Richard Bloedel *Legislative Service Commission*

Sub. H.B. 403

123rd General Assembly
(As Re-referred to S. Finance and Financial Institutions)

Reps. **Tiberi, Van Vyven, Netzley, Goodman, Mottley, Ogg, DePiero, Olman, Taylor, Jones, Buehrer, Evans, Krupinski, Flannery, Britton, Roberts, R. Miller, D. Miller, Boyd, Corbin, Evans, Stapleton, Barrett, Gardner, Schuring, Mettler, Winkler, Buchy, Hartnett, Salerno, Allen, O'Brien, Patton, Distel, J. Beatty, Verich, Barnes, Clancy, Calvert, Hollister, Redfern, Gooding, Vesper, A. Core, Widener, Hoops, Peterson, Jolivette, Harris, Terwilleger, Austria, Stevens**

Sens. **Hottinger, White, Johnson**

BILL SUMMARY

- Requires the Department of Aging to develop and publish the Ohio Long-Term Care Consumer Guide, for use by individuals considering entering a nursing facility in the state and by their families, friends, and advisors.

- Requires that the consumer guide provide users with information on each nursing facility in the state, with the information to include several measures of nursing facility quality and other data useful in comparing and selecting among facilities.

- Requires that the consumer guide be published in electronic form, available on the Internet.

- Creates a 16-member Long-Term Care Consumer Guide Advisory Council to make recommendations on rules concerning the content of the guide and to advise on other matters concerning the guide.

- Requires the creation of a unit in the Department of Health to provide advice and technical assistance to nursing facilities for the purpose of improving compliance with Medicaid certification requirements.

- Increases nursing facility and ICF-MR Medicaid reimbursement rates for FY 2001 by allowing (1) indirect care costs to be based on the number of

inpatient days a facility would have had during the period if its occupancy rate had been 75% (rather than 85%), (2) capital costs to be based on the number of inpatient days the facility would have had during the period if its occupancy rate had been 85% (rather than 95%), and (3) purchased nursing services costs to be based on 17% (rather than 10%) of the facility's cost specified in the calendar year 1999 cost report for such services, plus one-half of the amount by which the reported costs exceed that percentage.

- Removes the requirement of existing law that a nursing facility or ICF-MR provider that transfers an interest in the facility to a provider that is a "related party" must have received an Internal Revenue Service ruling that the transfer is an arm's-length transaction for purposes of federal income taxation in order for the Department of Human Services to pay the new provider a per-patient, per-day fee that is based on the facility's post-transfer capital costs.

- Provides, with respect to laws that prohibit neglect and require the reporting and investigation of neglect at long-term care facilities, that neglect does not include allowing a resident, at the resident's option, to receive only treatment by spiritual means through prayer in accordance with the tenets of a recognized religious denomination.

- Requires the Department of Health to investigate, within ten working days after referral, any unresolved complaint that the Office of the State Long-Term Care Ombudsperson has investigated and found to be valid and has referred to the Department of Health.

- Extends by two years the deadline for a nursing home that received a certificate of need for the purchase and relocation of licensed nursing home beds on February 26, 1999 to use the beds for the health service or activity for which they were purchased.

- Makes an appropriation.

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CONTENT AND OPERATION

Publication of nursing facility consumer guide

(R.C. 173.46, 173.48, and 173.49; Section 3)

The bill requires the Department of Aging to develop and publish a guide to nursing facilities in the state for use by individuals considering entering a nursing facility and by their families, friends, and advisors.[1] The guide is to be titled the Ohio Long-Term Care Consumer Guide.

The guide must be published in computerized form for distribution over the Internet. The bill requires the Department to adhere to the following principles in developing and publishing the guide:

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[1] *As used in the bill, a "nursing facility" means either (1) a facility, or a distinct part of a facility, that is certified as a nursing facility or a skilled nursing facility for purposes of the Medicare or Medicaid program or (2) a licensed nursing home that is not certified as a nursing facility or skilled nursing facility.*

--It should be designed to provide users with a variety of measures of nursing facility quality and with other information useful in comparing and selecting nursing facilities.

