



Senate Bill 221 (as introduced 3-2-11)
Sponsor: Senator Mark C. Jansen
Committee: Health Policy

Date Completed: 6-27-11

CONTENT

The bill would amend Part 201 of the Public Health Code, and add Part 218, to provide for the licensure of in-home services agencies. Specifically, the bill would do the following:

- Prohibit the operation of an in-home services agency without a license.
- Exempt certain individuals and entities from regulation as in-home services agencies.
- Require the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules establishing a schedule of license fees for each category of in-home services agency.
- Require LARA to conduct a survey of an in-home services agency during each three-year licensure period.
- Create the Michigan Board of In-Home Services Agency Licensing within LARA.
- Require LARA to promulgate rules to implement, administer, and enforce Part 218 by July 1, 2013.
- Require LARA to develop interpretive guidelines that were specific to each type of home health service.
- Specify minimum provisions of a patient rights policy.
- Require an in-home services agency to conduct a criminal history check in order to employ, contract with, or grant clinical privileges to an individual who regularly had direct access to or provided direct services to patients or clients.

- Make the unlicensed operation of an in-home services agency a misdemeanor, and provide that a corporation could be punished by forfeiture of its corporate charter.
- Authorize LARA to order a person to cease and desist from engaging in the unlicensed operation of an in-home services agency.
- Provide that person who operated an unlicensed in-home services agency would be subject to the Michigan Consumer Protection Act.

Part 201: General Provisions

Part 201 contains general provisions regarding the licensing and regulation of health facilities and agencies. The bill would include an in-home services agency in the definition of "health facility or agency".

The bill specifies that, for the purposes of certification, an in-home services agency would be considered a health facility or agency.

Part 201 requires an applicant or licensee under Part 213 (Homes for the Aged) and 217 (Nursing Homes) to disclose the names, addresses, principal occupations, and official positions of all individuals who have an ownership interest in the facility or agency. Under the bill, this requirement also would apply to an applicant or licensee under proposed Part 218.

The bill would define "in-home services agency" as the term would be defined in proposed Part 218, i.e., an organization

required to be licensed under that part to administer or provide home health services or private duty home care services directly or through a contractual arrangement to patients or clients.

(Under Part 218, "home health services" would include nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

"Private duty home care services" would mean private duty home care medical services, private duty home care nonmedical services, and other assistance given to patients or clients in their places of residence or other environment. "Private duty home care medical services" would mean non-Medicare-certified skilled services ordered by a physician, including nursing, occupational therapy, physical therapy, speech therapy, respiratory therapy, or social work and home health aide services. "Private duty home care nonmedical services" would mean supports and services including assistance with activities of daily living; personal care such as assistance with dressing, feeding, transferring, and personal hygiene; homemaker assistance with household tasks; respite care assistance; medication reminders; and support provided to family.)

Proposed Part 218: In-Home Services Agencies

License Requirement. Under the bill, beginning January 1, 2012, a person could not advertise, operate, manage, conduct, open, or maintain an in-home services agency without a license under proposed Part 218. Beginning on that date, Part 218 would apply to a nursing home, hospital, or other organization that functioned as a home health agency-certified, private duty home care agency, or home medical equipment supplier.

Except as otherwise provided, a person could not use in its corporate or business name any of the following titles, words, or phrases unless licensed:

- "Home health agency-certified", "visiting nurse", or "home health services".

- "Private duty home care agency", "private duty home care services", or "private duty home care".
- "Home medical equipment supplier", "home medical supplies or equipment services", or "durable medical equipment, prosthetics, orthotics, and supplies".
- "In-home services agency", "in-home services", or any similar titles, words, or phrases to indicate that a person was a home health agency-certified, private duty home care agency, or home medical equipment supplier.

Also, a person could not advertise using those titles, words, or phrases without a license.

