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## NURSING HOMES; PATIENT ABUSE

### House Bill 5759 as passed by the House Second Analysis (6-20-00)

**Sponsor: Rep. Sandra Caul**  
**Committee: Senior Health, Security and Retirement**

#### ***THE APPARENT PROBLEM:***

Under the Public Health Code, any person may report cases of physical, mental, or emotional abuse; mistreatment; or neglect of a nursing home resident by a nursing home licensee, administrator, or employee to the Department of Consumer and Industry Services (DCIS). Nursing home employees are required to report incidents to the home's administrator or nursing director, who then is required to make a report to the DCIS. (Physicians and other licensed health care professionals at facilities to which patients are transferred must also report any prohibited acts to the department.) The code requires the department to then investigate the reported incident, and nursing homes are prohibited from evicting, harassing, dismissing, or retaliating against a patient, his or her representative, or an employee who makes a report.

In addition to the Public Health Code provisions, federal law requires that states provide for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide in a nursing home. The individual must be advised of the allegations against him or her, and be given an opportunity for a hearing on the record. If the state finds an allegation of neglect, abuse, or misappropriation of property to be substantiated, it must notify the accused person and the nurse aide registry, which maintains records of patient abuse by nurse aides. Long term care facilities are prohibited from hiring individuals who have been "flagged" on the registry with a substantiated abuse charge (or a criminal conviction).

The Department of Consumer and Industry Services' procedures for investigating allegations of abuse by nurse aides in nursing homes have been criticized as inadequate to protect residents. Nursing homes report that, though they are required to report allegations to the department within 24 hours, the department may take months or years to bring an investigation and hearing process to a final resolution. During these months, no "flag" is placed on the abuser's name in the registry, and so even if the nurse aide has been

discharged from the nursing home where the alleged abuse occurred, he or she can gain employment in another facility and be free to victimize other nursing home patients.

Some people believe that the department's process for investigating allegations of patient abuse needs to be significantly changed, both to decrease the amount of time needed to bring resolution, and to formalize the hearing process.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Public Health Code's provisions regarding the investigation and disciplinary procedures that apply when patient abuse in a nursing home is alleged.

Under current law, a nursing home licensee, administrator, or employee is prohibited from physically, mentally, or emotionally abusing, mistreating, or harmfully neglecting a patient. The bill would modify this provision to prohibit, in addition, the theft or larceny of the personal property of a patient.

Current law requires nursing home employees to report incidents of patient abuse to the nursing home administrator or nursing director, who must then report the matter to the Department of Public Health (now the Department of Consumer and Industry Services), which in turn reports incidents to the Department of Social Services (now renamed the Family Independence Agency). Physicians and other licensed health professionals are also required to report such incidents, and any person may make such a report. Current law requires the department to make an investigation upon receipt of a report.

The bill would expand this provision to specifically make reference to requirements in the federal Social Security Act [Title XVIII, Part A, Section 1819(g)(1)(c)]. The bill would require the Department

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of Consumer and Industry Services to investigate a report of patient abuse allegedly committed by a nursing home employee according to the requirements of federal law. The department would be required to commence an investigation within 10 days after receiving a report, and complete the investigation within 30 days after receiving it. The department could require the person making the report to submit a written report or to supply additional information, or both. After commencing an investigation, the department would be required to notify, in writing, the subject of the complaint of the nature of the allegations. The department could extend the bill's specified time periods for commencing an investigation (10 days) and for completing an investigation (30 days) for not more than an additional 30 days, if the department documented sufficient reason for a delay, including, but not limited to, further investigation or verification of the report.

Within 10 days after completing the investigation, the department would have to notify, in writing, the individual who is alleged to have committed the abusive act. Further, the department would have to send a copy of the notice to the nursing home.

Federal law requires the state to provide the individual with the opportunity for a hearing to rebut the allegations. Under the bill, such a hearing would be conducted as a contested case hearing under the Administrative Procedures Act. The department would be a party to the hearing and would be represented by the attorney general. Further, the department would have to give notice and an opportunity to intervene in the hearing to the nursing home involved. Finally, within 10 days after the completion of the hearing, the department would be required to notify the individual who was the subject of the hearing, and if applicable, the nurse's aide registry maintained by the department, of the results of the hearing.

