

# Legislative Analysis

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## **VOLUNTEER LICENSE FOR RETIRED PHYSICIANS; IMMUNITY FOR SPECIAL VOLUNTEER PHYSICIANS**

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**House Bill 4670 as enrolled**  
**Public Act 24 of 2006**  
**House Committee: Health Policy**  
**Senate Committee: Health Policy**

**House Bill 5375 as enrolled**  
**Public Act 25 of 2006**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary**  
**Sponsor: Rep. Gary A. Newell**

### **Second Analysis (9-8-06)**

**BRIEF SUMMARY:** The bills would, respectively, create a special volunteer license for retired physicians and podiatrists who provide medical care for the needy and provide civil immunity in certain circumstances to those physicians.

**FISCAL IMPACT:** House Bill 4670 will create state costs to develop and administer a volunteer licensing process for certain physicians and podiatrists. Annual licensing fees are not charged under the bill, so the costs for the licensing process will have to be supported by existing revenue of the Department of Community Health or a new appropriation. The costs are dependent upon the number of persons who seek this licensure. Persons will be subject to discipline under Part 161 of the Public Health Code for licensure violations or unlawful practice, which may include fines.

Because volunteer licensees would provide medical care and podiatric care at no cost for indigent persons or in medically underserved areas of the state, there may be some modest consequent cost savings for state and local governments from possible reductions in medical care costs for these populations.

### **THE APPARENT PROBLEM:**

The number of uninsured persons residing in the state is estimated to be one million. Lack of health insurance often means that people forgo or delay medical treatments. As a result, these people may suffer from poorer health and have poorer outcomes when treatment is received. Some uninsured are able to receive medical care at free or low-cost clinics staffed by volunteers, including physicians who do not receive compensation for their services. Some retired physicians and podiatrists have expressed an interest in volunteering at such clinics, but to do so would require having an active license to practice medicine as well as medical liability insurance, both too expensive for many retired physicians to maintain.

Some states offer restricted licenses for retired physicians who offer their services to clinics serving the indigent. It has been suggested that more low-income persons without health insurance and Medicaid recipients could receive timely medical and podiatric services if Michigan also created a limited license for retired health physicians and podiatrists and immunity from law suits connected with those services under certain circumstances.

### ***THE CONTENT OF THE BILLS:***

House Bill 4670 would add a new section to the Public Health Code (MCL 333.16184) to create a special volunteer license for retired Michigan M.D.s, D.O.s, and podiatrists who wish to provide medical care for the indigent and needy or in medically underserved areas of the state on a volunteer basis. Under the bill, a physician or podiatrist would be considered to be retired from practice if he or she had intended to stop engaging in the practice of medicine, osteopathic medicine and surgery, or podiatric medicine and surgery for remuneration when the license expired.

The form provided for retired physicians and podiatrists by the Department of Community Health for submission to the appropriate licensing board would have to document that the physician or podiatrist had previously been licensed to practice medicine in this state and had had a license in good standing prior to expiration; acknowledge and document that payment or compensation, either direct or indirect, would not be expected or received; and that if the physician or podiatrist had not practiced for three or more years, document that – during the three years immediately preceding the application – he or she had attended at least two-thirds of the continuing education courses or programs required under part 170 (M.D.s), 175 (D.O.s), or 180 (podiatrists) for the renewal of a license.

The board would have to grant a special volunteer license to an applicant meeting the above requirements and the requirements for licensure under Article 15 of the code. An applicant seeking a license renewal would have to provide the board with an updated acknowledgement and documentation that no payment or compensation will be accepted or expected for services rendered. Unless otherwise provided, there would be no fee for an initial special volunteer license or a renewal license. A physician or podiatrist granted a special volunteer license and accepting the privilege of practicing medicine, osteopathic medicine and surgery, or podiatric medicine and surgery in the state, unless otherwise provided, would be subject to all of the provisions of Article 15, including those governing disciplinary action.

House Bill 5375 would add a new section to the Public Health Code (MCL 333.16185) to specify that a physician who provides medical care under a special volunteer license granted under provisions of House Bill 4670 would not be liable in a civil action for personal injury or death that was proximately caused by the professional negligence or malpractice of the physician in providing the care. Civil immunity would only apply if the care was provided at a health facility or agency that provided at least 75 percent of its

care annually to medically indigent individuals and the physician did not receive and did not intend to receive compensation for providing the care.

