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Expansion of Civil Immunity for Uncompensated Health Care

On July 15, 2011, Michigan Public Act 94 of 2011 amended the Michigan Public Health Code to expand the existing law that provides civil immunity to licensed health care professionals who provide uncompensated, nonemergency health care. The amendments were intended to fill perceived gaps in the previous law, including extending immunity to certain charitable organizations that do not provide health care, but otherwise coordinate and provide referrals for uncompensated nonemergency health care to uninsured and underinsured individuals.

Public Act 94 amends Michigan Compiled Laws (MCL) Section 333.16277 to extend immunity to certain charitable organizations that are not themselves health care facilities, but that otherwise refer uninsured or underinsured individuals to health care professionals for care. Under revised Section 333.16277(5),

[a]n entity that is not a health facility, is exempt from taxation under section 501(c)(3) of the [Internal Revenue Code], and is organized and operated for the sole purpose of coordinating and providing referrals for nonemergency health care to uninsured or underinsured individuals through licensees or registrants who do not receive compensation for providing the nonemergency health care is not liable in a civil action for damages that arise from the nonemergency health care provided by the licensee, registrant, or health facility[.]

Further, Section 333.16277 now protects those health care professionals providing uncompensated nonemergency health care *as a result of a referral* from an entity that coordinates and provides referrals for nonemergency health care, as such entities are described above. This expansion of the civil immunity law is significant because previously there was no explicit protection for health care professionals providing free nonemergency health care in their private practice offices as a result of a referral from a charitable entity that coordinates and provides referrals for uninsured or underinsured individuals but does not otherwise provide health care services.

Finally, Section 333.16277 sets forth that, subject to certain limitations, a health care professional who provides nonemergency health care to a patient, and who receives no compensation for providing such care, is not liable in a civil action for damages for acts or omissions in providing such care, unless the acts or omissions were the result of gross negligence or willful and wanton misconduct or were intended to injure the patient. Previously, some interpreted the definition of "compensation" in a manner that excluded health care professionals who volunteered to provide care at free clinics in their spare time but who were

otherwise employed and compensated by a health care facility (e.g., a hospital) from immunity protection. To correct this, Public Act 94 amends the definition of the term "compensation" to expressly exclude wages, salary or other consideration received by a health care provider from an employing health facility so long as certain requirements are met (e.g., the employing health facility does not expect or require the licensee to provide uncompensated, nonemergency health care as a condition of employment). In other words, this modification makes clear that civil immunity protection is available (so long as all of the relevant requirements set forth in MCL 333.16277 are met) to health care professionals who volunteer to provide nonemergency care and receive no compensation for providing such care, even if the health care professional is otherwise employed and receiving compensation pursuant to that employment arrangement.

As explained by the Michigan House Legislative Analysis Section, "as the ranks of the uninsured continue to swell, the health care services provided by these volunteer health care professionals are needed more than ever." Public Act 94 incentivizes the provision of such volunteer health care by extending immunity to previously uncovered health care professionals and charitable organizations.

If you have questions concerning Public Act 94 of 2011 or the Michigan law that provides civil immunity to licensed health professionals who provide uncompensated, nonemergency health care, please contact any member of the Honigman Health Care Department.