

# Legislative Analysis

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## "RURAL HOSPITALS PATIENT CHOICE ACT"

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**House Bill 4441 (Substitute H-5)**  
**Sponsor: Rep. Frank Foster**

**House Bill 4442 (Substitute H-1)**  
**Sponsor: Rep. Gail Haines**

**House Bill 4443 (Substitute H-1)**  
**Sponsor: Rep. Paul Muxlow**

**Committee: Health Policy**  
**First Analysis (4-26-11)**

**BRIEF SUMMARY:** Together, the bills would rename the "short-term nursing care program" as the "extended care services program," eliminate the 5-day/50-radius requirement regarding transfers of patients to nursing homes, require discharge plans for extended care services patients, and delete references in law to the short-term nursing care program. House Bills 4442 and 4443 are tie-barred to House Bill 4441.

**FISCAL IMPACT:** A fiscal analysis is in process.

### **THE APPARENT PROBLEM:**

Under federal and state law, small hospitals (fewer than 100 beds) are allowed to designate up to 10 beds as "swing beds," meaning the beds can be used to provide either acute care or skilled (long-term) care to patients. Michigan is one of just three states whose laws regarding swing beds are more restrictive than federal regulations.

For example, a Michigan patient who is ready to be discharged to a skilled nursing facility (nursing home or other long-term facility) from a rural hospital participating in the swing bed program cannot choose to remain in the hospital unless there are no long-term care facilities within a 50-mile radius of his or her home. Even then, the patient is only allowed to remain in the hospital for up to five business days after a bed in a nursing home becomes available. It doesn't matter if the nursing home is too difficult for families of the patient to visit regularly because of the distance and/or weather and road conditions, or if the patient is too frail to be moved to a nursing home and then moved again back home, or if the patient only needs a few more days of skilled nursing care beyond the five business days and so must be moved twice within a short period of time.

To provide more flexibility of choice for rural patients, legislation has been requested to eliminate some of the more restrictive provisions of Michigan's swing bed program.

## ***THE CONTENT OF THE BILLS:***

Together, the bills would rename the short-term nursing care program as the extended care services program, eliminate the 5-day/50-radius requirement regarding transfers of patients to nursing homes, require discharge plans for extended care services patients, and delete references in law to the short-term nursing care program. House Bills 4442 and 4443 are tie-barred to House Bill 4441.

House Bill 4441 would amend the Public Health Code (333.22208 and 333.22210) to enact what is known as the "Rural Hospital Patient Choice Act," revise several provisions pertaining to the short-term nursing care program, replace it with the extended care services program, eliminate the definition of "short-term nursing care," and define "extended care services." The bill would take effect 180 days after enactment.

Under state law, smaller and rural hospitals meeting certain state and federal requirements can apply for a Certificate of Need to establish a Short-term Nursing Care Program. The program allows an eligible hospital to operate up to 10 beds as "swing beds." Generally speaking, a "swing bed" refers to a bed that a hospital can use either as an acute care bed or a skilled nursing care bed. A swing bed comes into play when a patient is ready to be discharged from a hospital to a skilled nursing care facility (e.g., a nursing home) but no bed at a nursing home within a 50 mile radius of the patient's home is available. Once a bed in a skilled nursing care facility is available, the hospital must transfer the patient within five days. In addition, the Health Code limits the number of swing bed days per year per hospital to 1,825. Currently, 31 hospitals in the state operate swing beds under this program.

The bill would make the following revisions:

- Eliminate the definition of short-term nursing care, replace references to a short-term nursing care program with "extended care services program," and define "extended care services program" to mean a hospital program that provides extended care services to a patient through the use of swing beds under federal Medicare regulations (Section 1883 or Title XVIII, 42 USC 1395TT).
- Retain the cap on allowable swing beds per hospital to 10, and eligibility for participation in the program to hospitals with fewer than 100 licensed hospital beds.
- Eliminate the requirement that a patient must be transferred within five business days of being notified that a bed is available in a certified nursing home, county medical care facility, or hospital long-term care unit located within a 50-mile radius of the patient's home.
- Prohibit extended care services in a swing bed if the hospital owns or operates a hospital long-term care unit that has beds available.

