

"RURAL HOSPITALS PATIENT CHOICE ACT"

House Bill 4441 as enrolled
Public Act 51 of 2011
Sponsor: Rep. Frank Foster

House Bill 4442 as enrolled
Public Act 52 of 2011
Sponsor: Rep. Gail Haines

House Bill 4443 as enrolled
Public Act 53 of 2011
Sponsor: Rep. Paul Muxlow

House Committee: Health Policy
Senate Committee: Health Policy
Second Analysis (9-16-11)

BRIEF SUMMARY: Together, the bills would rename the "short-term nursing care program" as the "extended care services program," eliminate the 5-day/50-mile 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: The fiscal impact of House Bills 4441-4443 on the State budget appears to minimal. Among other things the bills lengthen the number of days a patient may reside in a hospital "swing bed" before being transferred to a nursing home or other facility. Department of Community Health staff report that Medicare pays for the first 20 days of hospital costs for dual eligibles, those who are both Medicare and Medicaid eligible, and will pay for an additional 80 days with the Medicaid program paying \$141.50 per day copay. The Department indicates that swing bed utilization rarely exceeds 23 days.

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 from a rural hospital participating in the swing bed program to a skilled nursing facility (nursing home or other long-term care facility) cannot choose to remain in the hospital unless there are no open beds in a long-term care facility 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 that 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 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:

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 enrolled version of House Bill 4441 would retain most of the state requirements for participation in the Extended Care Services Program, including the current cap of 10 on allowable swing beds per hospital, eligibility for participation in the program to hospitals with fewer than 100 licensed hospital beds, and capping the allowable swing bed patient days per hospital per state fiscal year to 1,825.

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).
- 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 and instead prohibit extended care services in a swing

bed if the hospital owns or operates a hospital long-term care unit that has beds available. "Hospital long-term care unit" is defined in Section 20106 of the health code and means a nursing care facility, owned and operated by and as part of a hospital, providing organized nursing care and medical treatment to seven or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

- 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.
- Eliminate a provision that allowed a hospital to obtain a variation from the cap of 1,825 on swing bed patient days per year.

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 be too frail to be moved to another facility, who 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 that was 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, by restoring some provisions that the introduced version of the bills would have eliminated, the enrolled package recognizes the important role that skilled nursing facilities provide to patients needing long-term care services. Hospitals are designed to provide acute care and are not set up to provide services that long-term care 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 care facilities are also able to provide skilled nursing care services at a lower cost than a hospital.

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