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Senate Bill 30 (as enrolled)  
Sponsor: Senator Walter H. North  
Senate Committee: Health Policy  
House Committee: Civil Law and the Judiciary

**PUBLIC ACT 172 of 2001**

Date Completed: 1-15-03

**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 was 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 were no liability protections for health care professionals in the clinics that provide free nonemergency health care. It was suggested that immunity from civil liability should be extended to these health professionals.

**CONTENT**

**The bill amended the Public Health Code to provide civil immunity to licensed or registered health professionals who provide uncompensated, nonemergency health care in certain health facilities or entities.** The bill took effect January 1, 2002, and applies to a cause of action arising on or after that date.

The bill specifies that a licensee or registrant who provides to a patient nonemergency health care, that the licensee or registrant is licensed or registered under the Code to provide, and who receives no compensation for providing the nonemergency health care, is not liable 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 limitation on liability applies only if the nonemergency health care is provided inside the premises of, or as a result of a referral from either of the following:

- A health facility organized and operated for the sole purpose of delivering nonemergency health care without receiving compensation.
- An entity that is not a health facility and that provides nonemergency health care to uninsured or underinsured individuals through the voluntary services of licensees or registrants who receive no compensation for providing the care.

The bill states that it does not affect the liability of such a health facility or entity as that liability existed before January 1, 2002.

A health facility, other than one described above, that provides financial, in-kind, or other support, not including health care services, to a health facility or other entity described above, is not liable in a civil action for damages based on nonemergency health care provided by that health facility or entity.

The bill's limitation on liability for a licensee or registrant does not apply in regard to the nonemergency health care of a patient unless, before the licensee or registrant provides that health care, he or she gives the patient a written disclosure describing the limitation on liability and stating that the health care is free and compensation for the health care will not be requested from any source; and the patient signs an acknowledgment of receipt of the written disclosure.

The bill does not apply to a civil action for damages for acts or omissions, if the nonemergency health care is surgery that

customarily requires more than a local anesthetic.

Under the bill, "compensation" means receipt of payment or expected receipt of payment from any source, including receipt or expected receipt of payment directly from a patient, from a patient's parent, guardian, or spouse, or from a public or private health care payment or benefits plan on behalf of the patient, or indirectly in the form of wages, salary, or other valuable consideration under an employment or service agreement.

MCL 333.16277

## **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. Many people who are uninsured or underinsured, and who cannot pay to see a medical professional for routine care or when ill, often use emergency rooms or urgent care offices as their primary health care provider. In fact, a March 2001 report by the Access to Health Care Coalition noted that of the population in Michigan without health insurance, 42% had no regular source of care or used emergency rooms as their regular source of care. This can place 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.

Some people expressed their belief that many health professionals who volunteer to work in free health clinics or offer free care were reluctant to do so because of liability concerns. By creating civil immunity for the provision of free care to nonemergency patients, the bill encourages more health professionals to volunteer at free clinics, and perhaps will encourage expansion in the size or number of clinics in the future.

### **Supporting Argument**

Immunity from civil liability for those who render health care is not a new concept. There are several places in statute 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 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 extends this policy to 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 ensures that health professionals who volunteer health care will 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 nonemergency care, the bill denies the indigent and the working poor the ability to seek compensation for care that is provided negligently and that injures the patient. Perhaps the State should consider finding a way to fund malpractice insurance for free clinics.

### **Opposing Argument**

The bill establishes 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 is treated for free and the care results in harm, the individual has no ability to recover damages unless the care is proven to be grossly negligent or intended to injure the patient. Under the same circumstances, if the individual is insured, he or she is allowed to sue. Furthermore, the bill exacerbates this double standard by extending immunity from liability to free care given in an "entity that is not a health facility", not just in a free clinic. It is one thing to extend immunity to professionals volunteering their services in a licensed health 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 something other than a licensed health facility, such as a health professional's office.

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

Legislative Analyst: George Towne

### **FISCAL IMPACT**

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

Fiscal Analyst: Maria 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.