

# Legislative Analysis

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## RETIRED PHYSICIANS: REVISE IMMUNITY CRITERIA FOR SPECIAL LICENSES

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**House Bill 4829 (Substitute H-1)**

**Sponsor: Rep. Tom Pearce**

**Committee: Health Policy**

### **First Analysis (4-23-10)**

**BRIEF SUMMARY:** The bill would revise the criteria under which a retired physician who provides medical care under a special volunteer license has immunity from liability in a civil action for negligence or malpractice. Generally speaking, the bill aims at increasing the number of clinics where volunteer physicians could practice.

**FISCAL IMPACT:** The bill may have some modest fiscal implications for state and local governments as discussed later in the analysis.

### **THE APPARENT PROBLEM:**

Under provisions of the Public Health Code, retired physicians may obtain a special volunteer license allowing them to engage in the practice of medicine and, if certain conditions are met, be protected from a lawsuit for a medical error arising from services performed under the license. The immunity relieves them of the need to maintain medical liability insurance, which can amount to tens of thousands of dollars per year, for services rendered for which they receive no compensation, and thus encourages more retired doctors to volunteer a few hours a week at clinics that serve low-income persons.

According to the Department of Community Health, 25 retired physicians so far have been issued a special license to volunteer their services. In order to be eligible to receive the immunity from malpractice claims, the retired physicians are restricted to serving at clinics that provide 75 percent or more of their annual patient care to people who are classified as being "medically indigent" (meaning their income is below standards set by federal law).

The problem, according to advocates who serve low-income persons, is that few clinics in the state can meet this condition. At the same time, clinics that offer free or low-cost care are seeing unprecedented numbers of patients as unemployment rates stay high and more people find themselves without insurance coverage. Thus, the need to entice retired physicians to volunteer their services is greater than ever.

To address this situation, some have proposed increasing the number of clinics that would be eligible to extend civil immunity to retired physicians by lowering the percentage of patients that must be medically indigent and by expanding the definition of "medically indigent" to encompass more people.

## ***THE CONTENT OF THE BILL:***

House Bill 4829 would amend the Public Health Code (MCL 333.16185) to revise the conditions under which immunity from civil liability is extended to retired physicians when rendering medical care under a special volunteer license.

Currently, a physician who provides medical care under a special volunteer license is not liable in a civil action for personal injury or death proximately caused by the professional negligence or malpractice of the physician in providing the care if both of the following apply:

- 1) The care is provided at a health facility or agency that provides at least 75 percent of its care annually to medically indigent individuals.
- 2) The physician does not receive and does not intend to receive compensation for providing the care.

However, the immunity does not apply if the negligent conduct or malpractice of the physician constitutes gross negligence, defined to mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

The changes proposed by House Bill 4829 would affect the first condition. A retired physician would retain immunity from civil actions when volunteering at a health facility or agency that provided at least 60 percent of its annual care to medically indigent individuals.

The immunity provided for retired physicians volunteering under a special license would not apply if the physician, in providing the volunteer care, was practicing outside the scope of his or her license.

The bill would also revise a part of the definition of "medically indigent individual." Currently, "medically indigent individual" means the term as defined in Section 106 of the Social Welfare Act [generally speaking, Medicaid recipients and those receiving aid from the Michigan Department of Human Services or federal Supplemental Security Income (SSI).] The bill would add a new exception to this definition. The exception would specify that an individual would be a medically indigent individual if, instead of meeting the conditions of Section 106(1)(b)(iii) of the Social Welfare Act, the individual had an annual household income that was below 150 percent of the federal poverty guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services.

[Section 106(1)(b)(iii) defines the protected basic maintenance level below which a person may be considered a medically indigent individual.]

***BACKGROUND INFORMATION:***

A retired podiatrist or retired dentist can also apply for and receive a special volunteer license to render services to medically indigent individuals on a volunteer basis, but the immunity from civil actions does not extend to either of these professions.

***FISCAL INFORMATION:***

If the enhanced conditions for immunity in House Bill 4829 have the effect of increasing the number of volunteer licensees and/or hours served by volunteer licensees, there may be some modest cost savings for state and local governments from possible reductions in medical care costs for low-income populations and reductions in public health facility uncompensated care. An increase in volunteer license applicants may also increase the state costs to administer the volunteer licensing program. There are no fees charged for the license, and any increase in costs will have to be supported by the existing revenue of the Department of Community Health unless an appropriation is made.

As of November 2009, DCH reports the following current active volunteer licenses: 17 dentists, 24 medical doctors, and 1 osteopathic doctor.

***ARGUMENTS:***

***For:***

The special volunteer license for retired physicians went into effect a few years ago to enable doctors who were no longer actively practicing to offer their services at clinics serving low-income persons. The legislation granted these retired doctors immunity from malpractice suits as long as they received no payment for their services and their services were performed at clinics serving mostly very poor persons. Medical malpractice insurance is very costly to maintain, and since the services provided must be uncompensated, few retired physicians were expected to volunteer a few hours a week if they had to pay tens of thousands of dollars a year to do so.

However, only a handful of clinics in the state can meet the level of medically indigent patients required by the bill in order for the retired doctors to receive the protection from being sued. The bill would merely lower – from 75 percent to 60 percent – the number of patients meeting the medically indigent criteria. The bill would also expand the definition of "medically indigent" – only for the purposes of immunity for retired physicians – so that people who close to, but just over, the income threshold for medically indigent could be counted in the 60 percent of patients receiving care from the clinic. In this way, the bill will open up the numbers of clinics around the state at which the retired physicians with special licenses could volunteer. As more retired doctors seek this special volunteer license, more people below or near the poverty level can receive quality care from experienced practitioners.

***Against:***

Expanding civil immunity takes away the rights of patients to sue if they are harmed by the negligence of a treating physician. Since the bill applies to low-income persons, it would essentially create a two-tier system in which the rich could sue for substandard care but the poor couldn't. They would be denied recompense for injuries suffered.

***Response:***

A retired physician providing care under a special volunteer license could still be sued if conduct constituted gross negligence. In addition, a patient may still have legal recourse against the clinic at which the retired doctor volunteered. It is important to remember that not all medical mistakes or poor outcomes are the result of malpractice. In addition, these are experienced practitioners who feel a responsibility to help those in great need of medical care but who cannot afford it. Moreover, the special volunteer license requires the retired doctor to take continuing education courses and meet all the statutory requirements that actively practicing physicians must meet. Thus, the skills brought by these retired physicians should be comparable to their non-retired counterparts. In short, the bill stands to increase the access to health care badly needed by low-income persons.

***POSITIONS:***

The following associations indicated support for the bill on 4-20-10: Department of Community Health, Michigan Association of Health Plans, Michigan Health & Hospital Association, Michigan Osteopathic Association, Michigan State Medical Society, Michigan Citizen Action, and Michigan Primary Care Association.

The Michigan Academy of Family Physicians indicated support for the bill. (11-10-09)

The Michigan Association for Justice (formerly the Trial Lawyers Association) indicated opposition to the bill on 4-20-10 and a representative of the association testified in opposition to the bill on 11-10-09.

A representative of the Negligence Law Section – State Bar of Michigan testified in opposition to the bill. (11-10-09)

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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.