



**House
Legislative
Analysis
Section**

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NURSING HOMES: COMPLAINTS

House Bill 4062 (Substitute H-1)

Sponsor: Rep. Lisa Wojno

House Bill 4079 (Substitute H-2)

Sponsor: Rep. Gary Woronchak

**Committee: Senior Health, Security and
Retirement**

First Analysis (3-11-03)

THE APPARENT PROBLEM:

The Public Health Code allows any person who believes that nursing home laws or regulations have been violated to make a complaint to the Department of Consumer and Industry Services requesting that an investigation take place. The provision says that the request must be made as a written complaint or the department will assist a person making an oral complaint to turn the request into a written complaint within seven days. Some people believe all such complaints should be acted on expeditiously and fear that this is not always the case, with some reported responses dragging out past a month. This is particularly worrisome for complaints involving allegations of abuse or injury. One proposed method of ensuring a quick response to complaints involving serious issues involves the creation of a 24-hour, toll-free, consumer complaint hotline within the Department of Consumer and Industry Services, and requiring that complainants receive a response within 24 hours.

Further, it is not uncommon that when a nursing home resident or his or her family member has a question or concern, he or she is not sure how to direct it. Simply telling a staff member does not necessarily ensure resolution. Though administrative rules already require that nursing homes have procedures in place to receive complaints and investigate them, residents or family members may be unaware of these procedures or unaware of which staff member is designated to receive complaints.

In an effort to address this concern, Public Act 11 of 2002 was enacted to amend the Public Health Code to require a nursing home to post, in an area accessible to residents, employees, and visitors, the name, title, location, and telephone number of a staff person in the nursing home who is responsible for receiving complaints and conducting complaint investigations, and a procedure for communicating

with that individual. A nursing home has to have a staff person on duty 24 hours a day, 7 days a week, who is responsible for receiving complaints and conducting complaint investigations.

The staff person on duty as designated in the bill has to respond to each complaint, inquiry, or request using the procedures adopted by the nursing home according to administrative rule R 325.20113. (See *Background Information*.) To assist the person responsible for receiving complaints in a nursing home in performing his or her duties, the Department of Consumer and Industry Services (CIS) has to post specified information on its Internet web site.

Even though DCIS already has a 24-hour hotline to receive complaints, and despite the changes brought about by Public Act 11, apparently some problems still remain. The brochure distributed by the department under Public Act 11 lists the phone number for the complaint hotline but also states that calls are handled in the order that they are received. In addition, calls go to a voice mail system after 5 p.m. and on weekends and holidays. According to a representative of DCIS, the department places priority on those complaints involving a threat to a resident's health, but some feel that action on some serious complaints may be delayed if calls received after 5 p.m. on Fridays are not screened until the following Monday. In addition, some feel that the brochure is difficult and confusing to read. Though a complaint form is provided on the Internet, not all residents or their family members have access to or knowledge of the Internet. Further, though the brochure gives the address for where a written complaint can be mailed, there is no information or guidelines about what information should be included in the complaint.

House Bills 4062 and 4079 (3-11-03)

Legislation has been proposed to require a hotline that could expedite investigation of complaints involving serious injury or life-threatening conditions, and to revise the brochure required by Public Act 11.

THE CONTENT OF THE BILLS:

House Bill 4062 would amend the Public Health Code (MCL 333.21799a) to require the Department of Consumer and Industry Services to provide a 24-hour hotline for consumer complaints and inquiries and to require a 24-hour response by the department for certain serious complaints. House Bill 4079 would amend the Public Health Code (MCL 333.20194 and 333.21799a) to revise provisions for the pamphlet that the Department of Consumer and Industry Services is required to develop regarding the procedure for filing a complaint against a health facility or against a licensed health professional employed by a health facility.

House Bill 4062. Under the Public Health Code, any person who believes that nursing home laws or regulations have been violated may make a complaint to the Department of Consumer and Industry Services, requesting that the nursing home be investigated. The request must be submitted to the department as a written complaint, or the department must assist the person in reducing an oral request to a written complaint within seven days of receiving the oral complaint. The bill would delete the current requirement that complaints be submitted in writing and the time frame for an oral complaint to be reduced to a written complaint (although consumers could still choose to complain in writing and still could receive assistance in reducing an oral complaint that was made according to the bill's provisions).

The bill would require the department to provide a toll-free consumer complaint and inquiry telephone line, accessible 24 hours a day and staffed at a level to ensure a response to each complaint and or inquiry that the department designates as a priority complaint within 24 hours. The department would have to establish a response system for the hotline that included an intake form that would serve as a written complaint. In addition, if the complaint were a priority complaint, the department would also have to establish a system for forwarding an intake form to an investigator by the next business day after the intake form is filled out by the phone line staff, and for forwarding a copy of the completed intake form to the complainant by the next business day after it was completed.

