

REPORT OF THE
NURSING HOME SUBCOMMITTEE OF THE
STANDING COMMITTEES ON SOCIAL SERVICES

Submitted to the Members of the
Second Session of the Sixty-fourth General Assembly
Meeting in the Year 1972

FINAL REPORT
of the
NURSING HOME SUBCOMMITTEE
of the
COMMITTEES ON SOCIAL SERVICES
December 15, 1971

In response to a request by Senator Earl G. Bass and Representative Edgar H. Holden a joint subcommittee of the Senate and House Committees on Social Services was authorized by the Legislative Council at its meeting on August 11, 1971. The Council authorized the subcommittee to hold not more than two meetings, for the purpose of further review of the proposed rules of the Department of Health which would implement House File 1243 of the Sixty-third General Assembly, the 1970 amendments to the state's nursing home law. Senator Bass and Representative Holden as chairmen of the Senate and House Committees on Social Services were directed to appoint three members of the majority party and two members of the minority party from their respective committees to serve on the Nursing Home Subcommittee. In addition to themselves, Senator Bass and Representative Holden named the following persons:

Senator G. William Gross
Senator Charles P. Miller
Senator Marvin W. Smith
Senator Richard L. Stephens
Representative Keith H. Dunton
Representative George J. Knoke
Representative D. Vincent Mayberry
Representative Nathan F. Sorg

At the organizational meeting of the Subcommittee Representative Holden was elected chairman, Senator Bass was elected vice chairman, and Mrs. Elizabeth Isaacson of the House Chief Clerk's staff was named as secretary.

In order for this report to be fully understood it is important that the record include certain background information and events which preceded the request for a subcommittee to review the proposed rules of the Department of Health which would implement House File 1243 of the Sixty-third General Assembly.

House File 1243 was prepared by the Nursing Home Study Committee which met during the 1969 interim. That study committee's efforts were directed towards extensive revision of Chapter 135C, Code 1966, to establish better enforcement standards and hopefully increase the emphasis on health care for residents of nursing and custodial homes. Since the revision of this chapter defined seven categories of health care facilities, each licensed to provide a specific level of care, required each such facility to have a care review committee, mandated compliance by public facilities as well as private facilities, and made numerous other changes, it was understood that a considerable length of time would be required for the Department of Health to prepare rules to implement this legislation.

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In the early part of June, 1971 some anxiety and concern was being expressed to Representative Holden, who had served as chairman of the Nursing Home Study Committee, and to Senator Bass as Chairman of the Senate Committee on Social Services, by some members of the nursing home industry who had learned through rumors some of the provisions of the proposed new rules. Representative Holden had asked from time to time during the First Session of the Sixty-fourth General Assembly for copies of any proposed rules that might be completed, but it was not until the middle of June that he and Senator Bass were delivered voluminous copies of the proposed rules for their scrutiny. Senator Bass and Representative Holden were astounded by the length and complexity of the rules which at that time ran to some four hundred legal size pages. It was also learned that very few persons had seen the rules, nor were they to be made generally available to the members of the industry or others prior to submission to the Departmental Rules Review Committee. Senator Bass and Representative Holden were concerned that this could lead to serious problems for the Rules Committee and the Department and might result in complete disapproval by that committee.

On June 15th Representative Holden notified the House Committee on Social Services that he intended to ask the Legislative Council for authority to hold a meeting to consider what action, if any, could be taken to assist the Department of Health in gaining approval of the needed rules. In subsequent conference with Senator Bass it was agreed to hold a joint meeting of the Senate and House Social Services Committees to discuss the issue. This meeting was held July 27th.

The joint meeting of the Committees on Social Services on July 27th and the two meetings held by the Subcommittee September 3rd and September 21st all attracted large numbers of people. In the case of the July 27th meeting it was necessary to move to the Senate Chamber to accommodate the crowd. This is made a part of the report to point up a basic weakness in our rule making procedure. There appears to be no requirement, and hence little effort, to make proposed rules available to the public or affected industry prior to submission to the rules review committee. The Subcommittee was severely critical of the Department of Health for their lack of consideration for the industry affected, whose members found it almost impossible to secure copies of the proposed rules.

