



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5609 (Substitute H-2 as passed by the House)
Sponsor: Representative Bronna Kahle
House Committee: Health Policy
Senate Committee: Health Policy and Human Services

Date Completed: 6-9-22

CONTENT

The bill would add Part 221 (Federal Certification of Nursing Homes) to the Public Health Code to do the following:

- **Require the Department of Licensing and Regulatory Affairs (LARA) to administer a certification process for a nursing home in conformance with Federal law.**
- **Require LARA to implement a quality assurance monitoring process to conduct surveys for certification, which would have to include the quality assurance review of citations.**
- **Require LARA to ensure that each nursing home survey team conducting a standard survey was composed of an interdisciplinary group of professionals, at least one of whom would have to be a registered professional nurse.**
- **Require LARA to limit the number of nursing home surveyors that conducted a standard survey to the recommended number of surveyors identified in survey procedural guidelines established by the Centers for Medicare and Medicaid Services (CMS).**
- **Require LARA to limit the length of a nursing home standard survey to a reasonable duration.**
- **Prescribe standard survey requirements.**
- **Prescribe a process for if a deficient practice occurred at a nursing home.**
- **Prescribe a review process for LARA to review and authorize the issuance of a citation for immediate jeopardy or substandard quality of care, which would include a desk review, if LARA received a request for a desk review.**
- **Allow a nursing home that was issued a citation to request an appeal through an informal dispute resolution process.**
- **Require LARA to develop and implement statewide reporting requirements for facility-reported incidents.**
- **Require LARA to report to the Legislature by March 1 each year.**
- **Require LARA to establish and implement progressive discretionary enforcement actions for the purposes of Part 221**

The bill also would amend Part 201 (General Provisions) to delete various provisions substantially similar to those that Part 221 would add, to delete a provision specifying that a license for a hospital is valid for two years and that provisional and limited licenses may be valid for one year, and to delete the definitions of "Advisory Commission" and "public member". Additionally, the bill would amend Part 217 (Nursing Homes) to delete a provision allowing a person aggrieved by the LARA

Director's decision to approve or disapprove a nonprofit corporation that has the rendering of assistance as one of its primary purposes to appeal it to the Nursing Home Task Force and to delete a provision prescribing the manner in which an individual must report a reasonable suspicion of the abuse, mistreatment, or harmful neglect of a patient to report to LARA.

The bill would repeal Sections 20121 through 20127, 20155a, and 20211 of the Code. (Sections 20121 through 20127, collectively, create the Health Facilities and Agencies Advisory Commission and prescribe its membership and duties, Section 20155a requires LARA to facilitate nursing home health survey tasks, and Section 20211 requires LARA to issue a summary of its activities in relation to licensing and regulation every six months.)

Survey Team

Section 20155 of the Code requires LARA to make at least one visit to each licensed health facility or agency every three years for survey and evaluation for the purpose of licensure.

The Department must ensure that each annual survey team is composed of an interdisciplinary group of professional, one of whom must be a registered nurse. The Code also allows other individuals to be part of the annual survey team. The bill would delete these provisions.

Joint Training

The Code requires LARA to provide for semiannual joint training with nursing home surveyors and providers on at least one of the 10 most frequently issued Federal citations in the State during the past calendar year. The Department must develop a protocol for the review of citation patterns compared to regional outcomes and standards and complaints regarding the nursing home survey process.

The Department must include the review in its report to the Legislature (see below). The bill would delete this provision.

Visit & Inspection Record

The Code requires the Department to maintain a record indicating whether a visit and inspection is announced or unannounced. Survey findings gathered at each health facility or agency during each visit and inspection, whether announced or unannounced, must be taken in account in licensure decisions. The bill would delete these provisions.

Reports

The Code allows the Department to consolidate information provided for any report required under Section 20155 and Section 20155a into a single report. The Department must report to the appropriations subcommittees, the Senate and the House of Representatives standing committees having jurisdiction over issues involving senior citizens, and the Senate and House Fiscal Agencies on March 1 each year on the initial and follow-up surveys conducted on all nursing homes in the State. The Department must include certain prescribed information in the report. In a separate report, the Department also must report the percentage of nursing home citations that are appeals through the informal dispute resolution process, the number and percentage of nursing home citations that are appealed and supported, amended, or deleted through the information dispute resolution process, and a summary of the quality assurance review. The bill would delete these provisions.

