

COVID-19 RESPONSE IN NURSING HOMES

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Senate Bill 956 as enrolled
Vetoed by the Governor

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Peter J. Lucido
1st House Committee: Health Policy
2nd House Committee: Ways and Means
Senate Committee: Health Policy and Human Services
Complete to 10-1-20

SUMMARY:

Senate Bill 956 would amend the Public Health Code to require the Department of Health and Human Services (DHHS), in consultation with the Department of Licensing and Regulatory Affairs (LARA), to assess and report on the state's response to COVID-19 in nursing homes and plan for any future response. It would also prohibit admission or retention of coronavirus-positive individuals in nursing homes.

Under the bill, DHHS, in consultation with LARA, would have to do all of the following:

- By August 15, 2020, conduct an evaluation of the operation, efficacy, clinical outcomes, and performance of each COVID-19 regional hub (see **Background**, below) that was implemented and operating during the state response to *coronavirus* in nursing homes and provide a detailed report on that evaluation to the House and Senate Health Policy committees.
- By September 1, 2020, in consultation with hospitals located in each of the state's eight health care regions,¹ develop a plan based on relevant and updated guidance from the federal Centers for Disease Control and Prevention (CDC), describing a process to ensure that by September 1, 2020, there is at least one dedicated facility available for coronavirus-positive patients in each of the eight health care regions to provide care only for those ineligible for admission at a hospital, nursing home, or adult foster care facility. DHHS would have to submit the plan to the House and Senate Health Policy committees upon its completion.

Coronavirus would mean severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Beginning September 1, 2020, if a hospital determined that a coronavirus-positive person was not eligible for hospital admission and the person was not a nursing home resident, the hospital would have to transfer him or her to a dedicated facility described above or a field hospital or other facility used as a surge capacity for the hospital.

Additionally, beginning September 1, 2020, a person who had tested positive for coronavirus and who was being moved from another health facility or agency could not be

¹ https://www.michigan.gov/mdhhs/0,5885,7-339-71548_54783_54826_56171-237197--,00.html

admitted or retained for care in a nursing home unless the person had since recovered from coronavirus.

Finally, beginning September 1, 2020, unless a nursing home could provide care to a coronavirus-positive resident in a physically separate building, the nursing home would have to move the resident to a dedicated facility described above or a field hospital or other facility used as a surge capacity for a hospital.

The bill states that nothing in it should be construed to require a nursing home to admit or retain a person who has tested positive for coronavirus.

MCL 333.21717 and proposed MCL 333.5145

BACKGROUND:

According to current DHHS guidance:²

The COVID-19 *Regional Hubs* are designated facilities or units within existing nursing facilities to care for COVID-19-individuals residing in long-term care facilities who are suspected to have Coronavirus or have been confirmed to have COVID-19 but do not require acute care provided in a hospital. The COVID-19 Regional Hubs are also designed to support the statewide hospital discharge policy and facilitate admission into nursing facilities prepared to treat COVID-19-affected residents.

COVID-19 Regional Hubs are selected at the discretion of MDHHS based on stated factors that include stated willingness to serve as a hub facility, capacity to contribute to local need for services, proximity to acute care facilities experiencing high COVID-19 related demand, physical attributes of the facility to effectively quarantine COVID-19-affected residents, performance history of the facility, and other factors deemed relevant by MDHHS.

COVID-19 Regional Hubs must keep up to date with Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC) guidance and recommendations related to COVID-19 and inform employees of any changes.

FISCAL IMPACT:

Senate Bill 956 would have cost implications in the current fiscal year for DHHS for the activities of evaluation, planning, and assisting in implementation of a plan. These activities are not unlike similar tasks that DHHS has undertaken during the current fiscal year related to the COVID-19 pandemic. It is likely that costs for these administrative tasks

² https://www.michigan.gov/documents/mdhhs/Guidance_and_Protocols_for_MDHHS_Designated_COVID-19_Regional_Hubs_687533_7.pdf

would be supportable under the current DHHS budget and possibly by federal funds received by the state for costs related to COVID-19 response.

The bill may result in minor administrative costs for LARA. Any resulting costs would likely be sufficiently offset by existing departmental appropriations.

Vetoed 7-31-20:

In her veto message, Governor Whitmer listed the steps that she and her administration have taken to protect nursing home residents, including expedited infection control surveys and ensuring adequate tests and personal protective equipment. Additionally, she pointed to the Michigan Nursing Homes COVID-19 Preparedness Task Force she established to guard against a second wave; their recommendations were issued August 31.³

She went on to say:

SB 956 is based on the false premise that isolation units created within existing facilities are somehow insufficient to protect seniors—a claim unsupported by the data and refuted by the nation’s highest authorities on infectious disease. Instead of protecting seniors, this bill would require the state to create COVID-19-only facilities, forcing hospitals and many nursing homes to send COVID-19 positive patients to such facilities without any requirement for consent, doctor approval, or notification to the patient or their family. The legislation fails to explain how such facilities would be staffed or paid for, or how frail residents would be protected during the potentially traumatic transfer from one facility to another.

The full veto message can be found here:

https://content.govdelivery.com/attachments/MIEOG/2020/07/31/file_attachments/1508841/SB%20956%20Veto%20Letter.pdf

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

³ https://www.michigan.gov/documents/coronavirus/Nursing_Home_Final_Report_701082_7.pdf