

## NURSING HOMES: DINING ASSISTANT PROGRAM

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

**House Bill 5389 (reported from committee without amendment)**

**Sponsor: Rep. Paul Clemente**

**Committee: Health Policy**

### **First Analysis (4-15-14)**

**BRIEF SUMMARY:** The bill would allow a nursing home to employ a trained person to provide feeding assistance to a resident who does not have complicated feeding problems, under the supervision of a nurse, and with consent of the resident or resident's representative.

**FISCAL IMPACT:** The bill would not have a significant fiscal impact on the state or local units of government.

### **THE APPARENT PROBLEM:**

Increasingly, nursing homes are caring for sicker residents and residents with conditions such as Alzheimer's disease that profoundly affect the residents' ability to do even simple tasks for themselves, such as eating and drinking. Without proper nutrition, a resident's health will suffer. Having nurses or nurse aides assist residents with feeding at meal times and snack times takes them away from providing the direct nursing care they are trained to provide. Recognizing such challenges faced by nursing homes, federal regulations were adopted about a decade ago to allow states to establish programs by which nursing homes could use paid feeding assistants instead of nurses or nurse aides to provide assistance to residents with uncomplicated feeding needs.

Among other requirements, the federal regulations stipulate that certain minimum training standards for paid dining assistants be followed, that the dining assistants be prohibited from providing nursing care services (e.g., dressing, toileting, or transferring patients in and out of bed), and that dining assistants only assist residents having uncomplicated needs – such as the inability to hold a spoon due to a stroke – and not be assigned to assist residents who have swallowing difficulties or other complicated feeding issues (nurses and nurse aides would continue to assist those residents).

Reportedly, at least 28 states have adopted dining assistant programs. Several studies have found that the trained dining assistants are able to provide a quality of assistance comparable to that provided by nurses and nurse aides. In some cases, because the dining assistants tend to spend more time with a resident, the quality of assistance was said to be actually better. Moreover, staffing levels of nurses and nurse aides stayed the same, meaning that dining assistants were being used appropriately and not to replace nurse aides.

In light of the positive benefits documented in the evaluation of several programs (including a state pilot project evaluated by Michigan State University), it has been suggested that the Public Health Code be amended to allow nursing homes in Michigan to establish dining assistant programs.

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

House Bill 5389 would add a new section to the Public Health Code to allow nursing homes to use trained individuals to provide feeding assistance to residents who do not have complicated feeding problems, if the resident or resident's personal representative gives consent. A more detailed explanation follows.

Dining Assistant. The sole purpose of a dining assistant would be to provide feeding assistance to patients of a nursing home. The term would mean an individual who meets the bill's requirements and who is only paid to provide feeding assistance to nursing home patients by the nursing home or who is used under an arrangement with another agency or organization. A dining assistant would:

- Have to be at least 17 years of age.
- Successfully complete a dining assistant training curriculum.
- Undergo a criminal history check under Section 20173a.
- Work under the supervision of nurse (RN or LPN).
- Be prohibited from performing any other nursing or nursing-related services.
- Be allowed to provide feeding assistance in a patient's room under certain conditions; for example, if a nurse were immediately available.

"Under the supervision of a nurse" would mean that a nurse who is overseeing the work of a dining assistance is physically present in the nursing home and immediately available. "Immediately available" would mean being capable of responding to provide help if needed to the dining assistant at any time either in person or by voice or call light system, radio, telephone, pager, or other method of communication during a feeding.

Utilization of a dining assistant. A dining assistant could be utilized by a patient in a nursing home if – based on the charge nurse's assessment of the patient and the most recent plan of care – the patient needs assistance or encouragement with eating and drinking. The patient, or the patient's personal representative, would have to give consent. Only patients who do not have complicated feeding problems could use a dining assistant. Patients with certain conditions, such as difficulty swallowing and recurrent lung aspirations, would be ineligible.

The bill would not prohibit a family member or friend from providing feeding assistance to a patient; however, a nursing home could offer to provide the training curriculum to a patient's family or friends.