--It should present its information in a manner that is easy to use and understand.

--It should allow users to determine which of the available measures are most important to them.

--The information in the guide should be kept as current as practicable.

--It should be designed to promote excellence in nursing facility quality.

--It should promote awareness of the range of long-term care services available to Ohioans.

The Department must make the guide available to any person or government entity, and cannot restrict access by requiring payment of a fee, use of a password, or fulfillment of any other condition. In addition, the Department is to develop and implement programs and other strategies to encourage use of the guide by individuals considering entering a nursing facility and their families, friends, and advisors.

Every two years, the Department also must publish an executive summary of the guide. The executive summary is to be available to the public in both computerized and printed forms.

The bill requires the Department to make the guide available within 14 months after the bill's effective date but also allows the Department to publish it only if (1) the guide includes the results of customer satisfaction surveys of families of nursing facility residents covering at least 25% of the state's nursing facilities and (2) the Department has established a process for conducting both family and resident satisfaction surveys.

Contents of the consumer guide

(R.C. 173.50)

The Ohio Long-Term Care Consumer Guide must present information on each nursing facility in the state. The guide is required to include for each facility, to the extent it is available to the Department of Aging, customer satisfaction data, clinical quality indicator data (meaning measures of various aspects of the physical or mental conditions of facility residents), data derived from the standard surveys of each facility that are performed by the Department of Health under existing law

to measure compliance with state and federal regulatory requirements, and any other information the Department of Aging specifies by rule. The following sections of this analysis describe in detail the bill's requirements concerning the categories of data that must be included in the guide.

Customer satisfaction data

(R.C. 173.47, 173.54, 173.55, 173.57(A)(7), and 5111.20)

While the bill allows the Department of Aging to contract with any person or government entity to perform any function related to the publication of the Ohio Long-Term Care Consumer Guide, it requires the Department to contract to have nursing facility customer satisfaction surveys conducted. The surveys are to be conducted annually, and must consist of standardized questionnaires for nursing facility residents and for families of nursing facility residents. Each questionnaire must ask the resident's age and gender, and is to be structured in a manner that produces statistically tested valid and reliable responses, as specified in rules adopted by the Department. The resident questionnaire must ask who, if anyone, assisted the resident in completing the questionnaire. The family questionnaire must ask the relationship of the person completing the questionnaire to the resident.

Resident surveys are required to be conducted in person, using a standardized survey protocol developed by the Department in consultation with the Long-Term Care Consumer Guide Advisory Council, and in a manner that preserves the resident's confidentiality as much as possible. Family surveys are to be conducted using anonymous questionnaires distributed to families and returned to a person other than the nursing facility, also in accordance with a standardized survey protocol.

The results of the surveys are to be used in the consumer guide, and also must be provided to the nursing facilities to which they pertain. The bill requires each nursing facility in the state to participate as necessary for successful completion of the surveys, and allows the Department to charge the facility a fee for each survey. The fee cannot exceed $400, and is subject to reimbursement through the Medicaid program.

The Department must deposit the fees into the state treasury to the credit of the Long-Term Care Consumer Guide Fund, which the bill creates. The fees are to be used for costs associated with the publishing of the consumer guide, including the cost of contracting for the surveys. The Department can contract with a person or government entity to collect the fees.

In awarding the contract to have the surveys conducted, the Department is required to choose a person or government entity that has experience in surveying the customer satisfaction of nursing facility residents and their families. The contract must permit the person or government entity to subcontract with other persons or government entities for purposes of conducting all or part of the surveys.

Clinical quality indicators

(R.C. 173.56)

The bill requires the Department of Aging, for purposes of the consumer guide, to use, subject to federal regulatory requirements, procedures, and guidelines, the clinical quality indicators calculated for each nursing facility by the U.S. Health Care Financing Administration for the Medicare and Medicaid programs.

