

MED MALPRACTICE IMMUNITY FOR CERTAIN EMERGENCY ROOM-RELATED CARE

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House Bill 4354

Sponsor: Rep. John Walsh

Committee: Judiciary

Complete to 11-7-13

A REVISED SUMMARY OF HOUSE BILL 4354 AS INTRODUCED 2-28-13

Under the bill, a licensed health care provider or a licensed health care facility or agency would not be liable in an action based on medical malpractice for emergency medical care provided under certain circumstances, unless the care constituted gross negligence.

House Bill 4354 would add a new section to the Revised Judicature Act (600.2912i). Under the bill, a licensed health care provider or licensed health facility or agency would not be liable in an action based on medical malpractice arising from emergency medical care provided in any of the locations listed below immediately following the evaluation or treatment of the patient in an emergency department:

- Hospital emergency room.
- Hospital obstetrical unit.
- Surgical operating room.
- Cardiac catheterization laboratory.
- Radiology department.

The immunity would not attach if the plaintiff proves by clear and convincing evidence that the health care professional's actions constituted gross negligence. (*Clear and convincing evidence* is a higher standard of proof than *preponderance of the evidence* but lower than the burden of *beyond a reasonable doubt* used in criminal cases.)

A jury in an action described above would be instructed to consider, in addition to all other relevant matters, all of the following:

- Whether the person providing care had the patient's full medical history, including knowledge of preexisting medical condition, allergies, and medications.
- Whether there was a preexisting health care professional/patient relationship.
- The circumstances that constituted the emergency.
- The circumstances surrounding the delivery of the emergency medical care.

"Emergency medical care" is defined to mean bona fide emergency services provided after the onset of a medical or traumatic condition that is manifested by acute symptoms (which would include, but not be limited to, pain) of sufficient severity that a failure to provide immediate medical attention could reasonably be expected to result in serious

jeopardy to the patient's health, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part. The term would not include medical care provided after the patient were stabilized and capable of receiving medical care as a nonemergency patient or care unrelated to the original medical emergency.

"Hospital" would mean that term as defined in the Public Health Code, which defines it as a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. Hospital does not include a mental health hospital licensed or operated by the Department of Community Health or a hospital operated by the Department of Corrections.

"Licensed health facility or agency" would mean a health facility or agency licensed under Article 17 of the Public Health Code, and therefore includes the following:

- An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
- A clinical laboratory.
- A county medical care facility.
- A freestanding surgical outpatient facility.
- A health maintenance organization.
- A home for the aged.
- A hospital.
- A nursing home.
- A hospice.
- A hospice residence.
- A facility or agency listed above located in a university, college, or other educational institution.

"Licensed health care professional" would mean an individual licensed or registered under Article 15 of the Public Health Code, and engaged in the practice of his or her health profession in a sole proprietorship, partnership, professional corporation, or other business entity. However, licensed health care professional does not include a sanitarian or a veterinarian.

FISCAL IMPACT:

The Medicaid Program within the Department of Community Health (DCH) receives medical malpractice settlement revenue when a responsible party is identified. DCH reports that over fiscal years 2010-11 – 2012-13, state and federal revenues recovered from this source averaged \$1.8 million annually. House Bill 4354 applies to a subset of prospective Medicaid-related malpractice cases, namely those related to emergency medical care. Raising the standard of proof required in such cases may reduce the number of malpractice settlements and, subsequently, the Medicaid revenue recovered by DCH.

Indirectly, if the increased immunity results in lower malpractice insurance costs for providers, those savings may be passed on to (1) the State through lower Medicaid costs, and (2) both state and local units of government through reduced employee healthcare premium costs.

The overall reduction to State Medicaid Program revenue would be less than \$1.8 million, but the exact amount is difficult to quantify. The exact impact on state and local government employee healthcare premium costs is indeterminate.

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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.