The bill would define "injury" as an injury requiring prompt medical attention by trained medical personnel. A "serious injury" would be a permanent serious disfigurement, serious impairment of health, or serious impairment of a bodily function of a person. A "priority complaint" would be a complaint alleging that any of the following had occurred:

- an injury of unknown origin to the resident that was a result of suspected abuse or neglect;
- a serious injury to a resident that was a result of suspected abuse or neglect;
- a sexual assault;
- the intimidation or threatening of a resident, including, but not limited to, spitting, slapping, sticking with a sharp object, pushing, or pinching;
- an unexplained or unexpected death of a resident that was a result of suspected abuse or neglect;
- a fall that resulted in a fracture and that is a result of suspected abuse or neglect;
- inadequate staffing that negatively impacted a resident's health or safety;
- failure to obtain the appropriate care or medical services that negatively impacted a resident's health or safety; or,
- any other occurrence designated by the department as a priority complaint.

The bill would not affect the current provisions that allow the department to investigate complaints based on their urgency or the provisions that describe how and within what time frame complaints are to be investigated.

House Bill 4079. Under the Public Health Code, health facilities and agencies are required to conspicuously display in patient waiting areas copies of a pamphlet provided by the Department of Consumer and Industry Services outlining the procedure for filing a complaint with the department against a health facility or against a licensed health professional employed by a health facility. (Under the code, "health facility or agency" includes a clinical laboratory, a county medical care facility, a freestanding surgical outpatient facility, an HMO, a home for aged, a hospital, a nursing home, a hospice or hospice residence, and certain facilities or agencies located in an institution of higher education.) The

law requires the department to print the pamphlet in languages that are appropriate to the ethnic composition of the patient population in the vicinity.

The bill would make a number of revisions to the provisions pertaining to the pamphlet. Currently, the department is responsible for printing the pamphlets and providing the pamphlets to the health facilities; under the bill, the department would be relieved of this responsibility, but would still have to develop the pamphlets after consultation with appropriate professional associations. The bill would also amend these provisions to require that the pamphlet use large, easily readable type and nontechnical, easily understood language, and to require the department to periodically distribute copies of the pamphlet to each health facility or agency and to each unlicensed health facility.

In addition, the bill would require the department to include in the pamphlet a model standardized complaint form. The department could also develop a separate model standardized complaint form that is specific to the type of health facility or agency, or the category of health facilities or agencies.

The bill would specifically require the department to develop a model standardized complaint form for nursing homes. This model form would have to include, at a minimum, simple instructions on how to file a complaint with a nursing home and the department, and with the state long-term care ombudsman, the Michigan Protection and Advocacy Service, and the health care fraud unit of the Department of Attorney General. The complaint form would also have to include a telephone number for making oral complaints. The department would be required to distribute copies of the model standardized complaint form simultaneously with copies of the required pamphlet. A nursing home would have to conspicuously display and make available multiple copies of the pamphlet and model standardized complaint form with the complaint information required to be posted under Section 21723 of the code in patient waiting areas or other common areas of the nursing home that are easily accessible to patients and visitors.

The department could continue to distribute the complaint pamphlets within its possession on the effective date of the bill until the stock is exhausted or until October 1, 2003, whichever is sooner. Beginning October 1, 2003, the department could only distribute the complaint forms and pamphlets complying with the bill's provisions.

The department would have to make the complaint pamphlet and the standardized complaint form available to the public on its web site. The department would also be required to take affirmative action toward developing and implementing an electronic filing system that would allow individuals to file complaints through the web site.

The bill would also add language to provisions governing the filing of complaints that specifically permits the use of the model standardized complaint form for filing a complaint, including filing a complaint via the Internet.

Finally, the bill would replace outdated references to the former Department of Public Health with references to the Department of Consumer and Industry Services.

BACKGROUND INFORMATION:

Administrative rule R 325.20113 requires a nursing home to adopt written policies and procedures to implement patient rights and responsibilities as required by the Public Health Code. The rule requires that the policy be available, before and following the patient's admission, to the patient, his or her next of kin, the attending physician, members of the patient's family (or guardian, designated representative, or person or agency responsible for placing and maintaining the patient in the home), employees of the home, and the public.

The procedures must include a procedure for the initiation, investigation, and resolution of complaints, subject to Department of Consumer and Industry approval, and, at a minimum:

- A statement that a patient may have the alternative to complain either to the home or the department about any condition, event, or procedure in the home without citing a specific violation of the code or the rules.
- A procedure for submitting written complaints to the home identifying potential violations of law or rule, including a procedure to assist a complainant in reducing an oral complaint to writing if the oral complaint is not resolved to the satisfaction of the complainant. If there is a standard complaint form, a copy must be provided to each patient at the time of admission, and additional copies must be provided upon request.
- The name, title, location, and telephone number of the individual in the home who is responsible for

receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.