Standard survey data

(R.C. 173.51(C)(3))

As mentioned above, existing law requires the Department of Health to conduct standard surveys of nursing facilities to measure compliance with state and federal regulatory requirements. The bill requires the consumer guide to include, for each facility, the date of the facility's most recent standard survey and the percentage of certain specified survey data tags (which identify, or "tag," specific regulatory requirements) with respect to which the facility was found to be in compliance during the survey. The Department of Aging must specify in rule the survey data tags to be used for this purpose, and can exclude tags that are never or very rarely cited during surveys. The guide also must include for each facility the statewide average percentage of the specified survey data tags for which facilities were found to be in compliance during the most recent standard surveys, or, alternatively, the Department of Aging can prescribe that a peer-group average be used. In addition, the guide must include (1) the number of specified data tags cited by the Department of Health in the facility's most recent standard survey, (2) the statewide average (or a peer-group average, if the Department so prescribes) number of specified tags cited during the most recent standard surveys, (3) the date the facility achieved substantial compliance with Medicare and Medicaid certification requirements, (4) whether the Department of Health determined that the facility provided substandard care to residents during two of its last three standard surveys, and (5) whether the Department of Health found that the care provided by the facility placed residents in immediate jeopardy during two of its last three standard surveys.

Specific requirements for the structure of the consumer guide

(R.C. 173.51)

The bill includes specific requirements concerning how the consumer guide is to be structured. The opening electronic page of the guide must include all of the following general information:

--A description of the guide.

--Disclaimers stating the limitations of the data included in the guide, including statements that standard surveys of nursing facilities are conducted at periodic intervals and that conditions at a facility can change significantly between standard surveys.

--A recommendation that individuals considering nursing facility placement visit any facilities they are considering.

--Electronic links to other information on the Internet about selecting nursing facilities and about other long-term care options, including information maintained by pertinent government agencies and private organizations and telephone numbers for those agencies and organizations.

--Other information the Department of Aging specifies by rule.

In addition, the consumer guide must allow the user to search for information in the guide in multiple ways, including searches by facility name, county, municipality, zip code, source of nursing facility payment, and special care service. The first information to appear on the computer screen following a search must be a list of all facilities identified by the search. For each facility listed, the consumer guide must present the user with summarized comparative measures, and electronic links to definitions and descriptions of the measures. A feature that allows the user to choose the particular comparative measures that are to be displayed on the screen must be included, and the Department also can include a consumer needs assessment function to assist the user in choosing measures. The comparative measures must be derived from the following sources:

--The aggregate responses made by the facility's residents or their families to measures of customer satisfaction included in the required customer satisfaction surveys. For each measure, the guide must compare the responses for the facility to the statewide average or to a peer-group average specified by the Department in rule.

--The facility's clinical quality indicator scores. For each indicator, the guide must compare the facility's score to the statewide average or to a peer-group average specified by the Department in rule. The scores are to be expressed as percentages.

--The data described above under "***Standard survey data***" concerning the facility's most recent standard survey.

--An electronic link allowing the user to gain access to facility-specific comparative information.

When the guide's user opens an electronic link to facility-specific information, the first information to appear on the computer screen must include all of the following:

--The name of the facility and its owner, the facility's telephone number, and the facility's address, including the county in which the facility is located. The guide must include a function that pinpoints on a map the facility's location.

--The facility's status with regard to Medicare and Medicaid certification and private accreditation.

--The number of beds in the facility.

--Information about the facility's staffing as prescribed by the Department by rule.

--An electronic link allowing the guide's user to gain access to a listing of services provided by the facility.

--At the facility's option, a picture of the facility, a brief statement provided by the facility, and an electronic link to any information the facility maintains about itself on the Internet.

