

Legislative Analysis



IMMUNITY FOR UNCOMPENSATED CARE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4350 as enrolled

Public Act 94 of 2011

Sponsor: Rep. Gail Haines

House Committee: Health Policy

Senate Committee: Health Policy

Second Analysis (7-28-11)

BRIEF SUMMARY: The bill would amend the Public Health Code (MCL 333.16277) (1) to extend civil immunity to charitable organizations that provide referrals to health facilities or health care providers providing uncompensated health care and (2) to exclude certain wages and salaries from consideration as compensation in order to provide immunity for volunteer care provided by health care professionals who work in a health facility such as a hospital or nursing home.

FISCAL IMPACT: The bill would have no direct fiscal impact on state or local government.

THE APPARENT PROBLEM:

Public Act 172 of 2001 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, with certain restrictions. By providing immunity from lawsuits, the focus of that legislation was to increase volunteer participation by health care workers at free clinics serving low-income individuals and the uninsured and also to increase the numbers of physicians providing free services in their offices to those in need.

As the ranks of the uninsured continue to swell, the health care services provided by these volunteer health care professionals are needed more than ever. Apparently, however, the immunity provisions as currently written do not cover health care providers in all situations. For instance, most of the physicians working in hospitals are employed as staff of those hospitals. If these physicians wish to volunteer at a free clinic in their spare time, some feel that the definition of "compensation" contained in the act would exclude them from being covered under the immunity provision because they are paid as part of their employment. In addition, the immunity does not appear to extend to certain charitable organizations that coordinate a network of volunteer health care professionals, clinics, and hospitals offering free care (e.g., Project Access and Project Chessed). These organizations help the uninsured and poor navigate the health care industry to find free care by providing referral lists but they do not provide health care services themselves. Therefore, some believe that immunity from lawsuits arising from services provided by facilities or health care workers on the referral lists should be extended to these charities, also.

Legislation has been offered to address these concerns.

THE CONTENT OF THE BILL:

Generally speaking, the Public Health Code provides civil immunity to licensed or registered health professionals who provide uncompensated, nonemergency health care in certain health facilities or entities. Certain restrictions apply, such as written disclosure to patients that the health care is free, that no compensation will be requested from any source, and that liability is limited. (Acts arising from gross negligence, willful and wanton misconduct, or one intended to injure a patient are excluded and therefore actionable).

House Bill 4350 would amend the Public Health Code (MCL 333.16277) (1) to extend civil immunity to charitable organizations that provide referrals to health facilities or health care providers providing uncompensated health care and (2) to exclude certain wages and salaries from consideration as compensation in order to provide immunity for volunteer care provided by health care professionals who work in a health facility such as a hospital or nursing home.

Compensation. The bill would exclude certain wages or salaries from consideration as "compensation." Currently, "compensation" is defined to mean payment or expected payment from any source, including, but not limited to, payment or expected 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.

Instead, the bill would specify that "compensation" would not include the receipt by a licensee or registrant who is employed by a health facility [other than a health facility described in subsection (2)] of wages, salary, or other valuable consideration from the employing health facility if all of the following apply:

- The employing health facility did not expect or require the licensee or registrant to provide volunteer, uncompensated health care as a condition of employment, including care to a specific health facility as described in subsection (2).
- The employing health facility did not receive compensation for the volunteer, uncompensated health care provided by the licensee or registrant.

Subsection (2) refers to (1) a health facility organized and operated for the sole purpose of delivering nonemergency health care without receiving compensation, and (2) an entity that is not a health facility and that provides or coordinates or otherwise arranges for the provision of nonemergency health care to uninsured or underinsured individuals through the voluntary services of or through referrals for the voluntary services of licensees or registrants who receive no compensation for providing the nonemergency health care. (Underlining denotes changes made by the bill.)

The written disclosure to patients previously mentioned would have to be provided by the licensee, registrant, or health facility or entity described above.

Immunity for referring organizations. The bill would also provide immunity to an entity that is not a health facility, has federal tax exempt status as a 501(c)(3) charity, and is organized and operated for the sole purpose of coordinating and providing referrals for nonemergency health care to uninsured or underinsured individuals through licensees or registrants who do not receive compensation for providing the nonemergency health care. Specifically, such an entity would not be liable in a civil action for damages that arise from the nonemergency health care provided by the licensee, registrant, or health facility or entity described in subsection (2) of Section 16277 (the section being amended by the bill).

A similar provision pertaining to immunity for health facilities that are providing certain supporting services to another facility or entity providing the free care already exists in the code. However, the bill would amend that provision to clarify that the immunity extends to uncompensated, nonemergency services provided by the licensee or registrant, and not just the health facility or entity as currently written.

ARGUMENTS:

For:

As the law is currently worded, some feel that a health care worker who is employed by a hospital or health facility, and therefore receiving wages from that entity, may be considered to have been "compensated" for care provided on a volunteer basis to patients at free clinics even if the health care worker was not paid for treating the patient and the clinic did not receive payment for the services either from the patient or from another source. By excluding certain types of payments from the definition of the term "compensation," House Bill 4350 would address this issue.

The bill as enrolled also appears to mitigate a concern raised by some that the expansion of immunity could lead to a scenario in which a hospital opened a free clinic through a subsidiary or nonprofit and avoided liability in the treatment of some patients by encouraging or requiring its employees to volunteer at the clinic and encouraging emergency room workers to steer uninsured patients with nonemergency complaints to the clinic for free care.

Under the bill, it would be clear that a licensed or registered health care worker employed by a hospital or other health facility would be eligible for immunity from malpractice suits when volunteering at free clinics only if the employing health facility did not receive any compensation for the worker's volunteer services and did not require the employee to provide volunteer health care anywhere or to provide that volunteer health care at a free clinic. Thus, it is hoped that more physicians and other health care providers (dentists, mental health practitioners, nurses, and so on) who work for hospitals, nursing homes, and other health facilities would be encouraged to volunteer their services at free clinics.

For:

Several charities collect information and maintain databases regarding free clinics and the names of physicians and other health care professionals offering free, nonemergency services in the clinician's own office – for example, Project Access and Project Chessed. These databases are only for the purposes of coordinating the types of services available and providing referrals to participating health care professionals. The bill would extend the immunity provision to also cover these groups. Supporters maintain that this is a sensible approach, as these nonprofit organizations simply coordinate networks of volunteer physicians, clinics, hospitals, and other health care providers and disseminate the information to low-income and uninsured people; these types of nonprofits do not provide healthcare services.

Against:

Some feel strongly that any provision of immunity from medical malpractice creates a two-tier justice system with a higher level of justice going to patients who have the ability to sue (for instance, those with health insurance or who can afford to pay for health care) and less justice afforded to the poor and/or uninsured who must depend on free clinics for their nonemergency health care. The standard of gross negligence is simply so high that, in essence, it is unreachable and therefore acts as a total shield from culpability. To date, no case based on medical gross negligence has been successfully litigated in the state. Therefore, any expansion of immunity is also seen as an expansion of the population that has no recourse to the courts for medical mistakes.

In short, any patient in pain, any parent with a child with a high fever, any low-income person who must choose between free care and paying hundreds or thousands of dollars for that same care is likely under the circumstances to surrender the right to sue. They don't know at the time of signing the disclosure form whether the physician, or nurse, or other health care practitioner that will be treating them is drunk or sober, is proficient or incompetent, etc. Therefore, is expanding the ranks of people for whom there is no legal recourse for medical injuries really warranted?

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk
Mark Wolf

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