The bill would not extend civil immunity if the negligent conduct or malpractice of the physician was gross negligence. The bill would define "gross negligence" as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury resulted. "Medically indigent individual" would mean that term as defined in Section 106 of the Social Welfare Act (MCL 400.106).

### ***ARGUMENTS:***

#### ***For:***

Accessing medical care can be difficult for those without health insurance, those who cannot self-pay for medical services, and those living in medically-underserved areas where there is a shortage of medical professionals. In some counties, it is reported that physician practices are no longer accepting any new Medicaid patients. The result is that many are receiving delayed care, which, in turn, means poorer outcomes and an increase in premature death. For example, men without health insurance are more likely to be diagnosed with colon cancer at a later stage in the disease process when it is more expensive to treat and has a lower rate of survival. Free health clinics can provide some individuals an opportunity to receive needed medical care. However, these clinics rely on busy physicians to donate their time on a voluntary basis. Expanding the available pool of physicians by including retired physicians and podiatrists could increase the number of such clinics in the state and so provide more access to health care by the uninsured and poor.

House Bill 4670 would address this concern by allowing the Department of Community Health to create a special license for retired physicians and podiatrists who wish to volunteer their services to provide medical care to the indigent, the needy, and those living in medically underserved areas of the state. If a doctor had been retired for over three years, he or she would first have to submit proof that at least two-thirds of the continuing education courses or programs required for currently practicing physicians and podiatrists had been completed in the previous three years. This requirement will ensure that a doctor's skills will be updated before receiving the special volunteer license. In addition, only physicians and podiatrists who had retired with their licenses in good standing and who agreed to accept no compensation for their services would be eligible to receive the special volunteer license. These retired doctors would still have to meet all the same provisions of the health code that they had to adhere to when in active practice, and would still be subject to disciplinary measures by their respective licensing boards, including license sanctions.

#### ***For:***

Generally speaking, once a physician or podiatrist closes out his or her practice and enters retirement, medical malpractice insurance is no longer maintained. Good Samaritan Laws provide a measure of civil immunity for certain health care providers who provide medical care in an emergency, for instance, treating a person for injuries at

the scene of a car accident or assisting a heart attack victim. However, even though the risk for a negative outcome due to a medical error increases as the number of patients treated increases, there currently are no legal protections against lawsuits for retired physicians or podiatrists who volunteer their services at free clinics. As a result, some physicians and podiatrists are reticent about donating a lot of time to provide medical care during retirement.

House Bill 5375 would create a very limited civil immunity for retired physicians licensed under the provisions of House Bill 4670. The civil immunity would only apply if the physician did not receive compensation for rendering the medical care and the care was given to patients at a health facility or agency that provided three-quarters of its care to medically indigent individuals; for example, Medicaid recipients and those receiving aid from the Michigan Department of Human Services or federal Supplemental Security Income (SSI). This means that a patient or his or her family could not sue a retired doctor with the special volunteer license for injuries or death caused by the doctor's professional negligence or malpractice. However, a doctor could be sued for conduct rising to the level of gross negligence. Doctors licensed under House Bill 4670 who provided volunteer medical care in other settings would not come under the bill's provisions and so would be legally responsible for actions brought against them. It is hoped, however, that the two bills working together will foster the establishment of more free health clinics around the state, thereby leading to greater numbers of the poor and uninsured being able to access timely medical services. The bills therefore have the potential to increase the quality of life for many while decreasing state spending for these populations on treatments for advanced disease conditions.

***Response:***

As written, the bill would extend civil immunity only to retired physicians (M.D.s and D.O.s) and not to podiatrists. Whereas House Bill 4670 was amended in the Senate Health Policy Committee to expand the special volunteer license to podiatrists, the Senate Judiciary Committee did not amend the companion bill, House Bill 5375, to extend civil immunity to podiatrists. It is unlikely that retired podiatrists would be willing to provide podiatric services without an umbrella of protection. This is unfortunate as podiatrists provide necessary medical care such as foot checks for diabetics to identify and treat conditions that if undetected early, can lead to serious infections and amputations. It is hoped that quick attention will be given to resolve this dilemma.

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