of the state. Unless there is a clear and unmistakeable need for the proposed program, however, the state should give priority to developing services that truly provide patients with health care alternatives — such as home-based care — rather than focusing on only one solution: short-term nursing care.