

MEDICAL MALPRACTICE: NO CAP ON LOSSES IF MEDICAL RECORDS FALSIFIED OR ALTERED

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House Bill 5745

Sponsor: Rep. Ellen Cogen Lipton

Committee: Judiciary

Complete to 6-28-10

A REVISED SUMMARY OF HOUSE BILL 5745 AS INTRODUCED 1-13-10

Generally speaking, under the bill, caps on noneconomic losses in medical malpractice cases would not apply where the defendant was found to have intentionally, willfully, or recklessly placed misleading or inaccurate information in a patient's medical record or was found to have falsified or altered medical records.

Specifically, House Bill 5745 would amend Section 1483 of the Revised Judicature Act of 1961 which limits recovery for noneconomic losses in medical malpractice cases in Michigan. "Noneconomic losses" include compensation for pain and suffering, physical impairment, and physical disfigurement, as opposed to "economic losses" such as lost earnings or hospital bills. The current limit, adjusted annually for inflation, is \$408,200, unless an exception applies, in which case the limit is \$729,000.¹ (The higher cap applies if the negligence of one or more defendants caused a brain or spinal cord injury resulting in paraplegia, hemiplegia, or quadriplegia; caused permanent cognitive impairment rendering the person incapable of making decisions or living independently; or damaged a reproductive organ resulting in the inability to procreate.)

Under the bill, these limits on noneconomic losses would not apply if the trier of fact (judge or jury) determined by a preponderance of the evidence that the defendant (or an individual for whose actions the defendant was liable) violated Section 492a of the Michigan Penal Code (MCL 750.492a), in relation to records describing the person's care or treatment. Under that section, it is a crime for a medical provider or another person to intentionally, willfully, or recklessly place misleading or inaccurate information in a patient's medical record (or to direct someone else to do this) knowing that the information is misleading or inaccurate. It is also a crime for a health care provider or another person to intentionally or willfully alter or destroy a patient's medical records (or to direct someone else to do this) for the purpose of concealing responsibility for the patient's injury, sickness, or death. Under the bill, in a case where the judge or jury found that medical records had been falsified or altered, the noneconomic losses suffered by the plaintiff would not be subject to the caps found in Section 1483.

MCL 600.1483

¹ These numbers, adjusted annually for inflation, are current as of January 20, 2010. See http://www.michigan.gov/documents/nonocolimit101_3658_7.pdf.

FISCAL IMPACT:

House Bill 5745 would have an indeterminate fiscal impact on state and local government, including the judicial branch. Most of the bill's impact will fall on private entities and private parties. The provisions of the bill would allow for no cap on non-economic damages where the defendant was found by a preponderance of the evidence to have intentionally, willfully, or recklessly placed misleading or inaccurate information in a patient's medical record or was found to have falsified or altered medical records.

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■ 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.