

Fiscal Estimate - 2009 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 09-1788/1	Introduction Number AB-0179
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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"/> Increase 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"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

Local:

<input type="checkbox"/> No Local Government Costs		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
<input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

Agency/Prepared By DOJ/ Mark Rinehart (608) 264-9463	Authorized Signature Mark Rinehart (608) 264-9463	Date 3/8/2010
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Fiscal Estimate Narratives
DOJ 3/8/2010

LRB Number 09-1788/1	Introduction Number AB-0179	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 Assembly Bill 179 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 AB 179, 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 AB 179. 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