Responsibilities of a nursing home. A nursing home choosing to use dining assistants would have to provide individuals with training through a training curriculum approved

by the Department of Licensing and Regulatory Affairs (LARA). LARA and the long-term care stakeholder advisory workgroup designated under Section 20155(24) would have to develop the training curriculum. At a minimum, the curriculum must include eight hours of course material covering all of the following:

- Dining assistant program overview.
- Patient rights.
- Communication and interpersonal skills.
- Appropriate responses to patient behavior.
- Recognizing changes in patients.
- Infection control.
- Assistance with feeding and hydration.
- Feeding techniques.
- Safety and emergency procedures.
- End of life.

A dining assistant would not be nursing personnel. A nursing home could not include a dining assistant in computing the ratio of patients to nursing personnel or use a dining assistant to supplement or replace nursing personnel.

The nursing home would need to maintain a written record of each individual used as a dining assistant. The written record must include, at a minimum, the complete name and address of the individual, the date the training curriculum was successfully completed, a copy of the written record of the satisfactory completion of the training curriculum, and documentation of the criminal history check.

In addition, the charge nurse's assessment and plan of care must be documented in the patient's medical record. If a patient assigned a dining assistant experiences an emergent change in condition, the charge nurse would have to perform a special assessment to monitor the appropriateness of continued utilization of the dining assistant.

### ***ARGUMENTS:***

#### ***For:***

House Bill 5389 will allow, but not mandate, nursing homes in the state to hire and pay people to assist residents with feeding and hydration. The bill is consistent with federal regulations pertaining to dining assistant programs issued by the Centers for Medicare and Medicaid Services (CMS). Studies have shown that if personnel are properly trained, feeding assistance can be provided safely by non-nursing staff to residents who do not have complicated feeding needs such as difficulty swallowing.

A dining assistant program enables a nursing home to use existing non-nursing employees to provide feeding assistance during meal and snack times if the worker successfully completes a training program that meets or exceeds stated minimum training standards. Under the program, a nursing home may choose to train employees from various facility departments including housekeeping, laundry, administrative, and/or

social activities. A nursing home could also hire outside workers just to work shifts during meal/snack times. The time that dining assistants assist residents cannot be counted by the nursing homes towards required direct care staffing levels. In addition, dining assistants would be prohibited from providing the types of care that constitute direct nursing care such as dressing residents, helping them to use the bathroom, or transferring them from a wheelchair into bed.

The bill, and the CMS regulations that apply to CMS-certified nursing homes, include resident protections such as requiring a resident's consent for participation in the program (or the resident's family or personal representative), requiring supervision of dining assistants by a nurse, having a charge nurse reevaluate any changes in a resident's condition that may affect eating or swallowing, and requiring a dining assistant to undergo a criminal history background check just like other direct care staff.

Though in general, dining assistants would provide feeding assistance to residents in the facility dining area, the bill would allow a dining assistant to provide feeding assistance to a resident in the resident's own room if the charge nurse approved it, the assistance is included in the resident's plan of care, and the resident either is unable to go to the dining area or chooses to remain in the room. A nurse would still be required to supervise in-room dining assistance, but would not have to be in the room at the same time. Further, the bill would not prevent or prohibit family or friends from helping or encouraging a loved one at mealtimes. Friends and family would not need to complete the training; however, a nursing home could make the curriculum available to them.

Observers say that the role of nursing homes has changed. They serve an increasingly medically frail and fragile population. Whether from accidents, traumatic brain injuries, stroke, or dementia, many residents cannot handle a fork or spoon, or lift a cup, efficiently enough to ensure proper nutritional intake and hydration. Nursing homes, most of which are not-for-profit, struggle with keeping adequate levels of direct nursing care workers. If some of the non-nursing duties traditionally provided by nurses and nurse aides can be provided by other nursing home employees, nurses and nurse aides could be freed up to perform their other duties, a strategy which should benefit residents. From that standpoint, dining assistant programs are a sensible solution to some of the challenges faced by nursing homes in providing quality care.

### ***POSITIONS:***

Representatives of the Healthcare Association of Michigan (HCAM) testified in support of the bill. (3-25-14)

Michigan Association of Counties indicated support for the bill. (3-25-14)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Paul Holland

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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.