Clarification Work Group

The Code requires a clarification work group comprised of LARA in consultation with certain other organizations and entities to clarify certain terms as those terms are used in Title XVIII and Title XIX and applied to the Department to provide more consistent regulation of nursing homes in Michigan. The bill would delete these provisions.

Quarterly Meeting

The Code requires LARA to conduct a quarterly meeting and invite appropriate stakeholders. Individuals who participate in the quarterly meetings, jointly with the Department, may designate advisory workgroups to develop recommendations on opportunities for enhanced promotion of nursing home performance, including programs that encourage and reward nursing homes that strive for excellence.

They also may designate advisory workgroups to develop recommendations on seeking quality improvement to survey and enforcement process, including clarifications to process-related policies and protocols. The Code prescribes certain members of the advisory workgroups. The bill would delete this provision.

Resident Care Policies & Compliance Protocols

The Code requires a nursing home to use peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources to develop and implement resident care policies and compliance protocols with measurable outcomes. The Department must maintain the process by which the Director of the Long-Term Care Division or his or her designee reviews and authorizes the issuance of a citation for immediate jeopardy or substandard quality of care before the statement of deficiencies is made final. Upon availability of funds, LARA must give grants, awards, or other recognition to nursing homes to encourage the rapid development and implementation of resident care policies and compliance protocols that are created from peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources with measurable outcomes to promote performance excellence. The bill would delete these provisions.

License Period

The Code specifies that, except as otherwise provided, a license, certification, provisional license, or limited license is valid for not more than year after the date of issuance.

A license for a hospital is valid for two years, except that provisional and limited licenses may be valid for one year. The bill would delete this provision.

Approval & Disapproval of Nonprofit Corporation

The Code requires the Director to approve or disapprove a nonprofit corporation that has the rendering of assistance as one of its primary purposes.

A person aggrieved by the Director's decision may appeal it to the Nursing Home Task Force. A decision of the Task Force is binding on the Director. The bill would delete this provision.

Reporting Abuse

The Code prohibits a licensee, nursing home administrator, or nursing home employee from physically, mentally, or emotionally abusing, mistreating, or harmfully neglecting a patient. A nursing home employee who has reasonable suspicion of a prohibited act must report the suspicion to the nursing home administrator or nursing director and to LARA.

The Code also prescribes the manner in which the individual required to report a reasonable suspicion of a prohibited act must report the suspicion. The bill would delete this provision.

Certification Process

The bill would require LARA to administer the certification process in Michigan in conformance with 42 USC 1395aa and the "Mission and Priority Document" and "State Operations Manual" published by the Centers for Medicare and Medicaid Services (CMS). "Certification" would mean certification issued by the CMS to a nursing home as evidence that the nursing home complies with requirements under Federal law for participation in Medicare. To the extent that there was a conflict between Part 221 and Federal law, Federal law would control.

Quality Assurance Monitoring Process

The bill would require LARA to implement a quality assurance monitoring process for the purposes of conducting the surveys for the purpose of certification. The quality assurance monitoring process would have to include the quality assurance review of citations as described in Part 221. The Department would have to establish an advisory workgroup to provide recommendations to the LARA on the quality assurance monitoring process. The advisory workgroup would have to include a representative from LARA, representatives from nursing home provider organizations, the State Long-Term Care Ombudsman, and any other representative that the Department considered necessary or appropriate. The advisory workgroup would have to identify and make recommendations on improvements to the quality assurance monitoring process to ensure ongoing validity, reliability, and consistency of nursing home survey findings.

Representatives from each nursing home provider organization that did not own or operate a nursing home representing 30 or more nursing homes statewide and the State Long-Term Care Ombudsman or his or her designee would be permanent members of the advisory workgroup. The Department would have to issue survey certification memorandums to providers to announce or clarify changes in the interpretation of regulations.

The Department would have to ensure that each nursing home survey team conducting a standard survey was composed of an interdisciplinary group of professionals, at least one of whom would have to be a registered professional nurse. Other members of the survey team could include social workers, therapists, dietitians, pharmacists, administrators, physicians, sanitarians, and others who could have the expertise necessary to evaluate specific aspects of nursing home operation.

