

PANDEMIC HEALTH CARE IMMUNITY ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1185 as passed by the Senate

Sponsor: Sen. Curtis S. VanderWall

House Committee: Judiciary

Senate Committee: Health Policy and Human Services [Discharged]

Complete to 11-10-20

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

SUMMARY:

Senate Bill 1185 would create a new act, the Pandemic Health Care Immunity Act, to 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. The bill is similar to 2020 PA 240, also called the Pandemic Health Care Immunity Act (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 after March 9, 2020, and before July 15, 2020, would not be liable for an injury, including death, sustained by an individual by reason of those services.

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.

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

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

- An individual licensed, registered, or otherwise authorized to engage in a health profession 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.)
- A medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator.
- A student, trainee, volunteer, competency-evaluated nursing assistant, temporary nurse aide, or any other licensed, registered, or unlicensed individual authorized to render health care services by law, executive order, or directive of the state.

Health care facility would mean an entity that is one or more of the following, and would include an administrator, executive, supervisor, board member, trustee, employee, or volunteer of such an entity:

- 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 state-owned surgical center.
- A state-operated outpatient facility
- A state-operated veterans' facility.
- Any other entity that renders health care services.
- A facility used as surge capacity for any of the above health care facilities.

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

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

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, which is also called the Pandemic Health Care Immunity Act, differs from SB 1185 in the following ways:

- It applies on or after March 29, 2020, and before July 14, 2020.
- It specifies that it does not apply to claims covered by the Worker's Disability Compensation Act.
- For purposes of its provisions, the term "health care facility" does not specifically include administrators, executives, supervisors, board members, trustees, employees, and volunteers of the listed entities and also does not include "Any other entity that renders health care services."
- For purposes of its provisions, the term "health care provider" does not include "An individual licensed, registered, or otherwise authorized to engage in a health profession under Article 15 of the Public Health Code," but instead includes both of the following:
 - An individual licensed under Article 15 of the Public Health Code.
 - An individual who by education, training, or experience substantially meets requirements for licensure under Article 15 and is allowed under the Public Health Code to render medical care without a license in a time of disaster or at the scene of an emergency.
- For purposes of its provisions, the term "health care provider" does not include "A student, trainee, volunteer, competency-evaluated nursing assistant, temporary nurse aide, or any other licensed, registered, or unlicensed individual otherwise authorized by law, executive order, or directive of this state to render health care services," but instead includes "A student, volunteer, or any other licensed health professional at a health care facility."

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.

Legislative Analysts: Susan Stutzky
Rick Yuille
Fiscal Analyst: Robin Risko

■ 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.