

Legislative Analysis



NURSING HOME AMENDMENTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6251 (Substitute H-1)
Sponsor: Rep. Robert Jones

House Bill 6255 (Substitute H-1)
Sponsor: Rep. Richard Ball

House Bill 6252 (Substitute H-1)
Sponsor: Rep. Kathy Angerer

House Bill 6256 (Substitute H-1)
Sponsor: Rep. Mary Valentine

House Bill 6253
Sponsor: Rep. Marc Corriveau

House Bill 6261 (Substitute H-1)
Sponsor: Rep. Marie Donigan

House Bill 6254
Sponsor: Rep. Mike Simpson

Committee: Senior Health, Security, and Retirement
Complete to 6-27-08

A SUMMARY OF HOUSE BILL 6251 AS REPORTED FROM COMMITTEE 6-25-08

The bills would amend Article 17 of the Public Health Code to add a number of requirements for nursing home licensees and applicants for nursing home licenses.

Surety Bonds

House Bill 6251 would add Section 22225a to make the furnishing of a security bond a requirement for approval for a certificate of need to acquire a nursing home, begin operation of a nursing home, or make a change in bed capacity in licensed nursing home beds.

Except as provided otherwise, the amount of the surety bond would have to equal or exceed the total cost to acquire or begin operation of a nursing home or to make the change in bed capacity (with the cost to be determined by the Department of Community Health). The amount of the surety bond could not be less than \$25,000 or greater than \$500,000. (The bond requirement would not apply to a county medical care facility.)

The surety bond would be conditioned on the continued operation of the nursing home by the applicant and would need to be approved by the department. Instead of a surety bond, the department could provide for an appropriate deposit of cash or securities, a letter of credit, or the assignment of coverage of other bonds, if it is satisfied that comparable or more extensive coverage results.

The DCH would be required to establish procedures and could demand payment from the surety bond or draw upon the deposit of cash or securities, letter of credit or assignment of coverage of other bonds if the nursing home voluntarily or involuntarily discontinues its operations, if a receiver is appointed, or if a temporary manager is appointed. Upon

full settlement of allowed claims, the department would return any remaining assets of those resources to the nursing home.

The department could bring an action in a court of competent jurisdiction against the nursing home, its assets, or the surety on the bond, or could take any appropriate action against the issuer of the deposit of securities, letter of credit, or assignment of coverage of other bonds for recovery of money due and owing to the department. The department would have to require that the surety bond or other security be and remain in effect before issuance or renewal of a nursing home license.

Control Persons

House Bill 6252 would amend Section 20142 to provide that an applicant for a nursing home license or a licensee disclose the names, addresses, principal occupations, and official positions of all control persons. Currently, applicants and licensees must only disclose this information about those with an ownership interest.

The term "control person" would be defined to mean a director, manager, or executive officer of an applicant or licensee or a natural person who has the authority to participate in the direction, directly or indirectly through one or more other natural persons, of the management or policies of an applicant or licensee.

Currently, a change in ownership of a health facility or agency must be reported to the DCH Director within 15 days before the change occurs. The bill would also apply this requirement to a change in control.

In the case of a change in ownership or control, the DCH could not issue a license to the new owner until all of items of noncompliance identified by the department had been corrected, or the department has an approved plan of correction.

Notification of Change in Ownership

House Bill 6253 would amend Section 21766 to provide that when a nursing home reports a change in ownership or control to the DCH, or not less than 30 days before the change occurs, whichever occurs sooner, the nursing home would be required to specifically notify, in writing, a patient and that patient's guardian or legal representative of the change in ownership or control. This section deals with the written contract required between a nursing home and a patient or patient's legal guardian or representative.

Posting Information on Control Persons

House Bill 6254 would amend Section 21781 to require a license nursing home to post the names and contact information for control persons and persons who have an ownership interest in the nursing home. (This would be in addition to current posted information.)

