

Fiscal Estimate - 2009 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 09-0061/1	Introduction Number SB-127
Description Notification to the state and certain public agencies regarding a medical malpractice claim and limits on liability	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues
<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<input type="checkbox"/> Decrease Costs	
Local:	
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate	
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
Affected Ch. 20 Appropriations	
Agency/Prepared By	Authorized Signature
DOJ/ Mark Rinehart (608) 264-9463	Mark Rinehart (608) 264-9463
Date	
8/13/2009	

Fiscal Estimate Narratives

DOJ 8/13/2009

LRB Number	09-0061/1	Introduction Number	SB-127	Estimate Type	Original
Description Notification to the state and certain public agencies regarding a medical malpractice claim and limits on liability					

Assumptions Used in Arriving at Fiscal Estimate

Under current law, no person may bring a civil action or civil proceeding against a state officer, employee, or agent for recovery of damages for medical malpractice resulting from the official duties of the officer, employee, or agent unless the person serves a notice of claim with the attorney general within 180 days after the injury was discovered or should have been discovered. 2009 Senate Bill 127 removes the requirement that a person must serve a notice of claim for medical malpractice involving a state officer, employee, or agent on the attorney general within 180 days after the injury was discovered or should have been discovered.

The Department of Justice's Civil Litigation Unit is responsible for state tort defense, both trial and appellate. This unit provides legal representation for the medical faculty of the University of Wisconsin and the Department of Corrections in medical negligence cases. Most of the litigation is handled in a similar procedural manner. DOJ's attorneys and paralegals ordinarily seek dismissal of the suit before trial, either by a motion for summary judgment, by a motion for failure to exhaust administrative remedies, or by a motion for failure to state a claim.

In each of the past few years, a handful of medical malpractice cases that were brought against the state were dismissed by the court due to the plaintiffs' failure to file a proper notice of claim. In addition, DOJ estimates that during that same time period, each year another ten medical malpractice suits were not even filed against the state because plaintiffs' attorneys realized the notice of claim requirement could not be met.

Under SB 127, DOJ would have litigated approximately 15 more medical malpractice cases annually over the past few years, provided those cases were commenced within the time limits that apply to claims against private health care providers, generally three years from the date of the injury or one year from the date the injury was discovered or should have been discovered.

The Department of Justice will need additional resources to handle the increased caseload that would result from the enactment of SB 127. The department will need 1 additional assistant attorney general, .5 additional paralegal, and .5 additional secretary to process the anticipated increase in medical malpractice suits against the state. Total salary and fringe costs for these positions is \$219,000 annually. Total first-year costs for computers and furniture for these positions is \$8,300.

Long-Range Fiscal Implications