In addition, the bill would amend this section of the Public Health Code to update references to the Department of Consumer and Industry Services (which now regulates health facilities, rather than the [formerly named] Department of Public Health), and to the Family Independence Agency (formerly the Department of Social Services).

MCL 333.21771

### **BACKGROUND INFORMATION:**

The relevant provision of the federal Social Security Act [Title XVIII, Part A, Section 1819(g)(1)(c)] reads:

*INVESTIGATION OF ALLEGATIONS OF RESIDENT NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY. –The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.*

### **FISCAL IMPLICATIONS:**

According to the Department of Consumer and Industry Services, the bill would have a significant fiscal impact on the department by requiring the assignment of increased resources to the Bureau of Health Services to carry out the requirements of the bill. (5-12-00)

### **ARGUMENTS:**

#### **For:**

The bill would strengthen protection of residents in nursing homes. It would place in statute a process mirroring the language of federal law, which requires allegations of abuse and neglect in nursing homes to be investigated. Though the Department of Consumer and Industry Services carries out this function already, its procedures have been criticized as inadequate.

The bill would significantly shorten the time periods for investigations and appeals. It would require an investigation to begin within 10 days after receiving a report of abuse, and would require the investigation to be completed within 30 days of receiving a complaint.

Further, if the person who is alleged to have committed abuse appeals a departmental finding, the appeal would have to be conducted as a contested case hearing under the Administrative Procedures Act. The department would have to be a party to the hearing and be represented by the attorney general. This would formalize the process and ensure that the department could defend its investigation before a hearing examiner, perhaps ensuring that more departmental investigations would be upheld during the appeal process.

Further, the bill would require the department to notify the employing nursing home and give the facility an opportunity to intervene in the hearing. This is only fair to the nursing home, which has a stake in the process of ensuring that its residents are not abused and that its record of care is not besmirched unfairly.

Finally, the bill would require the department to finalize the appeal process by coming to a decision and notifying the accused person of the results within 10 days after completion of the hearing. This would allow a person who is cleared of an allegation to begin working again, or, conversely, if the appeal is denied, it would allow immediate “flagging” of the abuser in the nurse aide registry, so that other nursing homes would not unwittingly hire the person for another patient care job.

Tightening up the investigation and appeal process so that it is timely and more formalized would be fairer to nurse aides accused of abuse, and to nursing homes that employ them. Most importantly, it would provide greater protection to the vulnerable population that relies upon nursing home caregivers.

### ***Against:***

The Department of Consumer and Industry Services says that the bill would put in place unrealistic time frames for these investigations and appeals. It may not always be practical for the department to commence an investigation within 10 days after receiving a report, as the information received in a complaint is often minimal and requires followup information before an investigation can even begin. Further, this bill would require investigations of nursing home employees to be completed within 30 days, when a similar investigation of another licensed health professional, even a physician in a complex medical case, is allowed 90 days. The department suggests that the concepts envisioned in the bill could be made more workable by adopting the same time frames established under current law for investigations of other health professionals. This would amount to a one-year period

in which to complete investigation, hearing and appeal. The bill’s proposed time frames will create real problems and will divert resources from other types of health professional cases.

With regard to appeal hearings, it seems unnecessary to require all of these cases to be conducted as contested case hearings. This will also require additional staff resources. In addition, the 10-day time frame for completing a final order is completely unrealistic - the normal turnaround time for similar cases is 90 days. If quick action is needed on a particular case, the department has the option of a summary suspension under the Administrative Procedures Act.

Further, it is problematic to allow the nursing home to be a party to the hearing. This provision would essentially turn the administrative hearing into an employer/employee grievance process, which is unprecedented and undesirable.

### ***POSITIONS:***

The Health Care Association of Michigan supports the bill. (6-20-00)

The Department of Consumer and Industry Services does not support the bill. (6-20-00)

Analyst: D. Martens

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