Independent Nursing Home Audits

House Bill 6255 would amend Section 21711 to prohibit the DCH from issuing or renewing a nursing home license, except as provided in this section, unless the applicant or licensee submits financial statements audited by a certified public accountant, bank officer, or other independent authority with knowledge of long-term care operations, as approved by the department. The applicant or licensee would be required to include in the audited financial statements the accountant's, or other authority's statement that the applicant's or licensee's assets, liabilities, revenues, and expenditures identified in the applicant's business plan are sufficient to predict that the applicant (or licensee) has the financial capacity to own and operate a nursing home. This subsection would not apply to a nursing home that is a county medical care facility.

Criminal Penalties for False Statements

House Bill 6256 would amend Section 21799c to specify that a licensee, nursing home administrator, or employee of a nursing home who knowingly and willfully makes a false statement to the DCH in the course of a visit made for the purpose of survey, evaluation, or consultation, or in the course of an investigation made following a complaint, is guilty of a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not less than \$1,000 or more than \$10,000. A licensee, nursing home administrator, or employee of a nursing home could not be found guilty of knowingly and willfully making a false statement under the subsection unless guilt is established by legal and competent evidence beyond a reasonable doubt.

Liability Insurance

House Bill 6261 would amend numerous sections in Chapter 21 to provide that beginning October 1, 2008, a person could not establish, operate, or maintain a nursing home without maintaining proof of liability insurance coverage on that nursing home in an amount not less than \$1 million per occurrence. A nursing home that is a county medical facility would not be required to maintain liability insurance as required in this section. An applicant or licensee would be required to include proof of liability coverage in its application for a license or license renewal. Proof of liability insurance would also be added to list of public records subject to disclosure by the Department of Community Health or the Department of Human Services. Additionally, a licensee would be required to retain for public inspection a copy of the proof of liability insurance coverage.

FISCAL IMPACT:

House Bills 6251, 6252, 6255, and 6261, as introduced, could result in additional costs for the DCH as implementing the requirements of the proposed legislation may require additional staff.

As of February 2008, there were 438 licensed nursing homes, 178 hospitals, 1,378 substance abuse facilities, 410 home health agencies, 6,800 clinical and physician office labs, more than 10,000 radiological facilities, and 320 certificate of need program applications in the state.

According to a January 22, 2008 spending plan for the Health Systems Administration line item, \$17 million has been authorized for 194.6 FTE positions. And, according to the January 22, 2008 spending plan for the Certificate of Need (CON) Program Administration line item, the DCH plans to expend \$1.4 million for 14.0 FTE positions. The responsibilities of the staff include: nursing home monitoring, licensing and certification of health facilities, investigation of nursing home residents' complaints and facility-reported incidents, processing and coordinating enforcement against facilities, conducting physical plant evaluations for construction and modernization projects for health facilities, conducting certification surveys of licensed health care facilities, licensing of substance abuse prevention and treatment programs, investigating complaints by recipients of licensed substance abuse programs, and processing CON letters of intent, applications, and amendments .

House Bills 6253 and 6254 have no state or local fiscal implications.

House Bill 6256: The fiscal impact on local correctional systems would depend on how the bill affected the number of misdemeanor convictions. There are no data to indicate how many people might be convicted under the bill. To the extent that the bill increased the number of misdemeanor sentences, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction, could increase. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues

POSITIONS:

Department of Community Health supports the bills. (6-24-08)

American Association of Retired Persons (AARP) supports the bills. (6-24-08)

Michigan Campaign for Quality Care and the Michigan Advocacy Project support the bills. (6-24-08)

Michigan Protection and Advocacy Services supports the bills (6-24-08)

Health Care Association of Michigan opposes the bills. (6-24-08)

Michigan Association of Homes and Services for The Aging opposes the bills. (6-25-08)

Michigan County Medical Care Facility opposes House Bill 6256 only and is neutral on the rest of the package. (6-25-08)

Legislative Analyst: E. Best
Fiscal Analyst: Margaret Alston
Marilyn Peterson

■ 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.