

Legislative Analysis



CIVIL IMMUNITY FOR RETIRED DENTISTS AND PODIATRISTS

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House Bill 4389 as introduced
Sponsor: Rep. Jim Stamas
Committee: Health Policy

First Analysis (3-24-11)

BRIEF SUMMARY: The bill would extend civil immunity to retired *podiatrists* and *dentists* providing services to the indigent under a special volunteer license. This immunity is currently only available to retired *physicians* providing services under a volunteer license.

FISCAL IMPACT: House Bill 4389, as introduced, may increase state costs to the volunteer licensing program in the Department of Community Health if it increases the number of persons seeking the volunteer license. The costs are dependent upon the number of persons who seek this licensure. Annual licensing fees are not charged under the bill, so the costs for the licensing process will have to be supported by existing revenue of the Department or a new appropriation. Because volunteer licensees would provide medical care at no cost for indigent persons or in medically underserved areas of the state, there may be some modest consequent cost savings for state and local governments from possible reductions in medical care costs for these populations.

THE APPARENT PROBLEM:

Public Act 24 of 2006 allowed a restricted license for retired physicians and podiatrists so that they could volunteer without compensation at health clinics that provided free or low-cost medical services to indigent or uninsured individuals and families. A companion bill, Public Act 25 of 2006, provided civil immunity for the retired physicians.

The bills originated in the House, with the volunteer license bill assigned to the Health Policy Committee in both chambers and the civil immunity piece going through the Judiciary Committee in both the House and Senate. Podiatrists were added to the licensure bill in the Senate, but due to what many believe to be an oversight, the civil immunity was not extended to podiatrists.

Later that same year, Public Act 591 of 2006 expanded the provisions of Public Act 24, which created the volunteer license, to include retired dentists. As passed by the House, the bill would have also included several other health professions in both the volunteer license for retirees and the civil immunity piece. However, the Senate stripped out the civil immunity part of the bill and limited the volunteer license expansion to dentists.

As some feared, it has been difficult for these clinics to recruit the numbers of retired podiatrists and dentists without the umbrella of protection that civil immunity would give. Legislation has been offered to address this issue.

THE CONTENT OF THE BILL:

The bill would extend civil immunity to retired **podiatrists** and **dentists** providing services to the indigent under a special volunteer license. This immunity is currently only available to retired **physicians** providing services under a volunteer license.

Under provisions of the Public Health Code, a retired Michigan physician (M.D. or D.O.), podiatrist, or dentist who wishes to provide medical care or dental care for the indigent and needy or in medically underserved areas of the state can apply for a special volunteer license to provide such care on a volunteer basis. A separate section of the health code provides civil immunity for retired physicians (but not retired podiatrists or dentists) who provide care under the special volunteer license in certain types of facilities. For instance, a physician who provides medical care under a special volunteer license granted under provisions of the code is not liable in a civil action for personal injury or death that was proximately caused by the professional negligence or malpractice of the physician in providing the care if the care was provided at a health facility or agency that provided at least 75 percent of its care annually to medically indigent individuals and the physician did not receive and did not intend to receive compensation for providing the care. The immunity does not apply to negligent conduct or malpractice that is gross negligence.

House Bill 4389 would amend the Public Health Code (MCL 333.16185) to expand the civil immunity provision to include retired podiatrists and dentists providing services under a special volunteer license at the same type of health facilities or agencies. Immunity would not apply if the negligent conduct or malpractice of the individual was gross negligence.

ARGUMENTS:

For:

Due to an oversight, the immunity provision was not extended to cover podiatrists or to cover retired dentists once they were added to the special volunteer license provision. Since these health professionals are retired, they no longer carry medical malpractice insurance. Without the same immunity from lawsuits that is provided to physicians, clinics serving the indigent are finding it difficult to recruit enough retired podiatrists and dentists to fill the needs of their patients.

This is unfortunate, as podiatrists provide necessary medical care such as foot checks for diabetics to identify and treat conditions that if undetected early, can lead to serious infections and amputations. And regular dental care is an important part of preventing gum disease, checking for mouth cancers, and identifying other dental problems. Since podiatrists and dentists provide necessary medical and dental care for conditions that can

impact an individual's overall health, it is prudent to extend civil immunity to both professions.

Against:

Some feel that taking away the right for the poor to sue for medical malpractice creates a two-tiered justice system – with greater rights and protection under the law for the wealthy or insured. Though a person could still bring a lawsuit for gross negligence, according to plaintiff's attorneys, this is a standard that is next to impossible to reach. In fact, to date, there has not been a single case that was successfully litigated on the grounds of gross negligence.

Response:

The level of care provided in these clinics is more at a primary care level. Sophisticated procedures or surgeries are not being performed by any of these retired professionals. Thus, it is unlikely that patients would be harmed by the level of care provided. It also should be remembered that though these retired professionals do not have to maintain malpractice insurance to obtain a special volunteer license, they do have to meet the same competency and continuing education requirements of those with active licenses.

POSITIONS:

The Michigan Dental Association indicated support for the bill. (3-17-11)

The Michigan Primary Care Association indicated support for the bill. (3-17-11)

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