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**BILL ANALYSIS**

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Senate Bill 30 (as reported without amendment)
Sponsor: Senator Walter H. North
Committee: Health Policy

Date Completed: 3-19-01

RATIONALE

In both urban and rural settings in the State, many health professionals volunteer their time and expertise to work in free health clinics. These clinics provide health care to thousands of Michigan residents who are uninsured or underinsured, including full- and part-time workers in low-paying jobs, seasonal workers, persons residing in shelters, and people leaving public assistance. The free clinics fill a need for those who cannot afford medical and/or pharmaceutical care. It has been pointed out that while there are several statutory provisions that offer immunity from liability for health care workers providing emergency care under certain circumstances, there are no liability protections for health care professionals or the clinics that provide free nonemergency health care. It has been suggested that immunity from civil liability should be extended to free health care clinics, and to licensed health professionals who provide uncompensated care.

CONTENT

The bill would amend the Public Health Code to provide that a health facility or agency, or a health professional licensee or registrant, who provided nonemergency health care to a patient without receiving compensation for providing the care would have immunity from liability in a civil action for damages for acts or omissions in providing the care, unless the acts or omissions were the result of gross negligence or willful and wanton misconduct or were intended to injure the patient. The care provided to the patient would have to be limited to care that the health facility or agency, or the health professional or registrant, was licensed to provide.

For a licensed or registered health professional, the limitation on liability provided by the bill would apply only if the nonemergency health care were provided in the office of the licensee or registrant; or in a health facility or the office of an entity organized for the sole purpose of delivering nonemergency health care without receiving compensation.

Before a health facility or agency, or a licensee or registrant, provided a patient with health care, the facility or agency, or licensee or registrant, would have to give the patient a written disclosure that described the limitation on liability as provided under the bill. The disclosure also would have to state that the health care was free, and that payment would not be requested from any source.

Under the bill, "compensation" would mean receipt of payment or expected receipt of payment directly from a patient or from a public or private health care payment or benefits plan on behalf of the patient for the nonemergency health care provided.

Proposed MCL 333.16277 & 333.20190

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Free health clinics provide a vital link to health care for those who cannot afford to see a health professional. It has been pointed out that many people who are uninsured or underinsured, and who cannot pay to see a medical professional on a regular basis or when ill, often use emergency rooms or urgent care offices as their primary health care provider. In fact, a recent report by the Access to Health Care Coalition noted that of the population in Michigan who do not have health insurance, 42% have no regular source of care or use emergency rooms as their regular source of care. This places great stress on those emergency facilities, causing crowding and resulting in financial burdens. Free clinics serve as a buffer to the emergency facilities, not only by providing an alternative source of health care but also by treating some people before their conditions deteriorate to the point at which they need acute care. In addition, untreated individuals can affect the health of an entire community by transmitting communicable diseases, such as

tuberculosis.

Recently, some people have expressed that many health professionals who would volunteer to work in free health clinics or offer free care are reluctant to do so because of liability concerns. Further, it has been pointed out that free health clinics could use more of their meager resources to treat patients if they were given immunity and saved money on liability insurance. By offering immunity from civil liability for providing free care to nonemergency patients, the bill would encourage more health professionals to volunteer at free clinics, allow free clinics to use their resources for patients (thus serving more individuals), and perhaps encourage expansion in the size or number of clinics in the future.

Supporting Argument

Providing immunity from civil liability for rendering health care is not a new concept. There are several places in statute already that allow a degree of immunity for health professionals in emergency situations. Under the Good Samaritan law, certain medical professionals who give care at the scene of an emergency, where a patient relationship has not been established, are not liable for civil damages; immunity also is extended to certain health professionals who respond to a life-threatening emergency within a hospital or licensed medical care facility. Under the Public Health Code, certain emergency medical personnel operating within the limits of their training are immune from liability for treatment of a patient outside a hospital or before transferring the patient to the care of hospital personnel. Further, local health officials or employees are not personally liable for actions in the performance of local health department functions; and members of emergency services units or law enforcement officers who care for an incapacitated person in compliance with the Code are not criminally or civilly liable. Obviously, the State has heretofore found it to be sound policy to provide various persons with immunity for their actions in rendering certain care, so that caregivers do not withhold treatment for fear of being sued. The bill would extend this policy to clinics and health professionals offering uncompensated health care.

Supporting Argument

Many individuals who seek help at health care clinics are very ill when they arrive, and often have chronic conditions that, while treatable, cannot be cured. Further, treating many conditions may be hampered if patients are reluctant to alter habits that negate the effects of proper treatment. The bill would ensure that health professionals who volunteer health care would not be burdened by unwarranted lawsuits, initiated by patients who remain ill because of their lack of cooperation during treatment or the severe

nature of their conditions before treatment was sought.

Response: While it may be that very ill patients seek help at free clinics, lack of access to proper health care is often a contributing factor to the severity of the illness. In addition, while many who seek care at free clinics are indigent, many are the “working poor” who simply cannot afford health care and have no employer-sponsored health insurance. By granting immunity to health care professionals who volunteer care, the bill would deny the indigent and the working poor the ability to seek compensation for damaging care, an opportunity still available to those who are insured or can afford care. Perhaps, instead of granting immunity for health professionals, the State should consider finding a way to fund malpractice insurance for free clinics.

Opposing Argument

The bill would establish two standards of care: one for the insured and those who can pay, and another for those who cannot pay. Under the bill, if a poor person were treated for free and the care resulted in harm, the individual would have no ability to recover damages unless the care were proven to be grossly negligent or intended to injure the patient. Under the same circumstances, if the individual were insured, he or she would be allowed to sue. Furthermore, the bill would exacerbate this double standard by extending immunity from liability to free care given in a health professional’s office, not just in a free clinic. It is one thing to extend immunity to professionals volunteering their services in a facility that is organized “for the sole purpose of delivering nonemergency health care without receiving compensation”. It is another matter to extend immunity to individuals working in their for-profit, insured offices.

Response: Providing immunity to those who offer charity care in their offices would increase access to care for the poor, just as it would in a free clinic. In either setting, the health professional would be donating his or her time and expertise. In his or her own office, a physician also would be contributing the facility and staff. In addition, before a health professional provided free care to a patient in either a free clinic or a private office, the patient would have to be informed of the limitation on liability contained in the bill.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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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.