- A requirement that all complaints be investigated within 15 days following receipt of the complaint by the home, and a requirement that, within 30 days following receipt of the complaint, the home deliver to the complainant a written report of the results of the investigation or a written status report indicating when the report may be expected.
- A mechanism for appealing the matter to the administrator of the home if the complainant is not satisfied with the investigation or resolution of the complaint.

The rule also requires nursing homes to maintain complaints and investigation reports for three years, and to make their records available to the department upon request.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the Department of Consumer and Industry Services has already established a 24-hour complaint hotline and a complaint intake process which complies with most of the provisions added by House Bill 4062. However, the provision requiring a response to each priority telephone complaint or inquiry within 24 hours of its receipt would require staffing of the line on weekends which, is not the current practice. This provision would increase costs to CIS by a very modest amount – probably less than \$5,000 annually.

Further, according to the House Fiscal Agency, since the DCIS already distributes an information pamphlet and model complaint form largely consistent with House Bill 4079's provisions, the bill should have little or no fiscal impact on the department. However, the department has not yet developed an online system for complaint filing. While the bill makes no specific mandate on the development of such a system, it does require the department to “take affirmative action” towards the development of a system. This could result in new state costs to the department. (2-28-03)

ARGUMENTS:

For:

Although the Department of Consumer and Industry Services already operates a 24-hour, toll-free, consumer complaint hotline, House Bill 4079 is needed to ensure a timely response to consumer

complaints about violations of nursing home laws and regulations that place a resident in jeopardy. Though the department does prioritize complaints that involve injury or abuse to a resident, some feel that clear criteria for what constitutes a priority complaint should be placed in statute. In addition, complainants should know that their complaints have been heard; under this proposal, complainants would get a copy of a completed complaint intake form by the next business day after it has been completed. And the bill requires that the intake form be forwarded to an investigator by the next business day after being filled out, and also requires calls to be screened on weekends and holidays rather than going into a voice mail system that isn't reviewed until days later; this could speed up the initiation of complaint investigations. Though it is intolerable to have a response to any complaint drag on (some have reported up to 30 days), it is also important to concentrate limited resources on the most serious of the complaints. The bill is a good first step in making it easier for residents and family members to file complaints via the 24-hour hotline and to ensure timely response for complaints involving suspicious deaths, unexplained injuries, assaults, abuse, and neglect.

Response:

As written, House Bill 4062 could be understood to require the DCIS to create a 24-hotline in addition to the existing hotline. This could lead to greater expense for the department and confusion for consumers who need to call in a complaint. For the existing hotline to comply with some of the bill's provisions, the department would have to have a supervisor screen the calls received over weekends and on holidays. Reportedly, due to staff shortages as a result of early retirements and budget reductions, this would be difficult to do without additional funding. However, the DCIS already operates a parallel reporting system used by health care facilities to report similar types of incidents as required by federal and state laws. Reportedly, this system does have staff that screens calls on weekends and holidays. The department believes that the bill could be amended to allow for coordination with existing programs so as to avoid extra expense, yet still comply with the intent of the legislation.

For:

The provisions of Public Act 11 of 2002 have greatly helped many residents and their family members to resolve complaints at the facility level and to know how to file a complaint against a facility with the Department of Consumer and Industry Services. However, according to consumer advocates, the

pamphlet that is printed and distributed by the DCIS under the provisions of Public Act 11 can be confusing and difficult for some to read. In addition, the current budget shortage is making it more difficult for the department to continue to bear the printing and distribution costs.

The bill would relieve the department of the requirement to print and provide the pamphlets to the health care facilities, though the department would have to still distribute some on a regular basis to the facilities. The bill would require a standardized complaint form to be developed, and both the pamphlet and complaint form would have to be readily available at each facility to consumers under provisions of the health code and be available on the department's web site. In addition, the bill would require the department to take affirmative action toward developing a system by which complaints could be filed over the Internet. Though after October 1, 2003, the current pamphlets in existence could no longer be used, and though the downloadable version of the pamphlet and complaint form will become the standard method of distribution, a representative of the department stated that the department will still print some pamphlets to fill requests by those who may not have access to the Internet.

POSITIONS:

The AARP supports both bills. (2-27-03)

The Michigan Advocacy Project supports both bills. (2-27-03)

The Department of Consumer and Industry Services supports the concept of the House Bill 4062 and supports House Bill 4079. (2-28-03)

The Michigan Association of Local Long Term Care Ombudsmen supports House Bill 4079. (2-27-03)

The Michigan Protection and Advocacy Service supports the bill. (2-28-03)

The Health Care Association of Michigan supports the bills. (3-4-03)

Analyst: S. Stutzky

■ 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.