The nursing home surveyors conducting a standard survey would have to designate a quality assurance monitor. The individual designated as the quality assurance monitor would have to ensure all of the following:

- That survey protocols from the CMS were followed.
- That interpretive regulatory guidance issued by the CMS was applied consistently and noncompliance with the interpretive regulatory guidance was documented in a clear and concise manner.

- An entrance and exit conference was conducted in accordance with survey procedural guidelines established by the CMS.
- That the survey complied with Part 221.

Nursing Home Surveyors

Under the bill, except as otherwise provided, LARA would have to limit the number of nursing home surveyors that conducted a standard survey to the recommended number of surveyors identified in survey procedural guidelines established by the CMS. The Department could exceed the recommended number of nursing home surveyors only for the reasons identified in the guidelines described in Part 221.

The Department would have to limit the length of a nursing home standard survey to a reasonable duration. In determining reasonable duration, LARA would have to consider the average length of surveys nationally.

Standard Survey Requirements

Under the bill, when preparing to conduct any standard survey, LARA would have to determine if there were an open survey cycle and make every reasonable effort to confirm that substantial compliance had been achieved by implementing the nursing home's accepted plan of correction before initiating the standard survey while maintaining the Federal requirement for a standard survey interval and the State survey average of 12 months.

All abbreviated complaint surveys would have to be conducted on consecutive days until complete. All Form CMS-2567 reports of survey findings would have to be released to the nursing home within 10 consecutive days after completion of the exit date of the survey. ("Consecutive days" means calendar days, but does not include Saturday, Sunday, or State- or Federally recognized holidays. "Form CMS-2567" means the CMS form for the statement of deficiencies and plan of correction or a successor form serving the same purpose.)

Departmental notifications of acceptance or rejection of a nursing home's plan of correction would have to be reviewed and released to the nursing home within 10 consecutive days after receiving the plan of correction.

A nursing-home-submitted plan of correction in response to any survey would have to have a completion date not exceeding 40 days after the exit date of the survey. If a nursing home had not received additional citations before a revisit occurred, LARA would have to conduct the first revisit within 60 days from the exit date of the survey.

A letter of compliance notification to a nursing home would have to be released to the nursing home within 10 consecutive days after the exit date of all revisits.

Deficient Practice

The bill specifies that if a deficient practice occurred at a nursing home after the most recent survey of the nursing home under Part 221 and the deficient practice was no longer occurring in the nursing home, LARA would have to evaluate the deficient practice on the request of the nursing home. If the nursing home were not eligible for an evaluation based on requirements from the CMS, LARA would have to notify the nursing home explaining the reason the evaluation could not be not granted.

Citations

Review Process. The bill would require LARA to maintain a process by which the Director of the Long-Term Care Division of LARA reviewed and authorized the issuance of a citation for immediate jeopardy or substandard quality of care before a statement of deficiencies was made final. The review would have to ensure the consistent and accurate application of Federal and State survey protocols and defined regulatory standards. "Immediate jeopardy" would mean that term as defined in the "State Operations Manual" published by the CMS.

On the discovery of a potential immediate jeopardy, a nursing home surveyor would have to communicate with the nursing home administrator, the director of nursing for the nursing home, or the medical director of the nursing home, if available, to review the issues of concern and to give the nursing home an opportunity to share any data or documentation that could have an impact on a decision by LARA to authorize the issuance of a citation for immediate jeopardy. If a citation for immediate jeopardy were issued to a nursing home, LARA would have to do both of the following:

- Contact the nursing home, at least once per day, until the immediate jeopardy was abated.
- Ensure that at least one nursing home surveyor remained on-site at the nursing home until the immediate jeopardy was abated unless LARA determined that having a nursing home surveyor on-site at the nursing home was not practical.

Desk Review. The bill would require LARA to conduct, after receiving a request from a nursing home, a desk review of a citation if the circumstances met the requirements established by the CMS for a desk review instead of an on-site revisit for a standard or abbreviated survey. If LARA determined that the nursing home were not eligible for a desk review, it would have to notify the nursing home with an explanation of why a desk review could not be conducted.

Appeal. Under the bill, a nursing home that was issued a citation could request an appeal of the citation through an informal dispute resolution process from a peer review organization approved by LARA. The Department would have to adopt the recommendations of the peer review organization on whether to support, amend, or delete the citation.