"Home health agency-certified" would mean an enrolled Medicare provider organization or part of that organization staffed and equipped to provide skilled nursing and at least one therapeutic service, including physical, occupational, or speech therapy, either directly or through a contract arrangement to patients or clients in their places of temporary or permanent residence. A home health agency-certified also could provide other health-related services, including social work, nutritional support, or home health aides to protect and maintain patients or clients in their residence.

"Private duty home care agency" would mean a non-Medicare-certified organization that employs, trains, supervises, maintains liability for, arranges for, and schedules employees to provide supports and/or services to a patient or client in his or her place of residence or other environment for which the organization receives a fee, consideration, or compensation of any kind. A private duty home care agency could provide nonmedical or medical services, or both. The term would not include a hospice, home health agency-certified, or volunteer provider.)

Criminal History Check. Beginning on January 1, 2012, an in-home services agency could not employ, contract with, or grant clinical privileges to an individual who regularly had direct access to or provided direct services to patients or clients unless a criminal history check of that individual had been conducted in compliance with the Code. An individual disqualified or denied

employment by an in-home services agency based on a criminal history check could appeal as provided in the Code.

Exemptions from Regulation. The following would not be subject to regulation for the purposes of Part 218:

- Family providing home health services or hospice care.
- An organization that provided only meal services to a patient or client in his or her place of permanent or temporary residence.
- An individual providing private duty home care services through a direct agreement with a patient or client in his or her place of permanent or temporary residence.
- An organization that provided services through a contract with a licensed agency as long as the contract established that the licensed agency held overall responsibility for patient or client services.
- An employee or volunteer of a licensed agency who provided home health services only as an employee or volunteer.
- Except as otherwise provided, facilities and institutions that were licensed under the Code or any other State law, including nursing homes, hospitals, adult foster care facilities, and psychiatric facilities or intermediate care facilities for people with mental retardation.
- An individual providing care to patients or clients through a contract with the Department of Human Services.
- Nursing homes, hospitals, or other institutions, agencies, organizations, or people that contracted with a licensed home health agency-certified, private duty home care agency, or home medical equipment supplier for the delivery of services.
- In-home assessments of patients or clients that did not result in regular ongoing care of a patient or client in his or her residence.
- Services conducted by and for the adherents of a church or religious denomination that relied upon spiritual means alone through prayer for healing in accordance with its tenets and practices and the bona fide religious beliefs genuinely held by such adherents.

- A Medicare-approved dialysis center operating a Medicare-approved home dialysis program.
- A person who provided home care services without compensation.
- A person providing case management services.

("Case management" would mean the assessment, coordination, authorization, planning, training, and monitoring of home health and home care and would not include the direct provision of care to a patient or client.

"Family" would mean individuals who are important to, and designated by, the patient or client. Such individuals would not have to be relatives.)

License Applicant. In addition to any other requirement for application for licensure under Part 201, an applicant for an in-home services agency license would have to do all of the following:

- Demonstrate ability to comply with Part 218 and rules promulgated under it.
- Cooperate with any on-site survey.
- Provide evidence of and maintain professional liability, public liability, and property damage insurance in an amount established by LARA, based on industry standards.
- File with LARA a list of the home health services, private duty home care services, and home medical supplies or equipment services provided directly and under contract.
- Pay to LARA the license fee (described below).

("Survey" would mean a visit for the purposes of survey, evaluation, and consultation conducted by LARA or another person under Section 20155 to evaluate and monitor an in-home services agency's compliance with Article 17 of the Code, which regulates facilities and agencies. Under Section 20155, LARA must make annual and other visits to each licensed health facility or agency for the purpose of survey, evaluation, and consultation.)

License Fees. An application for a license or a license renewal would have to be accompanied by a fee of up to \$500 per year, as established by LARA. The Department would have to promulgate rules

to adopt a schedule of required fees, and would have to establish various fees based on a sliding scale, using such factors as the number of agency full-time equivalents, geographic area served, number of locations, or type and volume of home health services provided. For agencies receiving a licensure survey that required more than two on-site surveys by LARA per licensure period, an additional fee determined by LARA would have to be charged for each additional on-site survey. The Department could set different fees for each licensure category. Agencies receiving a license without an on-site survey would have to pay the same license fee as other in-home services agencies in their licensure category.