- Require a hospital to establish a discharge plan for each extended care services patient admitted to the program. The hospital would have to emphasize patient choice in receiving extended care services in the most appropriate and least restrictive setting. A copy of the discharge plan would have to be provided to the patient or a representative not later than three days after being admitted to the program. The patient would be entitled under the bill to participate in the development of the discharge plan.
- Require extended care services programs to operate under Medicare regulations pertaining to swing beds that are applicable to the extended care services program.

House Bill 4442 would amend the Administrative Procedures Act (MCL 24.207) to replace a reference to "short-term nursing care programs" with "extended care services programs."

House Bill 4443 would amend The Social Welfare Act (MCL 400.109) to replace a reference to a "short-term nursing care program" with "extended care services program."

***ARGUMENTS:***

***For:***

The bills represent a compromise between the interests of rural hospitals operating swing beds and nursing homes and other facilities that provide skilled nursing care; it appropriately focuses on the needs of rural patients. House Bill 4441 retains the limitation on eligibility for the swing bed program to small hospitals, those with fewer than 100 beds. The bill also retains such current restrictions as limiting a hospital to no more than 10 swing beds and capping the total number of patient days for swing beds per year to 1,825. However, hospitals would no longer be forced to transfer a patient to a skilled nursing facility within five days of a bed becoming available anywhere in a 50-mile radius of the patient's home. Therefore, patients will have more choice regarding non-acute care. The elimination of the 5-day/50-mile rule will be particularly welcome to patients who may need only a short duration of skilled nursing care beyond the five days and/or for whom the nearest available bed in a skilled nursing facility is close to the 50-mile boundary. The bill adopts some of the flexibility of the federal Medicare swing bed program without creating undue competition with nearby skilled nursing care facilities.

***Response:***

Limiting the impact of the bills to elimination of the 5-day/50-mile rule, mitigates the potential impact to rural long-term care facilities posed by the bills as introduced. Also, requiring hospitals to develop discharge plans for swing bed patients is an important component of transitioning patients from skilled nursing care to going home. However, retaining some provisions that the introduced version of the bills would have eliminated recognizes the important role that skilled nursing facilities provide to patients needing long-term services. Hospitals are designed to provide acute care and are not set up to provide services that long-term facilities can provide – such as meals with others in a dining room, activities, outings, and in some instances, facility pets such as cats or dogs

that provide comfort and companionship to residents. Long-term facilities are also able to provide skilled nursing care services at a lower cost than a hospital.

***POSITIONS:***

The Michigan Health & Hospital Association supports the bills. (4-14-11)

Baraga County Memorial Hospital submitted written testimony in support of the bills. (4-13-11)

The following entities offered testimony or a position on the bills as introduced:

A representative of the Critical Access Hospitals testified in support of the bills. (3-17-11)

Portage Health submitted written testimony in support of the bills. (3-16-11)

A representative of the Mackinac Straits Hospital & Health Center testified and submitted written testimony in support of the bills. (3-17-11)

A representative of the Michigan Center for Rural Health testified and submitted written testimony in support of the bills. (3-17-11)

Eaton Rapids Hospital indicated support for the bills. (3-17-11)

A representative of the Health Care Association of Michigan (HCAM) testified and submitted written testimony in opposition to the bill. (3-17-11)

A representative of Thornapple Manor testified and submitted written testimony in opposition to the bills. (3-17-11)

A representative of the Iosco County Medical Care Facility testified and submitted written testimony in opposition to the bills. (3-17-11)

A representative of the Michigan County Medical Care Facility Council testified in opposition to the bills. (3-17-11)

Aging Services of Michigan indicated opposition to the bills. (3-17-11)

Legislative Analyst: Susan Stutzky

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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.