As might be expected many of the complaints regarding the proposed rules came from owners of facilities that must be licensed under the new health care facilities law. This caused

one Committee member to comment "If all persons in any regulated industry indicated wholehearted support of regulations, the regulations would be meaningless." However, others also registered complaint. The Department of Social Services sees some conflict with their authority to license boarding homes for children, their operation of state institutions and other problems. County boards of supervisors registered strong objection to the inclusion of county homes under the licensing act in light of the likelihood of substantially increased costs to comply with the new rules. Testimony was received that the new standards would require a facility that is "outside the pocketbook of the state of Iowa for welfare patients and a majority of private paying oldsters".

Although there were numerous complaints raised the Subcommittee considered the major ones to be:

1. The proposed requirement increasing the minimum number of square feet of floor space per bed in nursing homes. The Subcommittee recommended a change. The present proposal says the "Design of the room shall be such as to provide space between the beds and between the foot of the beds and walls, furniture and other obstructions so as to permit free passage of a wheelchair or patient on crutches".
2. The proposed requirement that bedrooms shall contain no more than four beds. The Subcommittee recommended that this apply only to new homes since many private as well as nearly all public nursing homes could not comply. The Department made no change.
3. The proposed requirements for social service staff personnel who hold specified academic degrees, and requirements severely limiting the range of duties or multiple duties that administrators of homes may perform. The Subcommittee recommended changes that would impose no greater restrictions than those of the federal government and that greater latitude be allowed the homes by permitting them to demonstrate to the care review committee that they had adequate social service and activity programs. It would appear this went unheeded.
4. The extreme bulk of the rules package. At the Subcommittee's urging a revised format reduced the package by about one-half.

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5. An apparent effort on the part of the Department of Health to go beyond the requirements of the law. Protests on the part of members of the Subcommittee were largely ignored.

Some Subcommittee members made strong efforts to exempt county homes from the licensing requirements of Chapter 135C, Code, 1971, because of the stringent requirements proposed in the new rules. Chairman Holden and others strongly objected to such an exemption as being unfair to private operators and the Subcommittee made no such recommendation. It should be noted that because of the many unresolved complaints, and the complexity of the proposed health care facility rules, it is possible that the second session of the Sixty-fourth General Assembly may see legislative attempts to nullify some of the rules and even repeal of parts of the current law.

A summary of specific objections to the proposed rules as they were first presented follows. Some revision has taken place since the Subcommittee's last meeting, but no attempt has been made to cross check the revision with the original proposal.

SPECIFIC OBJECTIONS TO PROPOSED HEALTH CARE FACILITIES RULES
PRESENTED TO JOINT STANDING SOCIAL SERVICES COMMITTEES AND
NURSING HOME SUBCOMMITTEE

This document has been prepared by the staff of the Legislative Service Bureau pursuant to a request from Representative Edgar Holden, as Chairman of the Nursing Home Subcommittee, that the specific objections to the proposed new rules drawn up by the Health Department which have been received by the Subcommittee and its parent joint standing Committees be listed. This list is not intended to include a reference to every rule within the sets of proposed rules which is or may be objectionable to nursing home operators or other parties.

At the meeting of the joint standing Committees on July 27, Commissioner of Social Services James Gillman indicated he feels there should be a specific nondiscrimination clause in the rules.

In addition, Commissioner Gillman indicated that he is concerned about what he regards as an "apparent intent to make institutions of family living situations," and that in particular he feels that the designation of all adult foster homes and boarding homes as health care facilities is not a desirable nor accurate concept. Mr. Francis A. Lackner of the Iowa Association of Homes for the Aging and Mr. B. E. Phillips, Director of the Knoxville Veterans Administration Hospital, also made similar comments at the July 27 meeting. This objection goes to the law itself, as well as the rules.

More specifically, Commissioner Gillman stated that rule 1.4(1)a.10, relating to funds or properties belonging to or due a resident of an adult foster care facility is sufficient to cover welfare as well as other funds, and that therefore rule 1.4(1)a.11 is unnecessary, and in fact infringes upon the responsibilities of the Department of Social Services.

