



Expenditures	- 0 -	Potential decrease in court operating expenses, magnitude uncertain for any affected county	Potential decrease in court operating expenses, magnitude uncertain for any affected county
--------------	-------	---	---

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Since all medical negligence claims would be initially submitted to an arbitration panel, the bill would delay the filing of medical negligence cases in courts of common pleas, and likely reduce the number ultimately filed. While it is likely that there would be a reduction in the number of medical negligence cases filed in courts of common pleas, LSC fiscal staff is unable to accurately predict the precise magnitude of any ultimate reduction in the number of cases filed in any affected local court.
- If there were a reduction in the number of medical negligence claims filed as a result of the bill's arbitration provisions, courts of common pleas will likely experience a loss in associated filing fee and court cost revenues. The savings realized by those courts in terms of their personnel and related operating costs would likely be greater than any possible revenue loss.

---

## ***Detailed Fiscal Analysis***

S.B. 59 would establish a ten-year pilot program mandating arbitration for claims of medical negligence prior to the filing of a complaint, and would suspend for nine years sections 2711.21 to 2711.24 of the Revised Code as the sections apply to medical negligence claims. Implementation of the pilot program would be assigned to the Superintendent of Insurance, in collaboration with the Supreme Court of Ohio. Both the Superintendent and the Supreme Court are required to issue reports on the use of arbitration panels, including specified information, on two occasions. A preliminary report is due five years from the effective date of the bill, and a final report is due within one year after the conclusion of the pilot program, which would be ten years after the effective date of the bill.

The bill establishes requirements for the formation of an arbitration panel and for the procedures it must follow. The bill would require the parties to the dispute to share the costs of arbitration. If the parties reach a settlement at any stage of the proceedings, they are required to file a complete written copy of the settlement agreement with the Superintendent of Insurance.

An arbitration panel is required to issue an evaluation of the case within ten days after an arbitration hearing, and this evaluation is to include specified findings, including a statement whether the panel finds the claim or defense is frivolous. The parties are then required to file a written acceptance or rejection of the evaluation within 28 days. If the evaluation is rejected, in whole or in part, by either party, the case may then proceed to trial, but the rejecting party is required to pay the opposing party's costs in addition to any damages established by the court. If the evaluation is accepted, the court is to determine damages. The chairperson of the arbitration panel is required to send a report summarizing the proceedings of the arbitration to the Superintendent of Insurance and to the Supreme Court.

### **Background information**

The Department of Insurance collects data on medical malpractice claims as required by H.B. 215 of the 125th General Assembly. All insurers that provide medical malpractice insurance to health care providers located in Ohio are required to report data to the department on claims that close during the year. Since the claims are reported based on when they are closed, the medical incidents on which they are based may be recent or they may be several years old.

The first report issued by the Department on statistics gathered under the terms of H.B. 215 was issued in November 2006. According to that report, a total of 5,051 claims were reported for 2005.<sup>1</sup> Nearly four-fifths of these claims, 4,005, were closed with no payment made on behalf of the defendant. The total amount paid to claimants attributable to the 1,046 claims that did lead to payment was approximately \$281.76 million, which works out to an average payment per successful claim of \$269,374. Averaged across all claims this works out to \$55,784. In addition to the amount of claims paid, insurers incurred costs of investigating and defending claims that were reported to total \$113.19 million. Of the 5,051 claims closed, 1,165 were less than one year old when closed, 1,585 were between one and two years old, 1,248 were between two and three years old, and the remainder were over three years old.<sup>2</sup>

Since this is the first annual report, there are no comparable data for previous years from which trends could be discerned. Trends will emerge as future reports are published. The report, available on the Department of Insurance web site, contains many additional details about claims closed in 2005 including, for example, some discussion of regional differences within the state.

### State fiscal effects

The bill requires the Superintendent of Insurance to: (1) establish a ten-year pilot program that allows for the use of arbitration procedures in all disputes concerning claims of medical negligence of health care professionals, hospitals, or other health care facilities, (2) receive copies of all settlement agreements or arbitration panel reports, as applicable, and (3) provide a written report on the use of arbitration panels under the pilot program to certain parties five years after the program's effective date and within one year after the conclusion of the program.

Department of Insurance officials indicate that performing these duties would likely require hiring a staff attorney and an administrative assistant, at a projected cost of approximately \$150,000 per year. Such costs would be paid out of the Department of Insurance Operating Fund (Fund 554).

The bill would also require the Supreme Court to issue a preliminary and final report on the pilot program, and would have chairpersons of arbitration panels send copies of arbitration panel reports to the Supreme Court. An official with the Supreme Court indicates that the costs imposed on the court are expected to be minimal, and would be paid from its main operating appropriation, which is funded by the GRF.

---

<sup>1</sup> This figure includes 3,325 claims reported by insurers regulated by the Department, 1,516 claims reported by self-insured entities, 172 claims reported by surplus lines insurers, and 38 claims by risk retention groups.

<sup>2</sup> Specifically, 572 were between three and four years old, 286 were between four and five years old, and 195 were over five years old.

### Local fiscal effects

The fact that all medical negligence claims would be initially submitted to an arbitration panel may increase the possibility that the parties will accept the evaluation of an arbitration panel. To the extent that there is an increase in successful arbitrations, there will be a corresponding reduction in the number of medical negligence cases filed in courts of common pleas. LSC fiscal staff is unable to accurately predict the precise magnitude of any ultimate reduction in the number of medical malpractice cases filed in any affected local court. However, LSC staff produced an estimate for a similar bill in the last General Assembly that the number of cases statewide may be reduced by up to between 2,146 and 2,415 (see fiscal note for S.B. 88 of the 126th General Assembly). This estimate appears to be in line with the new data provided by the Department of Insurance.

The relatively low arbitration rate under current law<sup>3</sup> would suggest that arbitration is not a preferable dispute resolution alternative. Assuming that continued to be true subsequent to the bill's enactment, then, in the short-term at least, it seems likely the practical effect will be to delay the filing of medical negligence claims in courts of common pleas. If there were in fact a reduction in the number of medical negligence claims filed, there would in all likelihood be an overall savings realized in courts of common pleas resulting from a decrease in judicial dockets and the related workload of other court personnel. The types of medical negligence cases most affected by the bill are likely to be handled by courts of common pleas, which hear all civil cases in which the amount in controversy exceeds \$15,000.

If there were in fact a reduction in the number of medical negligence claims filed, courts will likely experience a loss in associated filing fees and court cost revenues. The savings realized by courts in terms of their personnel and related operating costs would likely be greater than any possible revenue loss. Revenues from filing fees and court costs flow to county treasuries in the case of the courts of common pleas.

*LSC fiscal staff: Ross Miller, Senior Economist*

*SB0059IN.doc/lb*

---

<sup>3</sup> Of the 5,051 claims reported by the Department of Insurance, 239 were disposed of through existing alternative dispute resolution. Of the total 5,051, 3,208 claims were abandoned, leaving 1,604 handled by court verdicts (720) or through a settlement (884).