

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 502 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Philip E. Hoffman  
Committee: Judiciary

Date Completed: 7-1-98

### **RATIONALE**

According to the Michigan State Medical Society, there are a disproportionate number of lawsuits on behalf of prisoners against physicians who provide them with medical care. In addition, the Department of Corrections (DOC) reportedly experienced over 600 claims regarding "medical issues" over the last eight years. Arguably, this situation may make physicians reluctant to contract with the State to provide medical services to prisoners, thereby decreasing the availability and quality of care for prisoners. Some people believe that, in order to protect physicians who provide care to prisoners from exposure to liability and to ensure prisoners' access to care, medical malpractice suits on behalf of prisoners should be prohibited.

### **CONTENT**

The bill would amend the Revised Judicature Act (RJA) to bar an action for medical malpractice for medical treatment or care provided to an individual while he or she was incarcerated in a "correctional facility" as a result of a criminal conviction, unless the act or omission of the person providing the treatment or care upon which the claim was based was grossly negligent or intentional.

"Correctional facility" would mean that term as defined in the Correctional Officers' Training Act (MCL 791.502): either a facility or institution that houses an inmate population under the jurisdiction of the DOC; or a municipal or county jail, work camp, lockup, holding center, halfway house, community corrections center, or any other facility maintained by a municipality or county that houses adult prisoners.

MCL 600.2912a

### **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**

Medical malpractice suits arising out of medical care or treatment provided to prisoners should be barred, in order to protect physicians from exposure to liability and to ensure that quality care remains available to prisoners. If physicians continue to be subject to malpractice suits, they might be reluctant to contract with the Department of Corrections to provide services, which would reduce the quality and availability of medical care for prisoners. By protecting physicians from prisoners' litigiousness, the bill would help ensure that doctors would be more likely to contract with the DOC to furnish medical services. The bill would provide the necessary protection to medical professionals, without giving them blanket immunity. Doctors would continue to be subject to malpractice claims for intentional acts and for gross negligence.

#### **Opposing Argument**

The bill is unnecessary. There does not appear to be a problem with excessive medical malpractice claims by prisoners. Although the DOC reportedly had over 600 claims over the last eight years regarding "medical issues", it is unclear how many of those complaints involved malpractice claims. The corrections division of the Attorney General's office has estimated that there were only six medical malpractice claims brought by prisoners in 1996. In the 1994-95 fiscal year, there were only two cases alleging medical malpractice against State-employed doctors and those cases were settled for a total of \$240,000. In addition, State-employed doctors are covered under the governmental immunity Act, so there is already a gross negligence standard for suits against them. Further, it is very difficult to file a medical

malpractice claim under the RJA and to collect damages: A doctor must certify the case as having merit; the claimant must give 180 days' notice prior to filing suit; and noneconomic damages are limited to \$280,000. It is unlikely that prisoners could meet these standards in any great number.

### **Opposing Argument**

The bill could create more problems than it solved. If a prisoner were permanently disabled due to medical malpractice, but could not recover damages for that negligence, the State could be ultimately responsible for long-term care for that person even beyond his or her prison term.

### **Opposing Argument**

As introduced, the bill would have barred a medical malpractice action for treatment or care provided to a prisoner, unless the prisoner or his or her insurer paid for the medical care. This would preserve the right of some prisoners to pursue legal actions for medical negligence, as long as they paid for their own care. The bill should include that exception to the prohibition.

**Response:** The introduced version of the bill would have established two standards of justice based on a person's ability to pay. If a prisoner could afford medical coverage, then he or she could bring an action; if not, then the prisoner could pursue legal remedies only if the physician's conduct constituted gross negligence or an intentional act. This dichotomy of justice would set a bad precedent.

### **Opposing Argument**

An earlier version of the bill, considered by the committee, would have limited a plaintiff's recovery to economic damages if liability were found in an action permitted under the bill (i.e., if there were gross negligence or an intentional act or omission). The bill should include this limit, in addition to barring a medical malpractice action for simple negligence.

**Response:** Noneconomic damages in a medical malpractice case are already strictly limited by the RJA. Economic damages for a prisoner would be practically nonexistent, since prisoners make very little, if any, income. Barring noneconomic damages when a prisoner suffered from a doctor's grossly negligent or intentional act or omission would, in effect, bar a prisoner from collecting any damages at all.

### **Opposing Argument**

Since the incidence of medical malpractice claims filed by prisoners is extremely low, higher priority should be given to an area in which the DOC is exposed to greater liability. The DOC reportedly pays out approximately \$1.5 million a year in judgments against it, with 60% to 70% of that for racial and sexual harassment suits. Perhaps those issues should be dealt with before prisoners' medical malpractice claims were addressed.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

Senate Bill 502 (S-2) would have an indeterminate fiscal impact on State and local government. As employees of the State, doctors employed by the Department of Corrections have immunity from malpractice, except when the charge is gross negligence. Doctors who contract with the DOC do not have immunity. Seemingly, the bill would not extend any additional protection to doctors who are employees of the State; it would provide some malpractice suit protection to contract employees. Given that contract health care employees would have decreased exposure to medical malpractice suits, it is unknown if medical malpractice insurance premiums would decrease. Assuming that insurers would reduce premiums for contract physicians, it is unknown if contracts would be rewritten to allow the State the benefits of premium cost savings.

Some information about medical malpractice suits against Department of Correction's doctors is presented below. In 1996, about six lawsuits were brought by prisoners for malpractice against State-employed doctors. This was estimated by the corrections division of the Attorney General's office. Additional lawsuits may have been handled by the division that represents the Department of Community Health physicians. Additionally, for fiscal year 1994-95, two cases, alleging medical malpractice against State-employed doctors, were settled for a total of \$240,000.

Fiscal Analyst: K. Firestone

### **A9798\S502A**

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.