SAS SENATE ANALYSIS SECTION
Lansing, Michigan 48909

Senate Bill 22 (as passed by the Senate)
Sponsor: Senator Vernon J. Ehlers
Committee: Health Policy
Date Completed: 2-26-87

RATIONALE

It has long been a tradition at sporting events, particularly high school sporting events, for doctors, nurses, or other health care professionals to volunteer their services to care for the participants. In addition, doctors traditionally have given routine physical examinations to prospective athletes, at nominal or no cost, prior to the beginning of a school year or start of a season. Recent reports indicate that some schools have been experiencing difficulty in obtaining doctors to give physical exams, or getting health care professionals to give assistance at sporting events. The reasons for the reluctance of doctors or other health care providers are familiar: the cost of liability insurance and the fear of being sued for malpractice. Some people feel that doctors or other health care providers who volunteer their service to sports programs should, unless they act with gross negligence, be given immunity from civil liability.

CONTENT

The bill would amend Public Act 17 of 1963 to grant immunity from liability for civil damages to physicians who in good faith and without compensation, performed physical examinations on persons to determine their fitness to engage in competitive sports. The bill also would grant civil immunity to health care providers who, in good faith and without compensation, gave care to persons who required care as a result of participating in competitive sports. The civil immunity also would apply to situations in which emergency care was given to minors even though parental consent had not been obtained. In addition, immunity would be granted to a person who was a registered member of the National Ski Patrol system and who, in good faith, provided care at the scene of an emergency.

The bill would not apply to acts or omissions amounting to gross negligence or willful and wanton misconduct or acts or omissions outside the scope of the license held by the physician or other health care provider.

MCL 691.1501 et al.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

For many years doctors and other health care providers have volunteered their services to schools to assess the fitness of prospective athletes for competition, or to assist with the care of athletes during training or at competitions. Some schools currently are having a hard time obtaining, or maintaining, this traditional volunteer help because of concerns over insurance or malpractice lawsuits. Many doctors and other health care providers have become reluctant to continue to volunteer their help because involvement increases their exposure to situations where they may be named in a liability suit if an athlete is injured during competition, and increased exposure may cause their insurance premiums to rise. Testimony before the Senate Committee on Health Policy revealed that some health care providers also have expressed reluctance to come out of the stands to assist competitors who may be in need of medical attention, because of fears of lawsuits. The bill would eliminate these concerns on the part of the medical community and would ensure that health professionals could continue to treat participants at sporting events, especially those in need of emergency care, without fear and, possibly, great expense.

Supporting Argument

Public Act 5163 of 1986 amended the governmental immunity act and provided for the extension of immunity to "political subdivisions", which include public school districts. While the 1986 act resolved the health care provider immunity problem for employees and designated volunteers involved in public school athletics, Senate Bill 22 is needed to provide immunity to nonpublic schools, as well as to nonschool-related activities, such as little league.

Supporting Argument

The National Ski Patrol has 1,500 volunteer members in Michigan granting emergency first aid to recreational skiers in Michigan's ski industry. Each member is required to earn a Red Cross advanced first aid and CPR card and each year to pass an eight-hour first aid refresher course and a four-hour CPR refresher course. Members also must train and prove themselves to be among the most expert of skiers. National Ski Patrol volunteers currently can reach an accident victim in less than two minutes, a critical factor when serious injury occurs. Should liability problems continue to increase, however, ski resort management may be forced to employ emergency medical technicians to patrol the slopes. Costs to the ski industry would rise, resulting in higher users' fees. The bill would encourage the continuance of the valuable service of the National Ski Patrol and would assist it in recruiting needed volunteers.

Opposing Argument

While it is good to maintain traditions, the idea of accepting volunteer assistance for all athletic programs from well-intentioned but sometimes unqualified health care professionals comes from a different era, and any such assistance should be monitored. If medical personnel, voluntarily or for pay, treat persons, they should be expected to do so properly and to carry insurance in the event that they don't. Who knows how many ailing athletes

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have been encouraged, or not discouraged, by a well-meaning local doctor/sports fan to ignore their injury, or "play over" their pain, and suffered long-term damage as a result? If health care providers were granted immunity under the bill, they would have no incentive to offer the best care available, other than their own integrity, which is a powerful force but cannot always be relied upon from everyone. It would be nice if volunteer care by qualified persons could be encouraged, but the bill would be so far-reaching that it could open the door to poor medical care.

Response: Doctors and trainers assist at many different sports events, not just ones where there are chances for serious injury. In considering the bill the good must be weighed against the bad: if medical personnel stop volunteer assistance and refuse to attend to injured or potentially injured athletes during or before competitions, the effect of not passing the bill may be actually to worsen the care athletes receive, or make participation in sports prohibitively expensive for all but children from well-to-do families.

Opposing Argument

The proposed immunity would be much too broad. Although designed to encourage physicians to volunteer their services to school athletics, the bill simply refers to care rendered to persons in "competitive sports", a vague category that is too general in scope. The circumstances under which immunity would be granted should be more narrowly defined.

Opposing Argument

This bill is another example of the band-aid approach to addressing the liability insurance problem. Instead of simply granting immunity to those who have trouble getting insurance, the State should deal directly with the cause of that problem: high premiums and the need for greater regulation of the insurance industry.

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