

REQUIRE BIENNIAL REPORTS ON CERTAIN FACILITIES

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House Bills 5659 and 5660 as enacted
Public Acts 117 and 118 of 2022

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

Sponsor: Rep. Jeff Yaroeh
House Committee: Oversight
Senate Committee: Oversight
Complete to 7-26-23

BRIEF SUMMARY: House Bills 5659 and 5660 require biennial reports containing input from inspectors of entities regulated by the Bureau of Community Health Systems regarding state and federal guidelines for those entities. The reports must be submitted to the House and Senate Fiscal Agencies, the state budget director, and the appropriation subcommittees for the Department of Licensing and Regulatory Affairs (LARA).

FISCAL IMPACT: House Bills 5659 and 5660 would not have an appreciable fiscal impact on any unit of state or local government. LARA would be required to submit additional reports under the bills, but any costs associated with this activity would likely be sufficiently absorbed by existing departmental appropriations and resources.

THE APPARENT PROBLEM:

Some feel that, when policies that affect the public are being developed by public entities, decisions are too often made at a distance and those at the front, who would be implementing those decisions, have little or no opportunity to provide input as to what could work and what would not. For example, in the early days of the COVID-19 pandemic, executive orders affecting nursing homes were issued, but workers who inspect nursing homes were not consulted or given an opportunity to provide feedback as to whether the proposed actions would achieve the desired end or if they would conflict with other regulatory requirements. Legislation was offered to require any feedback provided by inspectors in the Bureau of Community Health Systems to be included in reports submitted to the legislature and the state budget director.

THE CONTENT OF THE BILLS:

The bills amend different acts to require LARA to submit biennial reports containing a summary of input from individuals who perform inspections for entities regulated by the Bureau of Community and Health Systems,¹ or a successor agency in the department, regarding the adequacy of federal and state guidelines pertaining to the areas the individual inspects for those entities. The summary must include details of the feedback, but cannot include information that would identify the inspector providing the feedback. The summary may be cumulative in nature. It must be understandable to the general public. The reports must be submitted to the House and Senate Fiscal Agencies, the state budget director, and the appropriation subcommittees for LARA.

¹ <https://www.michigan.gov/lara/bureau-list/bchs>

House Bill 5659 adds the above requirement to Article 17 (Facilities and Agencies) of the Public Health Code to apply to entities regulated by the Bureau of Community and Health Systems under that article. Article 17 provides for the regulation of certain *health facilities or agencies*, defined to include county medical care facilities, hospitals, nursing homes, freestanding surgical outpatient facilities, homes for the aged, hospices or hospice residences, health maintenance organizations, and any of these that are located in a university, college, or other educational institution. In addition, Article 17 also provides for the regulation of mobile dental facilities and certain laboratories.

MCL 333.20158

House Bill 5660 adds the above requirement to the Adult Foster Care Facility Licensing Act to apply to adult foster care facilities.

MCL 400.711

ARGUMENTS:

For:

Reportedly, in the early days of the COVID-19 pandemic, under authority of executive order and the Public Health Code, the Department of Health and Human Services (DHHS) developed a Long-Term Care COVID-19 Plan. As part of the state's COVID-19 response, DHHS launched the COVID-19 Regional Hub strategy, in which certain facilities cared for residents of long-term care facilities who had been infected with COVID-19 but no longer needed to be hospitalized. Although the plan also included an emphasis on infection prevention and control, apparently, when developing the plan, input from the state inspectors tasked with inspecting the state's nursing homes to ensure compliance with state and federal regulations regarding infection prevention and control was not sought, nor was an opportunity given for inspectors to offer feedback. Some feel that since the inspectors were the state's experts on what works and what doesn't regarding infection control in long-term care facilities, their input and feedback should have been considered when developing the plan and also as needed if any parts of the plan did not work as intended.

The bills address the issue by soliciting input from inspectors employed by the Bureau of Community Health Systems and requiring that input to be passed along, anonymously and in summary form, to the appropriations subcommittees for LARA in the House and Senate, both fiscal agencies, and the state budget director. Supporters argued that this advice from those in the field as to regulations and guidelines that work for the public good and those that do not could lead to funding and policy changes and decisions that could increase health and safety to residents and staff who reside or work in the state's long-term care facilities, including adult foster care facilities.

Against:

Although discussion on the bills in House committee centered on obtaining feedback regarding state and federal regulations affecting long-term care facilities such as nursing homes, the bills are not restricted in scope to only those facilities. House Bill 5659 appears to apply to all of the entities regulated under Article 17 of the Public Health Code, which includes hospitals and surgery centers and homes for the aged, among other facilities. Concerns were raised that the bills lack specificity. For example, they provide no guidance as to how the input is to be

solicited or used to inform policy decisions. The parameters regarding the nature of the feedback (i.e., the adequacy of federal and state guidelines pertaining to the areas that the individual inspects) also appear to be vague. The bills require that individual inspectors who provide input not be identified, but it is not clear whether the identify of those providing feedback will be known to supervisors. If so, will inspectors worry about reprisals? In addition, many of the regulations that medical and long-term care facilities must comply with are imposed for certification to participate in Medicare and Medicaid or guidance issued by the Centers for Disease Control and Prevention (CDC) and cannot be changed by state law.

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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.