In addition, LARA could establish a late fee for failure to apply for licensure, transfer, or renewal.

License Issuance & Licensure Survey. Upon receiving an application and the license fee, LARA would have to issue a license if the applicant met the requirements of Part 218. Unless suspended or revoked, a license would be effective for three years.

The Department would have to conduct a survey within each licensure period, and could conduct a licensure survey before or after a transfer due to change in ownership.

License Transfer. A license under Part 218 would be transferable due to change in ownership as provided in the Code, if approved by the LARA. A licensee would have to submit an application for a transfer due to change in ownership at least 30 days before the transfer was scheduled to occur. The Department would have to charge a reasonable fee for processing a transfer application, and would have to establish a transfer approval process to ensure that applicants for transfer of an existing licensed in-home services agency satisfied the intent and requirements of Article 17.

A fee for a transfer due to a change in ownership could not exceed 50% of the base licensure fee.

Exemptions from Licensure Survey. Notwithstanding any other provisions of the Code to the contrary, an in-home services agency that was certified by the Federal Medicare program, or accredited by an

accreditation organization recognized and used by the Federal Medicare program for the purpose of granting eligibility for enrolled Medicare providers, including the Community Health Accreditation Program, the Joint Commission, or the Accreditation Commission for Healthcare, would not be subject to a licensure survey under Part 218 if all of the following requirements were met:

- The Department determined that the applicable standards of the certification or accreditation program were substantially equivalent to those required by Article 17 for a survey.
- An on-site survey had been conducted for the purposes of certification or accreditation during the previous 36 months or as extended by the certifying or accrediting entity.
- The Department received directly from the certifying or accrediting entity or from the applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicated compliance with the requirements of Part 218.

Notwithstanding these provisions, LARA would retain the authority to conduct a survey of service areas not addressed by the national certifying or accrediting entity.

The Department would have to review the survey standards of the certifying or accrediting entities for substantial equivalency to those set forth in Article 17. If LARA determined at any time that the standards were not substantially equivalent, it would have to notify the affected licensees that they were subject to a survey. The notification would have to contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation of the risk to patients or clients.

The Department could perform a validation survey on in-home services agencies that previously had received a survey through certification or accreditation. The Department could perform a validation survey on up to 10% of each type of certification or accreditation survey.

These provisions would not affect LARA's enforcement authority for in-home services agencies under Part 218.

Michigan Board of In-Home Services Agency Licensing. The bill would create the Board within LARA. The Board would consist of 13 members appointed by the LARA Director. The membership would have to consist of four representatives of the home health agency-certified community, four representatives of the private duty home care agency community, three representatives of the home medical equipment supplier community, and two public members.

The Director would have to solicit candidates from the home health services industry, including the Michigan Home Health Association, as follows: four nominees for the home health agency-certified members and three for the home medical equipment supplier members. The Director would have to solicit two nominees each from the Michigan Home Health Association and the Michigan Chapter of the National Private Duty Association for the private duty home care agency members.

Rules. In consultation with the Board, LARA would have to promulgate rules necessary to implement, administer, and enforce Part 218 by July 1, 2013. In order to ensure safe and adequate care, the rules would have to address at least all of the following:

- Maintenance and preservation of all records relating directly to the care and treatment of patients and clients by licensees.
- Supervision of home health services.
- Compliance with all other applicable State and Federal laws.

In addition, the rules would have to address the establishment and implementation of all of the following:

- A procedure for the receipt, investigation, and disposition of complaints regarding home health services.
- A plan for ongoing care of patients and clients and preservation of records if the licensee ceased operations.
- Written policies regarding response to referrals and access to home health services.
- Written policies and procedures for volunteers who had direct access to or provided direct services to patients or clients and that provided for criminal

history and health screening, orientation, and supervision.

