



**House
Legislative
Analysis
Section**

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

NURSING HOME PATIENT ABUSE

House Bill 4783 (Substitute H-1)
First Analysis (3-29-88)

RECEIVED

Sponsor: Rep. Francis R. Spaniola
Committee: Public Health

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Mich. State Law Libr

THE APPARENT PROBLEM:

When abuse of a nursing home patient occurs, it sometimes goes unreported. Even once abuse is discovered, investigations and prosecutions can be hampered by a lack of strong and specific statutory provisions granting the necessary authority to investigators. Any difficulty that officials have in discovering and investigating patient abuse can only increase the likelihood that such abuse will recur, and that abused patients will go without necessary medical attention. To discourage patient abuse, encourage prompt reporting of such abuse, and facilitate prosecutions of abusers, amendments to the Public Health Code have been proposed that would increase the responsibilities of nursing home owners, hike fines, and strengthen the ability of investigators to obtain needed information.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to make nursing home owners responsible for patient abuse occurring in their facilities, to increase the penalties for nursing home patient abuse, and to grant the attorney general increased powers to investigate nursing home provision violations.

Reporting and preventing nursing home patient abuse. The Public Health Code prohibits nursing home owners, administrators, and employees from physically, mentally, or emotionally abusing patients and requires nursing home administrators or directors to immediately report such abuse, when they know of such occurrences, to the Department of Public Health (DPH). The bill would require nursing home owners who are aware of patient abuse also to immediately report such incidences to the DPH and would further require owners to inform all of their employees about the employees' responsibilities in reporting and acting to prevent patient abuse.

Violations and penalties. It is a misdemeanor punishable by a jail term of up to one year and a fine of \$1,000 to \$10,000 for someone (a) to claim to provide nursing home services without being licensed by the state, (b) to misrepresent the name of the nursing home in certain ways, (c) to use false or misleading information in advertising a nursing home, or (d) to abuse a nursing home patient or for a nursing home owner or administrator to harass or fire an employee who reports an incident of patient abuse. The bill would add to this list of violations the failure of a nursing home owner, administrator, or director to report known incidences of patient abuse and would increase the maximum fine for these violations to \$50,000. The bill also would make it a misdemeanor punishable by a year's imprisonment and a fine of \$1,000 to \$10,000 for a nursing home owner to fail to inform his or her employees of their obligations to report and prevent patient abuse. A nursing home that violates patient rights is assessed a civil penalty on a per-bed basis; the bill would change the basis of calculation from the average number of patients during the 30 days preceding discovery of the violation to the licensed capacity of the nursing home at the time of violation.

Investigation of violations. The bill would add a section granting the attorney general or a prosecuting attorney increased powers, paralleling those provided by the Health Care False Claims Act (Public Act 323 of 1984), to investigate misdemeanor violations of the health code provisions governing nursing homes.

Rules. The bill would require the Department of Public Health to promulgate rules for a quality of care allowance formula that were consistent with the recommendations in the April 1984 final report of the Nursing Home Reimbursement Task Force. These rules would have to be submitted for public hearing by January 1, 1989. (Current law calls for rules based on studies done in the mid-1970's.)

MCL 333.21771 and 333.21799c

FISCAL IMPLICATIONS:

There is no fiscal information at present. (3-28-88)

ARGUMENTS:

For:

With its increases in fines and clearer articulation of nursing home owners' responsibilities, the bill would do much to encourage the prompt reporting of abuse of a patient in a nursing home. With its strong investigative powers for the attorney general and prosecutors, the bill would improve capabilities to stop abuse and prosecute abusers.

Against:

The bill could do more to help to put an end to abuse of nursing home patients. For example, it perpetuates the current law's structure of misdemeanor penalties for various violations, when felony penalties could be more effective. Further, it lets stand existing language that prohibits owners, administrators, and employees from mistreating patients, but does not specifically apply that prohibition to contract workers who are not employees of the nursing home. Finally, the bill contains a provision that says that the attorney general's investigators can exercise their powers when working in conjunction with police; what is needed is a clarification that the exercise of these powers is not contingent on working with police.

POSITIONS:

The Department of Attorney General supports the bill. (3-28-88)

The Area Agencies on Aging Association of Michigan supports the bill. (3-24-88)

The Health Care Association of Michigan supports the bill. (3-28-88)

The Michigan Non-Profit Homes Association supports the concept of the bill but does not have a formal position on the substitute. (3-25-88)

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