Care Review Committee

Several objections have been received relative to the requirements for a care review committee for each health care facility. Here again, the basic requirement is found in the law itself, but it is quite flexible and leaves the Department of Health considerable latitude in drawing up the implementing regulations. The section in question is 135C.25 of the 1971 Code, which reads as follows:

"Each health care facility shall have a care review committee, established in accordance with the rules of the department, which shall periodically review the needs of each individual patient or resident of the facility. The composition of the care review committee shall be in accordance with rules of the department, which shall in formulating such rules give consideration to the needs of patients and residents of each license category of

health care facility and the services facilities of each category are authorized to render."

Commissioner Gillman suggested, with particular reference to adult foster homes and boarding homes, that a single care review committee serve a number of facilities in a given region. (This is specifically permitted by rules 1.12(3)f and 2.13(3)e.)

Commissioner Gillman also expressed objection to having the care review committees selected by the health care facility licensee. This feature is common to all five sets of detailed rules which have been proposed by the Department of Health (1.12(3)b; 2.13(3)b; 3.13(3)b; 4.14(3)b; 5.15(3)b.)

Mr. Lackner stated that in view of the limited degree of health care services which boarding, custodial and basic nursing homes are licensed to provide (see section 135C.1, subsections 2, 3 and 4), the need for a care review committee for such facilities is minimal, and suggested that the needed service could be provided by the county Department of Social Services without cost to the homes. He also expressed the opinion that "many of the areas of concern listed in the regulations for a care review committee are of a medical nature which laymen are incompetent to judge," and that these matters should be left to the physician's personal responsibility.

Mrs. Charles K. Sullivan of Sioux City, in her presentation to the full joint Committees on July 27, addressed her specific comments only to the proposed basic nursing home rules. She objects to the concept of the care review committee, which she interprets as "the watch dog for the patient," and states that the functions assigned the care review committee by the proposed rules are properly those of the licensed administrator.

Employment of Retarded Persons and
Performance of Work by Patients or Residents

Mrs. Helen Henderson of the Iowa Association for Retarded Children questioned whether the proposed rules would adequately protect retarded persons employed in health care facilities. The rules state that "recognized retarded individuals may be employed" on the basis of individual approval by the Department of Health. (Rules 2.4(1)h, 3.4(1)h, 4.4(1)h, 5.4(1)h.) Commissioner Gillman's statement that "the physician's approval of the employee's capability to perform the task without injury to his health should be sufficient without requiring additional approval from the Health Department" may have reference either to the foregoing rules or to the rules which state that a patient or resident may work in a health care facility so long as he does not replace a paid employee, and his physician and the Department of Health approve the tasks he is assigned to perform. (Rules 2.4(2)b, 3.4(2)c, 4.4(2)n, 5.4(2)i.)

Administrative Requirements

Another of the comments by Commissioner Gillman relates to some features of the detailed provisions governing admission, transfer and discharge which appear in all five sets of detailed rules. (Rules 1.4, 2.5, 3.5, 4.5, 5.5.) He suggested that the resident himself should be the primary decision maker in any transfer from a facility, with the advice of friends or relatives and, where appropriate, his physician. Mr. and Mrs. William C. Beckman, operators of the Westside Nursing Home in Sioux City, on July 27 submitted to the full joint Committees a statement which includes an objection to the proposed basic nursing home rules 4.5(1)d, f, and g, and 4.7(2)c, on the grounds that these would deny the patient freedom of choice. However, these rules appear to be based fairly directly on section 135C.23, subsection 2, paragraph d.

Mr. Lackner objected specifically to the requirements of proposed rules 4.3(1)i and 5.3(1)i regarding establishment of certain cost centers for accounting purposes in basic and intermediate nursing homes. He contends that the Department of Health should accept any system of accounting which an accountant is willing to certify. Mr. and Mrs. Beckman also objected to this rule.

Mrs. Sullivan objected to the requirement of proposed rule 4.3(2)c that a licensed administrator in charge of two basic nursing homes shall employ a full-time assistant administrator. The same rule appears at the corresponding point in chapter V, covering intermediate nursing homes. Mr. Lackner also objects to the restriction in rules 4.3(2)e and 5.3(2)e that no full-time administrator may be regarded as filling any other staffing requirement in the facility he administers.