--The summary customer satisfaction, clinical quality indicator, and standard survey data for the facility described above. This information must be presented with electronic links allowing the user to gain access to additional information. The additional information must include the customer satisfaction responses for each statistically valid question asked on the questionnaires used in the resident and family surveys. The responses for the facility are to be compared to the statewide average or a peer-group average, and expressed in percentages.

The user also must be provided links to a list of all survey data tags that were cited during the facility's most recent standard survey, a brief description of each data tag, directions or links for obtaining more information about the facility's

survey history, and links to the text of each citation and to the facility's plan of correction filed with the state for each citation.

Besides the facility-specific information required by statute, the Department can prescribe by rule other information to be included in the guide.

Updating consumer guide information

(R.C. 173.52)

The Department of Aging must update the customer satisfaction data in the guide annually, after the customer satisfaction surveys are conducted. The clinical quality indicator data must be updated in January, April, July, and October of each year, using the most recent resident assessment data available to the Department. The data derived from standard surveys of each facility is to be updated weekly, using the most recent standard survey data available to the Department.

The bill requires the Department to modify the standard survey data included in the consumer guide to reflect either (1) any change in the data resulting from informal dispute resolution, an appeal, or any other process, and (2) the date of correction of any citation.

The Department is required to specify by rule information in the guide that nursing facilities can electronically update without need for any action by the Department, and the guide must include a mechanism for such updates. The bill specifies that the self-updating mechanism does not apply to the guide's customer satisfaction, clinical quality, and standard survey data.

The Department of Health is mandated to cooperate with the Department of Aging to ensure that standard survey information and quality indicator data are updated in accordance with the bill's requirements, subject to the regulatory requirements, procedures, and guidelines of the United States Health Care Financing Administration.

Assisting consumers who lack Internet access

(R.C. 173.53)

In addition to publishing the computerized consumer guide, the Department of Aging is required to prepare and make available to the public printed information to assist consumers in making long-term care and nursing facility placement decisions, particularly consumers who do not have access to the Internet. The printed information must specify organizations that will provide

consumers free on-site access to the guide and will mail to consumers free paper copies of electronic pages of the guide.

Consumer guide advertising restriction

(R.C. 173.59)

The bill prohibits the Department of Aging from including in the guide any advertising that causes a conflict of interest. The prohibition does not affect facility-specific information allowed to be submitted by nursing facilities for presentation in the guide, such as a photograph of a facility.

Long-Term Care Consumer Guide Advisory Council

(R.C. 173.58)

The bill creates a 16-member Long-Term Care Consumer Guide Advisory Council, to be convened by the Director of Aging. The Council is charged with (1) helping develop and review rules to be adopted by the Department concerning the consumer guide, (2) recommending administrative practices to the Department for improving the operation and content of the guide, and (3) recommending legislative changes to the Department needed to improve the guide. The Council is to consider whether it is feasible to include in the consumer guide other long-term care facilities, such as residential care facilities and intermediate care facilities for the mentally retarded, and long-term care service providers, such as home health agencies and adult day service providers. The Council also is to consider the feasibility of including measurements of quality of life standards in the guide.

The Council consists of the following members:

--A representative of the Department of Aging, appointed by the Director of Aging;

--A representative of the Department of Health, appointed by the Director of Health;

--A representative of the Department of Job and Family Services, appointed by the Director of Job and Family Services;

--Two representatives of the Ohio Health Care Association, appointed by the chief administrator of the association;

--Two representatives of the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging, appointed by the chief administrator of the association;

--Two representatives of the Ohio Academy of Nursing Homes, appointed by the chief administrator of the academy;

--A representative of the Ohio Association of Regional Long-Term Care Ombudsmen, appointed by the chief administrator of the association;

--A representative of the Ohio chapter of the American Association of Retired Persons, appointed by the chief administrator of the chapter;

--The state Long-Term Care Ombudsperson;

--A family member of a nursing facility resident, appointed by the Governor;

--A representative of the Ohio Association of Area Agencies on Aging, appointed by the president of the association;

--A representative of a consumer group or other not-for-profit entity that is organized for the purpose of promoting improved care for nursing home residents, appointed by the Governor;

--A representative of a research organization, appointed by the chief administrator of the organization. The research organization is to be selected by the Director of Aging from among Ohio research organizations that have experience in long-term care policy matters.

