

# HOUSE BILL REPORT

## HB 1743

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to enhancing opportunities for community-based providers to provide health care services in carceral settings.

**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 History:**

**Committee Activity:**

Civil Rights & Judiciary: 2/12/25, 2/19/25 [DP].

**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.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Taylor, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Abell, Assistant Ranking Minority Member; Entenman, Goodman, Peterson, Salahuddin, Thai and Walen.

**Minority Report:** Do not pass. Signed by 1 member: Representative Graham.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Burnett and Jacobsen.

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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.*

**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. 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 (DOH) for coverage under the claim reimbursement program. To be approved, the entity must be a federally qualified health center or a clinic that the DOH determines meets substantially similar requirements to those of federally qualified health centers.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

## **Staff Summary of Public Testimony:**

(In support) This bill addresses an important issue for communities relating to the provision of health care in local jails. Local jurisdictions have a constitutional duty to care for those in their custody, but jails are finding it impossible to find providers who can provide these services. This is a significant issue that has to be fixed. The bill provides an approach that

can help address this problem without decreasing care for people or giving immunity to anyone.

The Office of the Insurance Commissioner (OIC) study found that liability coverage is not available for health care in jails, and that there is currently just one provider operating in the state jail system and it appears to be mostly self-insured. This company has dramatically raised prices in recent years. This is financially crippling to counties that are currently facing a budget crisis, but there is no other option. In Kitsap County, only one provider responded to a request for these services and it was an out-of-state entity. Pacific County lost medical coverage in its jail and a community-based provider stepped in to provide primary care services, but had to withdraw because it could not find liability coverage.

Incarcerated people have some of the most challenging and high risk conditions. One of the most important factors in successful treatment is continuity of care. The state has taken action through the Medicaid 1115 process to provide continuity of care for those who are reentering into their communities after incarceration. The problem is that it is nearly impossible for community-based providers to obtain the necessary insurance. Federally qualified health care centers receive malpractice insurance through the Federal Tort Claims Act, but it does not cover services provided in state carceral settings.

This situation has drastic consequences for incarcerated persons. A person in jail may be able to attain some level of stabilization through forced abstinence from self-medication with street drugs that exacerbate existing conditions. However, the inability to access reentry coordination services that would help provide a plan for transition to care in the community results in a continual cycle of relapse and rearrest. If a community-based provider had the ability to provide medical care in jails, the transition from jail to release would be much more successful.

(Opposed) None.

(Other) The OIC conducted a study on this issue and found that there is no private insurance market for health care providers working in a carceral setting. Insurance companies find this market uninsurable because these claims are often entangled with Eighth Amendment civil rights claims, and jail inmates present a higher risk due to existing medical conditions and lack of continuity of care, as well as risks of providing care in a jail setting. In addition, many reinsurers exclude this specific type of medical malpractice coverage.

The sundry claims process is currently in statute and could be expanded to accommodate this legislation. This process allows people entitled to reimbursement under statute to submit a claim to the Office of Risk Management, which collects claims throughout the year and then compiles and submits them to the Legislature for reimbursement. The Office of Risk Management would work with the DOH to ensure a provider is qualified under the bill.

**Persons Testifying:** (In support) Representative Tarra Simmons, prime sponsor; James McMahan, WA Assoc Sheriffs and Police Chiefs; Brynn Felix, Peninsula Community Health Services; Dr. Michael Maxwell, North Olympic Healthcare Network; Gaelon Spradley, Valley View Health Center; Penelope Sapp, Kitsap County Chief of Corrections; and Tatiana Leone.

(Other) Jason Siems, Department of Enterprise Services- Risk Manager; and David Forte, Office of the Insurance Commissioner.

**Persons Signed In To Testify But Not Testifying:** Brad Banks, Washington State Association of Counties (WSAC); Gaelon Spradley, Valley View Health Center; Lindsey Pollock, Lewis County Board of County Commissioners; Oran Root, Kitsap County Commissioner; Meja Handlen, Lewis County Public Health & Social Services; and Monica Spence.