Staffing and Service Requirements

Mr. Hal Showers of the Iowa Nursing Home Association stated at the July 27 meeting that the Association seeks the removal of the proposed rules that each boarding home, custodial home, and basic or intermediate nursing home have a qualified social services supervisor. (Rules 2.11(2), 3.11(2), 4.11(2), 5.11(2).) Mrs. Sullivan objected both to this rule as it applies to basic nursing homes, and to rule 4.12(4), requiring each such home to have an activities director.

Mr. Lackner stated the Association of Homes for the Aging does not believe a boarding home should be required to maintain an individualized social service assessment and summary (rule 2.7(4)a.2), nor an organized social service program as required by rule 2.11. He added that while there might be more need for a social services program and director in custodial homes, the Association questions the availability of enough qualified people to enable custodial homes in the state to comply with rule 3.11, and suggested that the county social services departments provide the needed service or that the required minimum amount of time for

which a social services director must be utilized be reduced. (Mr. Lackner stated the proposed rules for intermediate nursing homes were not available to him prior to the July 27 meeting.) With respect to rules 3.12(5) and 4.12(4)b, Mr. Lackner asserted that when the utilization of volunteer groups is required, "they cease to be volunteer."

Mrs. Sullivan objected to proposed rule 4.4(2), "Nursing Supervision and Staffing in a Basic Nursing Home," contending it would require her to overstaff her facilities.

Physical Facilities

Mr. Showers stated on July 27 that the Iowa Nursing Home Association is asking that the time limit for compliance by pre-1957 facilities with the State Fire Marshal's revised minimum standards (rule 28.11(1)a) be extended to January 1, 1974, and that any requirements for capital improvement expenditures upon such facilities, which arise under the proposed rules and which total more than \$1,000 overall, also have an effective date of January 1, 1974. Mr. Phillips of the Knoxville V.A. Hospital also requested that smaller homes be given an opportunity to meet the new requirements over a period of time, so as to avoid the necessity of an immediate major capital outlay which would prohibit their continued operation.

Mrs. Sullivan and Mr. and Mrs. Beckman objected to proposed basic nursing home rule 4.17(3)a, b, and c, governing floor space in bedrooms, as excessive and financially burdensome. Mrs. Sullivan also objects to rule 4.17(3)d, which prohibits placing nonambulatory patients above the first floor unless suitably sized elevators are available.

Mrs. Sullivan stated in her presentation that the requirement of rule 4.17(2)a.2, insofar as it relates to dining room space, is excessive because it would require her to provide seating space for a greater number of persons than are able to come to the table in her facilities. Mr. and Mrs. Beckman apparently have reference to the same rule, as applied to living room space, in stating that they "object to the 50 square foot recreation area for 75% of patients we are licensed for." (Rule 4.17(2)c.1 says the living room "may be used for recreational activities.")

Mr. Lackner, referring specifically to the proposed rules for boarding homes, objects to rule 2.14(2)d insofar as it requires separate living and dining rooms. He notes that "many excellent facilities combine these fundtions in one room, thus utilizing costly space to the most economical extent." He acknowledges that such a dual use area might need to be larger than the proposed rules require either a living room or dining room to be.

Mrs. Sullivan objects to rule 4.17(3)u, requiring an electrically operated nurse call system for each patient, stating

few of her patients would know how to use it. Mr. and Mrs. Beckman state that the Fire Marshal's rule 28.11(7), which would require a sprinkler system to be installed in their home, is unnecessary and would impose an exorbitant cost upon them, in view of the fact that their converted two-story dwelling has five outside exits for a maximum capacity of 19 patients.

Additional Statements of Objection

In addition to comments and objections presented at the hearing by the full joint Social Services Committees, subsequent written objections to certain specific provisions of the proposed new health care facilities regulations were submitted by Mrs. Sullivan on behalf of the pre-1957 nursing homes in Sioux City, and by the (county) Supervisors, Stewards and Matrons Co-ordinating Committee with respect to the custodial home rules as they would apply to county homes. As each of these lists of objections is itemized by reference to the specific rule involved, copies of these two lists are attached to this summary.

August 30, 1971

TO: Members of the Social Services Legislative Committee

FROM: Pre-1957 nursing homes in Sioux City

The following comments are in regard to the rules pursuant to authority of Section 135.14, Code, 1971. We take this opportunity to share with you some of the concerns which we feel may cause undue hardships upon the residents that we serve under the present welfare appropriations.