- Written policies for obtaining regular reports on patient or client satisfaction.
- A quality improvement process.
- Policies related to in-home services agency implementation and oversight of delegation of licensed health professionals.
- Policies to ensure that the in-home services agency's caregivers were bonded and/or insured, as applicable, and that the agency was responsible for payment of all necessary income taxes and liability and worker's disability compensation insurance.

The rules also would have to address the establishment and implementation of written personnel policies, procedures, and personnel records for paid staff that provided for prehire screening, including criminal history check and testing for communicable diseases, minimum qualifications, regular performance evaluations that included observation in the patient's or client's residence, participation in orientation and in-service training, and involvement in quality improvement activities. The Department could not establish experience or other qualifications for in-home services agency personnel or contractors beyond that required by State law.

In addition, the rules would have to address the establishment and implementation of policies related to the delivery of home health services, including all of the following:

- A plan of care for each patient or client served.
- Periodic review of the plan of care.
- Supervision of care and clinical consultation as necessary.
- Care consistent with the plan of care.
- Admission, transfer, and discharge from care.

Interpretive Guidelines. With cooperation and input from the State trade associations representing the home health services industry, including the Michigan Home Health Association and the Michigan Chapter of the National Private Duty Association, LARA would have to continue to develop interpretive guidelines that were specific to each type of home health service and

consistent with Part 218. The process for these continuing developments would have to provide opportunity for comment from licensees.

Patient Rights & Responsibilities Policy. An in-home services agency would have to give each patient or client, or his or her designated representative, a copy of the policy established under Section 20201 and the bill describing the rights and responsibilities of patients and clients service by the agency. (Section 20201 requires a licensed health facility or agency that provides services directly to patients or residents to adopt a policy describing the rights and responsibilities of people admitted to the facility or agency. Among other things, the policy must include a nondiscrimination clause and provisions regarding confidentiality and privacy.)

If a conflict existed between a requirement of the bill and Section 20201, the requirement of the bill would prevail. At a minimum, the policy would have to include all of the following:

- A listing of the home health services offered by the agency and those being provided.
- The names of the administrator and the director of clinical services and the manner in which those individuals could be contacted.
- The job title of the individual supervising the patients' or clients' care and the manner in which he or she could be contacted.
- The State complaint hotline number and the appropriate certifying or accrediting entity's hotline number.
- That the patient or client, or his or her designated representative, could participate on an ongoing basis in the development of the plan of care.
- That the patient or client, or his or her designated representative, could select any licensee to provide home health services, subject to his or her reimbursement mechanism or other relevant contractual obligations.
- That the patient or client would be treated with courtesy, respect, privacy, and freedom from abuse and discrimination.
- That the patient or client would have his or her property treated with respect.

- That the patient or client, in compliance with Federal regulations, would receive information about his or her right to execute an advance health care directive or durable power of attorney and designation of patient advocate and the agency's responsibility to implement those documents.
- That the patient or client would be informed that the agency's caregivers had extensive training, were supervised, had undergone a criminal history check, and were tested for tuberculosis and other communicable diseases.
- That the agency ensured that all employment laws were followed; that its caregivers were bonded and/or insured, as applicable; and that it was responsible for payment of all necessary income taxes and liability and worker's disability compensation insurance.
- That the patient or client could request and be given a fully itemized billing statement, including the date of each service and the charge.

Licensees providing services through a managed care plan, Medicare, Medicaid, or other third-party payer would not have to provide itemized billing statements unless there were applicable copayments, coinsurance, or deductibles.

An in-home services agency would have to treat patients and clients in accordance with the policy. An agency would have to implement and update its policy as appropriate.

Refund for Violation. In addition to the authority under the Code to deny, limit, suspend, or revoke a license under Part 218 or impose an administrative fine, LARA could require a refund of any amounts billed to, and collected from, the patient or client or a third-party payer if the Department determined that any of the following violations had occurred:

- Fraud or deceit in obtaining or attempting to obtain a license or in the operation of the licensed health facility or agency.
- A violation of Article 17 or a rule promulgated under it.
- False or misleading advertising.
- Negligence or failure to exercise due care.