Each quarter, LARA would have to do both of the following:

- Conduct a quality assurance review of amended or deleted citations with the peer review organization for the purposes of identifying whether there was a need for additional training of nursing home surveyors or peer review organization staff.
- Use the findings from the informal dispute resolution process for identifying training topics for the joint provider and surveyor training sessions.

Statewide Reporting Requirements

The bill would require LARA to develop and implement statewide reporting requirements for facility-reported incidents for any category required by Federal regulations and at least all of the following additional categories:

- Elopements.
- Bruising.
- Repeated statements from residents with mental health behaviors.
- Resident-to-resident incidents with no harm.

The reporting requirements developed by LARA would have to exclude the following:

- A resident-to-resident altercation if there were no change in emotional status or physical functioning of each resident involved in the altercation, including no change in range of motion, toileting, eating, or ambulating.
- An injury of unknown origin if there were no change in emotional status or physical functioning of the resident with the injury, including no change in range of motion, toileting, eating, or ambulating.
- An allegation made by a resident who had been diagnosed with a mental illness, including psychosis or severe dementia, if the resident had a history of making false statements that were not based in reality and were documented in the resident's care plan, with interventions to protect the resident.
- An allegation if a thorough assessment did not substantiate the allegation.
- An allegation if the resident or the resident's legal guardian or other legal representative had been informed of the allegation, did not wish for the nursing home to report the allegation, and had received information on how to file a complaint with LARA.

Report

The bill would require LARA to report by March 1 of each year to the standing committees on appropriations and the standing committees having jurisdiction over issues involving senior citizens in the Senate and the House of Representatives on all of the following:

- The number and percentage of nursing home citations that were appealed through the informal dispute resolution process and an independent informal dispute resolution process.
- The number and percentage of nursing home citations that were appealed and supported, amended, or deleted through the informal dispute resolution process and an independent informal dispute resolution process.
- A summary of the quality assurance review of the amended citations and related nursing home survey retraining efforts to improve consistency among nursing home surveyors and across the survey administrative unit that occurred in the year being reported.
- The number of surveys conducted.
- The number requiring follow-up surveys.
- The average number of citations per nursing home.
- The number of night and weekend responses to complaints conducted by LARA.
- The review of citation patterns.
- The number of standard surveys of nursing homes that were conducted during a period of open survey or enforcement cycle.
- The number of abbreviated complaint surveys that were not conducted on consecutive surveyor workdays.
- The percentage of all Form CMS-2567 reports of findings that were released to the nursing home within the 10-working-day requirement.
- The percentage of provider notifications of acceptance or rejection of a plan of correction that were released to the nursing home within the 10-working-day requirement.
- The percentage of first revisits that were completed within 60 days from the date of survey completion.
- The percentage of second revisits that were completed within 85 days from the date of survey completion.
- The percentage of letters of compliance notification to the nursing home that were released within 10 working days of the date of the completion of the revisit.
- A summary of the discussions from the quarterly meetings (described above).
- The number of nursing home complaints and facility reported incidents received by LARA, grouped by county.

The information from nursing home complaints and facility reported incidents reported by LARA would have to be shared as part of the quality assurance monitoring process and reviewed by the advisory workgroup.

Discretionary Enforcement Actions

Under the bill, to the extent permitted by Federal law, LARA would have to establish and implement progressive discretionary enforcement actions for the purposes of Part 221 that considered the least restrictive enforcement action if a nursing home did not have a history of receiving citations in past nursing home surveys and increased in severity if a nursing home had a history of receiving similar citations in past nursing home surveys.

MCL 333.20102 et al.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

The bill would result in some new administrative costs for LARA and would have no fiscal impact on local units of government. The bill would make various changes to the nursing home survey process that could require the establishment of new Department policies and procedures, which would result in administrative costs through that process. Also, the bill would require the promulgation of new administrative rules, which would result in additional administrative costs. Generally, these new administrative costs should be short-term in nature. The Department also would incur new administrative costs related to the creation and administration of the quality assurance monitoring process that would be created under the bill, and from the changes in reporting requirements, to the extent that they differed in scope of work relative to the reporting LARA already performs and administers.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.