The following proposed regulations would cause definite increases in the cost of care in nursing homes throughout the State of Iowa.

5.4 (2) f. Each intermediate nursing home, regardless of size or classification, shall provide the minimum equivalent of .28 nurses aides per bed per week.

5.8 (5) a. (Under the direction of a physician who shall act as a medical consultant for the intermediate nursing home).

5.9 (1) j. Inspection of drug storage condition shall be made by the director of nursing services and a registered pharmacist not less than every three months.

5.10 (1) a. A trained cook manager. . . .
c. Kitchen personnel shall not be assigned to patient care.
d. Nursing services, laundry, or housekeeping personnel shall not be assigned to preparing food on the days they are working in those areas.

5.11 (135.c) T.X. Social Services this whole section and those following relating to Social Services and the employment of such personnel.

5.13 (2) Physical therapy services.

5.13 (3) Occupational therapy services.

5.18 (2) 2. Provide accommodations for the seating of 75% of their patients at any one time.

4. Provide a minimum of at least fifteen square feet of usable seating area per licensed bed.

5.18 (3) c. After January 1, 1974, every licensed nursing care facility. . .
1. Single bed room shall have a minimum of 100 square feet of usable floor space per bed.

- 2. Multiple bedrooms shall have a minimum of 80 square feet per bed.
- 3. Bedrooms shall contain no more than four beds.
- d. The nonambulatory patients shall not be housed above the first floor. . . .etc.

3.U There shall be an approved electrically operated nurse call system for each patient.

There is concern that the proposed fire regulations do not have a "Variance Clause" which would give the Fire Marshall authority to exempt conditions which may be physically impossible to comply with in certain homes. There is further concern that the promulgation of the fire regulations under another code other than 135.c will place authority out of the jurisdiction of the intent of the legislature contained within the ammendment to 135.c which was concerned with the economics as well as the upgrading of certain standards.

The following proposed regulations are questionable because of their impracticability in the administration and operation of a health care facility.

5.2 (1) 1. The Department shall be notified at once by letter of any reduction or loss of staff lasting more than seven days which places its staffing below that required for licensing.

5.3 (1) i. Be required to maintain financial and statistical records capable of verification by qualified persons.

m. 1. Notify the Department thirty days in advance of the sale of the health care facility.

5.5 (1) d. A patient admitted shall have an order written by a physician certifying that he requires no greater degree of service than the facility is capable of providing.

5.16 (2) Conditions within the facility shall be in accordance with the Labor Laws of the State of Iowa.

5.16 (3) RESTRAINTS. . . Under this section attention is called to b,f,j.

5.19 (3) e. Yearly inspection of heating and cooling systems shall be made by a professional heating contractor to guarantee safe operation.

The above areas of concern, in our opinion, would not detract from good patient care if they were eliminated from the regulations as they are proposed. Furthermore, the elimination of these proposed rules would insure both private and welfare patients that the cost of care would be limited to ordinary inflationary costs and not unnecessary costs by the enforcement of those regulations.

We appreciate your consideration in this matter and stand ready to assist you in any manner that we can.

The Supervisors, Stewards and Matrons co-ordinating committee respectively submit the following:

As licensed County Custodial Homes we feel the proposed Rules for Health Care Facilities for Custodial Homes are not adaptable to our operations as County Homes.

The present Rules and Regulations are adequate when properly enforced as we are a non-profit organization supported strictly by County taxation. This taxation is limited by the State Legislators.

Under the present law the Board of Supervisors are the legislative body of the County; but under the proposed Rules and Regulations 135.14 Code of 1971, all authority would be regulated by the State Social Services and State Department of Health. We believe in home rule.

Page 3 - 3.2(135.C) T.X. Licensing:
3.2(1)

- b. Not adaptable
- c. Not adaptable as written as all policies should be under the jurisdiction of the County Board of Supervisors, County Doctor and the Care Review Committee.
 - 1. same as above.
- q. Why should this apply as we as County Homes are asked by the Judges, Welfare dept., law enforcements to hold on a temporary bases juvenile delinquents, unwed mothers, children of broken homes and alcoholics?