Each Council member serves at the discretion of the person who appointed the member. Each member serves without compensation or reimbursement for expenses, except to the extent that serving as a member of the Council is part of the member's regular duties of employment. The member serving as the representative of the Department of Aging serves as the Council's chairperson, and the Department must supply meeting space and staff support for the Council.

The Long-Term Care Consumer Guide Advisory Council is not subject to the State Agency Sunset Law.

Department of Aging rules

(R.C. 173.57)

The Department of Aging is required to adopt rules to implement and administer the Consumer Guide Law. The rules are to specify all of the following:

--The content of the guide, including any information in addition to that specified by the bill.

--The content of the executive summary of the guide;

--The customer satisfaction measures to be published in the guide.

--The clinical quality indicators to be published in the guide.

--For purposes of expressing staffing comparisons in the guide, criteria to be used in classifying nursing facilities into peer groups, which can be based on case-mix scores calculated for nursing facilities under Medicaid law, the size of nursing facilities, the location of facilities, or other pertinent factors.

--The format for listing nursing facility services in the guide and the manner in which that information is to be collected from nursing facilities.

--A method of including additional long-term care facilities and service providers in the guide pursuant to the Advisory Council's consideration of this matter.

--Any other requirements necessary to implement and administer the Consumer Guide Law.

The Department must develop the rules in consultation with the Advisory Council. Before filing a rule, the Department must present it to the Council and provide the Council a reasonable time to comment on it. All rules that are adopted must be done so in accordance with the Administrative Procedure Act. The bill states that initial rules must be adopted not later than six months after the bill's effective date.

Creation of nursing facility technical assistance unit

(R.C. 3721.026 and 5111.62)

The bill requires the Director of Health to establish a unit to provide advice and technical assistance to nursing facilities for the purpose of improving compliance with Medicaid certification requirements. The unit is to be staffed by employees who have training or experience in conducting or supervising nursing facility surveys, but who do not conduct the surveys. The Director must adopt rules to implement the requirement to establish the unit. By December 31 each year, the Director must submit a report to the Governor and General Assembly describing the unit's activities that year and its effectiveness in improving compliance with certification requirements.

Nursing home and ICF-MR Medicaid reimbursement rates

(Section 5)

Nursing facility and ICF-MR Medicaid reimbursement rates are based on their (1) direct care costs--primarily for employing or engaging nurses and other professional and administrative staff, (2) "other protected costs"--mostly for medical supplies; real estate, franchise, and property taxes; and utilities, (3) capital costs--includes depreciation or amortization and interest on buildings and equipment, and (4) indirect care costs--reasonable costs not considered direct, other protected, or capital costs. The bill increases Medicaid reimbursement rates for FY 2001 by altering the formulas used in calculating indirect, direct, and capital costs.

Under the bill (1) indirect care costs for FY 2001 are to be based in part on the greater of a facility's actual number of "inpatient days" (days that a resident occupies or is considered to occupy a bed, as when the person has therapeutic or hospital leave days) during the cost reporting period or the number of inpatient days the facility would have had during the period if its occupancy rate had been 75% (rather than 85% under existing law), (2) capital costs for FY 2001 are to be based in part on the greater of the facility's actual number of inpatient days for the period or the number of inpatient days the facility would have had if its occupancy rate had been 85% (rather than 95% under existing law), and (3) FY 2001's reimbursement for purchased nursing services costs are to be based on 17% (rather than 10% under existing law) of the nursing facility's cost specified in the calendar year 1999 cost report for services provided that year by registered nurses, licensed practical nurses, and nurse aides who are employees of the facility, plus one half of the amount by which the reported costs for purchased nursing services exceed that percentage.