- Permitting a license or certificate to be used by an unauthorized facility or agency.
- Evidence of abuse regarding a patient's health, welfare, or safety or the denial of a patient's rights.
- Failure to comply with a requirement that a hospital enter into an agreement or affiliation with an anatomical gift procurement organization.
- Failure to comply with Part 222 (Certificates of Need) and/or a term, condition, or stipulation of a certificate of need.
- A violation of the human cloning ban.

Additionally, LARA could require a refund upon a finding of a condition or practice that would constitute a violation of Article 17 if the applicant were a licensee.

Surveys. At any time, LARA could conduct a survey of all records and operations of a licensee in order to determine compliance with Part 218. In addition, LARA could conduct in-home visits to observe care and services to a patient or client. The right to conduct a survey would extend to any premises and records of people LARA had reason to believe were providing home health services without a license in violation of Part 218.

Following a survey, LARA would have to proceed as prescribed in the Code with regard to notice, right to hearing, and final determination of the matter. If requested, the licensee would have to submit to LARA a written plan of correction within the time frame designated on the notice. The Department would have to give the licensee written notice of the acceptance of the plan, or any changes necessary in order for it to be acceptable.

Penalties & Remedies. Any penalties or remedies provided in Part 201 or 218 would be independent and cumulative and not exclusive. Neither LARA nor any other person would be limited to the penalties and remedies in either part. A person's use of a penalty or remedy could not be considered a bar to the use of other penalties or remedies by that person or another person.

Unlicensed In-Home Services Agency. A person who operated an in-home services agency without a license would be guilty of a misdemeanor. Each day of the violation

would be considered a separate violation. If the violator were a corporation, it could be punished by forfeiture of its corporate charter and all rights and franchises under that charter.

The Department could order a person to cease and desist from engaging in the unlicensed operation of an in-home services agency. The person would be entitled to a hearing before a hearings examiner if the person filed a written request within 20 days after the effective date of the order. Failure to request a hearing would constitute a default, and LARA could enter a permanent cease and desist order and proceed as prescribed in the Code to deny, limit, suspend, or revoke an applicant's or licensee's license or certification.

Upon a violation of a cease and desist order, the Department of Attorney General could apply in circuit court to restrain and enjoin, temporarily or permanently, an individual from further violating the order.

A person who operated an unlicensed in-home services agency also would be subject to the Michigan Consumer Protection Act because such operation would not be reasonable in relation to the development and preservation of business, and would be an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or commerce.

MCL 333.20106 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Under the bill, starting on January 1, 2012, in-home health agencies would have to obtain licensure in order to operate. The bill would require LARA to establish a schedule of fees for license application and renewals, depending on various criteria contained in the bill. The maximum license/renewal fee would be \$500. Licenses would be valid, unless suspended or revoked, for three years, and would be transferrable for a fee of up to 50% of the original license fee. The number of agencies that would be licensed under the bill is not available at this time, and the fee schedule that the Department would establish is unknown. Because of this, though licensing fees would certainly

raise some revenue, it is unknown how much it would be.

Additionally, for agencies receiving a licensure survey requiring more than two on-site surveys by LARA per licensure period, an additional fee would apply. The Department would determine this fee.

The bill would introduce various indeterminate administrative costs to LARA for rule promulgation, plan development, licensing, and enforcement of licensing laws established under the bill. It is unknown whether the fees authorized under the bill would raise enough revenue to cover these costs. Therefore, the fiscal impact of the bill is indeterminate.

The bill also would make the operation of an unlicensed in-home services agency a misdemeanor. To the extent that the bill resulted in an increase in convictions, local units of government would incur increases in correctional costs. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries. Under the Michigan Penal Code, if the penalty for a misdemeanor is not set in statute, the offense is punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both.

Fiscal Analyst: Matthew Grabowski
Josh Sefton

S1112\§221sa.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.