

Legislative Analysis



PROHIBIT REUSE OF CERTAIN MEDICAL SUPPLIES & EQUIPMENT

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House Bill 4940 (Substitute H-2)
Sponsor: Rep. Dian Slavens

House Bill 4941 (Substitute H-1)
Sponsor: Rep. Jeff Mayes
Committee: Health Policy

First Analysis (6-10-09)

BRIEF SUMMARY: The bills would prohibit a person in a regulated health profession from using a previously-used, single use product more than once, establish penalties for a violation, and include the penalty within the sentencing guidelines.

FISCAL IMPACT: The bills would have a fiscal impact on the state, as discussed later in the analysis.

THE APPARENT PROBLEM:

Two years ago, a Grand Rapids dermatologist was charged with federal insurance fraud. During the trial, the defendant doctor played a video of a surgery he had performed in the hopes that it would prove he really was performing the billed procedures. The expert witness for the prosecution noticed something else, however. He noticed that the sutures were shorter than they should have been, indicating that the defendant was reusing sutures.

A subsequent investigation revealed that not only was the doctor reusing sutures, but also hypodermic syringes and needles, scalpels, and gloves. Health officials estimate that almost 5,000 people were exposed to hepatitis B and C and HIV. Though the doctor was later convicted on the insurance fraud charges, reusing medical equipment meant for a single use did not violate any existing federal or state laws. Legislation has been introduced to make it a crime to reuse medical equipment intended for only one use.

THE CONTENT OF THE BILLS:

House Bill 4940 would add a new section to the Public Health Code (MCL 333.20153) to prohibit a health care provider from knowingly reusing, recycling, refurbishing for reuse, or providing for reuse a single-use device. "Single use device" would mean a medical device intended for one use or one procedure.

A violation would be a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$50,000. A violation by a health care professional would be considered a violation of Article 15 of the code and would subject the health care

professional to administrative action (which can include additional fines and/or license sanctions) under Sections 16221(h) and 16226.

Applicability. The bill would apply to a health facility or agency, or a health professional, that utilized single use devices in furnishing medical or surgical treatment or care to patients. "Health professional" would mean an individual registered, certified, or otherwise authorized to engage in a health profession under Article 15 of the Public Health Code, but would exclude dentists, dental hygienists, or dental assistants.

[The health professions regulated under Article 15 are chiropractic, dentistry, audiology, marriage and family therapy, medicine, nursing, optometry, osteopathic medicine and surgery, speech-language pathology, pharmacy, physical therapy, athletic training, massage therapy, podiatric medicine and surgery, nursing home administrator, counseling, psychology, occupational therapists, dietetics, sanitarians, social work, respiratory care, and veterinary medicine.]

Exemptions. The bill would not apply to a health care provider that utilized, recycled, or reprocessed for utilization, or provided for utilization a single-use device that had been reprocessed by a federally registered and regulated reprocessor. "Reprocessed" would mean, with respect to a single-use device, an original device that had previously been used on a patient and had been subjected to additional processing and manufacturing for the purpose of additional use on a different patient.

The bill would also not apply to a health care provider utilizing an opened, but unused, single-use device for which the sterility had been breached or compromised and that (1) had not been used on a patient and had not been in contact with blood or bodily fluids, and (2) had been resterilized.

House Bill 4941 would amend the Code of Criminal Procedure (MCL 777.13n) to specify that the reuse of a single use medical product would be a Class D felony against the public safety with a maximum term of imprisonment of 10 years. The bill is tie-barred to House Bill 4940.

FISCAL INFORMATION:

Department of Community Health

House Bill 4940 may have fiscal implications for the Bureau of Health Professions and the Bureau of Health Systems in the Department of Community Health. Some additional costs may be incurred by the department related to enforcement and violations for licensed health professions and health facilities or agencies as defined in the Public Health Code. If these functions cannot be performed with existing personnel and resources, each additional regulatory FTE required to carry out the functions of the bill would be at a total cost of approximately \$80,000 - \$100,000.

If the changes made by the bill result in reduced infections or other consequential illness, over time the bill may have the fiscal impact of reducing state costs for related medical services for state employees and Medicaid participants.

Impact of Penalties

The bills' fiscal impact on state and local correctional systems would depend on how they affected the numbers of felony convictions and severity of sentences. There are no data to indicate how many offenders might be affected by the bills.

To the extent that the bills increased the numbers of felony sentences, the state could incur increased costs of incarceration or felony probation supervision. The average appropriated cost of prison incarceration is roughly \$33,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. To the extent that more offenders were sentenced to jail, affected counties could incur increased costs; jail costs vary with jurisdiction.

The felony offense of reusing a single-use medical product would be a Class D offense against public safety. Exclusive of sentences for habitual offenders, the guidelines-recommended minimum sentence for a Class D offense varies from 0-6 months, for which a nonprison sanction is required, to 43-76 months, for which a prison sentence is required.

Any increase in penal fine revenues would benefit local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

The bills fill a gap in current law that fails to criminalize the deliberate reuse of medical devices meant to be used one time on one patient. The practices of the Grand Rapids doctor described earlier unnecessarily exposed patients to serious and life-threatening infections and diseases, caused untold mental anguish among his former patients, and cost taxpayers a lot of money in departmental investigations and notifications to the former patients. Yet, the conduct was not unlawful.

The bills would address the concern by making it clear that any doctor who engaged in similar practices would face a felony record, up to a decade in prison, and could be ordered to pay a hefty fine. Hopefully, the bills would be a strong deterrent in discouraging similar conduct and would also provide an appropriate punishment should a doctor fail to abide by standard medical practices.

Response:

The bill as reported is problematic for home health care providers. Many insurance policies limit the number of certain types of medical equipment covered during a specific period. As a result, it is not uncommon for home health aides and nurses to clean and reuse, on the same patient, equipment such as tracheotomy tubes and feeding tubes until

such time as the benefit renews. Many patients and their families simply cannot afford the out-of-pocket costs that otherwise would be incurred. The association representing nurses has requested that the language be further tweaked to address this concern and also to distinguish between single use and disposable medical equipment, especially as these issues pertain to the delivery of home health services.

POSITIONS:

A representative of the Michigan Nurses Association testified in support of the bills. (6-2-09)

The following entities indicated support for the bills on 6-2-03:

Michigan Department of Community Health
Trinity Health
Michigan Health & Hospital Association
Association of Medical Device Reprocessors

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.