Page 6. - 3.2(3)

- a.- 1. We feel this should be at the approval of the local Board of Supervisors, County Doctor, Care Review Committee and County Board of Health.
 - 2. Delete the word "approval" and insert "Cooperation"
 - 3. Again delete word "approval" and insert "Cooperation of the department."

3.2(4)

- a. -3 Delete "within six month period" and read "as soon funds are available".

Page 7. 3.2(5).

- e. Delete word "and approval"
- b. Delete word "approval" and insert The Department shall be consulted on proposed structural changes.

Page 14 3.5 (3) a. This does not apply for a great number of our residents are the incurable insane, mentally retarded and paupers referred to us by state institutions.

3.5 (4) a. does not apply to our type of residents.
c. add "only after going through proper channels through state law."

Page 15. 3.6 Medical Services:

- (1) Home operated by County may appoint doctor.
- (2) Does not apply to County Homes because a great number of our residents come from state institutions.
- (3) Strike "prior to and have had" and add upon admission.
- (8) Does not apply.

Page 17 3.7(3) Does not apply.

Page 18 3.7(6) a. On request of the Department of Health - insert the word "Health"/

3.8 Resident Care Program

- (1) Please refer to page 11 and 12 (3.4(2))
- (2) Submitted ~~by~~ to the County Department of Health .

3.8 (4)

- d. delete last sentence.
- e. Strike "once" and put in "twice"

page 19 - m. Insert word "staff" family member.

Page 22. 3.9(5)

- e. Injectable medications maybe given in a ~~XXXXXX~~ and County Home by competent personell upon physicians order

Page 25 - u. Strøke out completely.

Page 25. 3.11 (135C) Omit the Social Services.

Why should County Homes conform to these resolutions when they (residents) have previously been evaluated at Mental Health Instituc, and evaluation so states they have received maxium benefits at the institution and recommends tñansfer to the County Home for supervision.

Page 33 3.14(5) Restraints

- a. - strike out and replace with - No more than necessary restraints shall be used only to protect self and saftey of others.
- d. delete "shall" and put "may"

Page 35. 3.15 (3) Bedrooms:

- e. 1 - strike "casters" use of glides preferred or casters or glides.
- f. Each resident shall have a bedside table "or its equivalent"

Page 36. 1. Not applicable

Page 7 continued

- 3.2 (6) All hearings shall be conducted by the County Attorney and the Grand Jury.

Page 10-31(2)

H. Religious services:

Transportation arrangements shall be made for residents who desire to attend church services by their family or concerned persons at the discretion of the administrator. Church services shall be made available once weekly in the facility.

Page 11 3.3(2)

2. Outgoing mail of competent residents shall not be censored controlled or restricted.

j. telephone

A telephone shall be accessible to the residents within the facility to make personal calls at the administrator's discretion.

Page 11 3.4(135.C) Personnel:

- d. should read - In facilities licensed for sixteen beds or more, persons in charge of meal planning and food preparation shall have had training approved by the Department in conjunction with the Board of Supervisors.
- f. Delete "or be employed".
- h. Period after the word "duties" and delete remaining words.

Page 12. 3.4(2). Staffing.

County homes shall be staffed every hour or every day at the discretion of the County Board of Supervisors and Care Review Committee.

- b. Omit.
- c. Strike out "types of tasks ~~given residents will be subject to Departmental approval~~".
- e. add to last sentence "except on recommendation of doctor."
- h. add "unless it is to the best interest of the resident"
- j. delete "health care facility" and add County Home facility
----- and shall report twice yearly in writing to the Board of Supervisors.

Page 13. 3.5

1. ~~Commence~~-after word representative and strike remaining sentence and add or Board of Supervisors.

- 1.-3 strike completely as not applicable.
4 strike completely as not applicable.

3.5(2) Why should this apply to the County Homes because a great number of our residents are the incurable insane.

Page 37 - k Strike - not applicable
1 Strike - not applicable

3:15(5)

a and b. Not applicable for County Homes.

The proposal of the State Fire Marshal's Department relative to the abandoning of wards to create rooms of four beds is not feasible in a County Home as the cost factor is prohibitive. Many County Homes have remodelled removing walls and partitions upon recommendations of state officials. The proposed rule is contrary to former recommendations.