

## PANDEMIC RESPONSE HEALTH CARE IMMUNITY ACT

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**Senate Bill 1185 (proposed substitute H-2)**

**Sponsor: Sen. Curtis S. VanderWall**

**House Committee: Judiciary**

**Senate Committee: Health Policy and Human Services [Discharged]**

**Complete to 11-11-20**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

Senate Bill 1185 would repeal 2020 PA 240, the Pandemic Health Care Immunity Act, and create a similar new act called the Pandemic Response Health Care Immunity Act. Like 2020 PA 240, the new act would provide protection from liability, with some exceptions, to a health care provider or health care facility that provided health care services under specific circumstances related to the COVID-19 pandemic. Senate Bill 1185 differs from 2020 PA 240 in that it would apply to an additional period of time and it would additionally apply to psychiatric hospitals, psychiatric units, and nursing home care and recovery centers (see **Background**, below).

Under the bill, a *health care provider* or *health care facility* that provided *health care services* in support of the state's response to the COVID-19 pandemic during the following times would not be liable for an injury (including death) sustained by an individual because of those services:

- From March 29 through July 13, 2020.
- From October 1 through December 31, 2020.

This protection from liability would apply regardless of how, under what circumstances, or by what cause the injuries were sustained. However, it would not apply if it were established that the provision of the services constituted *willful misconduct*, *gross negligence*, intentional and willful criminal misconduct, or intentional infliction of harm by the health care provider or health care facility. The act also would not apply to claims covered by the Worker's Disability Compensation Act.

*Health care services* would mean services provided to an individual by a health care facility or health care provider regardless of where the services were provided, including services provided through telehealth or another remote method.

*Health care provider* would mean an individual who is one or more of the following:

- An individual licensed under Article 15 of the Public Health Code. (This includes, among others, physicians, nurses, dentists, mental health professionals, acupuncturists, physical therapists, occupational therapists, and respiratory therapists.)
- An individual who by education, training, or experience substantially meets requirements for licensure under Article 15 and is allowed under the code to render medical care without a license in a time of disaster or at the scene of an emergency.

- A medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator.
- A student, a volunteer, or any other licensed health professional at a health care facility.

**Health care facility** would mean an entity that is one or more of the following:

- A hospital.
- A health maintenance organization.
- A freestanding surgical outpatient facility.
- A county medical care facility.
- A nursing home.
- A home for the aged.
- An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
- A facility or agency described above located in a university, college, or other educational institution.
- A hospice or hospice residence.
- A psychiatric hospital or psychiatric unit, as those terms are defined in the Mental Health Code.
- A state-owned surgical center.
- A state-operated outpatient facility or veterans' facility.
- A facility operating as a **care and recovery center**.
- A facility used as surge capacity for any of the health care facilities described above.

**Care and recovery center** would mean a nursing home that is designated by the Department of Health and Human Services (DHHS) as a dedicated facility to temporarily and exclusively care for and isolate residents affected by COVID-19.

**Willful misconduct** would mean conduct or a failure to act that was intended to cause harm.

**Gross negligence** would mean conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

## **BACKGROUND:**

The bill is similar to House Bill 6159, which was enacted into law as 2020 PA 240 and took effect October 22, 2020. That act, called the Pandemic Health Care Immunity Act, differs from SB 1185 in the following ways:

- It applies only from March 29 through July 13, 2020 (and not from October 1 through December 31).
- For purposes of its provisions, the term “health care facility” does not specifically include a psychiatric hospital, a psychiatric unit, or a facility operating as a care and recovery center.

Senate Bill 1185 would repeal and replace 2020 PA 240.

**FISCAL IMPACT:**

Senate Bill 1185 would have an indeterminate fiscal impact on local court funding units. The bill would potentially reduce liability for injury, including death, for health care providers and health care facilities that provide COVID-19 health care services, unless it was established that the services provided constituted willful misconduct, gross negligence, intentional and willful criminal misconduct, or intentional infliction of harm by the health care provider or health care facility. Provisions of the bill are aimed at limiting the number of medical malpractice lawsuits likely to be filed. Any fiscal impact would be directly related to how provisions of the bill affect court caseloads, the complexity of lawsuits, and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.