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## Civil Rights & Judiciary Committee

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### HB 1743

**Brief Description:** Enhancing opportunities for community-based providers to provide health care services in carceral settings.

**Sponsors:** Representatives Simmons, Couture, Street, Kloba, Griffey, Ormsby, Hill, Nance and Davis.

#### Brief Summary of Bill

- Creates a process under which the state will provide reimbursement for certain judgments or settlements based on damages for injury or death in the provision of health care services by community-based health care providers in local correctional facilities.

**Hearing Date:** 2/12/25

**Staff:** Edie Adams (786-7180).

#### Background:

*Health Care in Carceral Settings.* Persons incarcerated in correctional facilities are entitled under state and federal constitutional law, as well as state statutory law, to receive appropriate necessary and emergency medical care. Local correctional agencies provide health care services through a number of mechanisms, including by contract with third party providers, which are typically required by the local agency to maintain professional liability insurance coverage for medical malpractice claims.

Under the 2023 Medicaid transformation waiver, the Health Care Authority is implementing a program to fund certain health care services provided by community health care providers to incarcerated individuals who are Apple Health-eligible during the last 90 days of incarceration.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

The 2024 Supplemental Operating Budget directed the Office of the Insurance Commissioner (OIC) to study and make recommendations on how to increase the availability of liability coverage or other liability protection options for community-based health care providers who deliver transitional services to incarcerated individuals. In its report, the OIC found that private insurers are reluctant to provide medical malpractice insurance in carceral settings, and as a result community health care providers are facing significant barriers to obtaining necessary medical malpractice insurance coverage that would enable them to provide transitional services to incarcerated individuals.

*Medical Malpractice.* Medical malpractice actions are civil tort actions against a health care provider for the recovery of damages for injury or death resulting from the provision of health care. A health care provider may be found liable in a medical malpractice action if: the health care provider failed to follow the required standard of care, the health care provider promised that the injury suffered would not occur, or the injury resulted from health care to which the patient did not consent. Failure to follow the accepted standard of care means that the health care provider failed to exercise the degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the same profession or class, and acting in the same or similar circumstances.

*Sundry Claims Process.* Under the sundry claims process, a person or entity with a claim for reimbursement by the state may submit the claim to the Office of Risk Management. The claim must be accompanied by a statement of facts on which the claim is based, and evidence supporting the claim. The Office of Risk Management must submit recommendations to the Legislature on whether the claims should be approved or rejected, and include in its recommendations information concerning whether the facts alleged in the claim can be verified, an estimate of the value of the loss or damage, an analysis of the legal liability of the state for the loss or damage, and a summary of equitable or public policy arguments that may be helpful to resolving the claim. If the Legislature approves a claim, it is paid from an appropriation provided to the Department of Enterprise Services.

### **Summary of Bill:**

If a judgment or settlement is entered against a community-based health care provider under contract with a local correctional agency for damages based on an act or omission in the provision of health care in a local correctional facility, the state must provide reimbursement for any amount of the judgment or settlement that is in excess of \$50,000. Reimbursement is allowed for judgments or settlements against a community-based health care provider entered on or after the effective date of the bill. Reimbursement is available only for damages awarded for medical malpractice, and not for any amounts awarded for damages arising from other tortious conduct or a violation of a person's constitutional or other statutory rights.

To qualify for reimbursement, the local correctional agency must file a claim with the Office of Risk Management under the sundry claim process, and in addition must provide specified information relating to the claim, including:

- the amount of the settlement or judgement;
- the costs of defense;
- whether the judgment or settlement included damages for claims other than medical malpractice, and if so an attestation of the amount of damages and costs attributable to the medical malpractice claim and the amount attributable to other claims; and
- any other claim-related data the Office of Risk Management determines to be necessary for evaluation of the claim and actuarial analysis of medical malpractice liability claims in carceral settings.

"Community-based health care provider" means an entity that is approved by the Department of Health for coverage under the claim reimbursement program. To be approved, the entity must be a federally qualified health center or a clinic that the Department of Health determine meets substantially similar requirements to those of federally qualified health centers.

**Appropriation:** None.

**Fiscal Note:** Requested on February 6, 2025.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.