In addition, the bill states that if the Department of Job and Family Services is unable to calculate the rates for indirect care and capital costs for FY 2001 in the manner provided for in the bill before it makes payments for services provided during FY 2001, the Department must pay a nursing facility or intermediate care facility for the mentally retarded (ICF-MR) the difference between the amount it pays the facility and the amount that would have been paid had the Department made the calculation in time.

Tax consequences of transfers of interest between related nursing home providers

(R.C. 5111.25 and 5111.251)

Under existing law, the Department of Human Services pays each eligible nursing facility or ICF-MR provider a per-resident, per diem rate for the facility's reasonable capital costs established prospectively each fiscal year for each facility. If the facility is owned by the provider, "capital costs" means primarily

depreciation and interest on the land, building, and equipment costs; if the facility is leased, it means the lease rental payments for the land, building, and equipment.

If a provider transfers an interest in a facility to another provider, the capital cost basis of the asset is adjusted (increased) for the time that the transferor held the asset by the lesser of one-half of the change in either construction costs or the Consumer Price Index during the time the transferor held the asset--provided that (1) the providers are not "related parties" (that is, personal relatives, or an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by the provider) or (2) if the providers are related parties, several conditions are met, one of which is that the United States Internal Revenue Service has issued a ruling that the transfer is an arm's-length transaction for purposes of federal income taxation. The bill removes the condition concerning an IRS ruling, thus allowing for an increase in the capital cost basis of a nursing home where the other conditions are met.

Federal tax law does not grant capital gains treatment to the sale or exchange of depreciable property between related parties. For example, suppose that a nursing facility provider with an adjusted basis of $500,000 in the facility sells it to a related party for $1 million. Suppose also that the facility has a remaining useful life of ten years. The original owner could take depreciation deductions of only $50,000 per year over the next ten years, but the new owner could take depreciation deductions of $100,000 per year. Because the sale is a related-party transaction, the Internal Revenue Service would be unlikely to issue a ruling that the transfer is an arm's-length transaction for purposes of federal income taxation. Thus the $500,000 gain from the sale would be treated as ordinary income. If the new owner were not a related party, the gain would be treated as a capital gain and therefore taxed at a lower rate.

Christian Science treatment not considered to be neglect

(R.C. 3721.21)

The bill provides, with respect to laws that prohibit neglect, and require the reporting and investigation of neglect, at long-term care facilities, that neglect does not include allowing a resident, at the resident's option, to receive only treatment by spiritual means through prayer in accordance with the tenets of a recognized religious denomination. Christian Science treatment is the object of the provision.

Investigation of complaints referred by the State Long-Term Care Ombudsperson

(R.C. 173.19 and 3721.027)

The bill requires the Department of Health to investigate within ten working days after referral, in accordance with procedures and criteria to be established by the Department of Health and the Department of Aging, any unresolved complaint that the Office of the State Long-Term Care Ombudsperson has investigated and found to be valid and has referred to the Department of Health. The bill also requires that a complaint affecting a long-term care facility resident that has been investigated and found to be valid by a regional long-term care ombudsman program but that has not been resolved must (rather than may) be referred to the State Ombudsperson.

St. Vincent Mercy Hospital's certificate of need

(R.C. 3702.525)

Under existing law, the certificate of need that a nursing home receives for the purchase and relocation of licensed nursing home beds expires if, within 24 months after the certificate is granted, the beds are not used for the health service or activity for which they were purchased. The bill extends the deadline by two years for a nursing home that received a certificate of need for the purchase and relocation of licensed nursing home beds on February 26, 1999. The bill is designed to benefit St. Vincent Mercy Hospital in Toledo, which purchased 24 long-term care beds from the Little Sister of the Poor, also in Lucas County, but will not be able to use those beds before February 26, 2001.

Effective date

The effective date of the bill's provisions is July 1, 2000.

HISTORY

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