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MIRS Breaking News - Legislature Spikes CON's Limitations On Cancer Treatment - 4:58 p.m.

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The House and Senate today pushed through a resolution rejecting an executive branch ruling that an emerging cancer treatment only be allowed in facilities with a special accreditation.

Senate Health Policy Chair Curtis **VANDERWALL**'s (R-Ludington) SCR 14 was introduced and passed by both chambers in a voice vote within a six-hour span and didn't get run through a statutorily available six-lawmaker committee to study the issue further.

Rep. Hank **VAUPEL** (R-Fowlerville) would have co-chaired the never-before-used legislative entity to review "chimeric antigen receptor T-cell therapy" (CAR T) in which blood is taken out of a patient's body, treated with a drug and pumped back in to help the body to better fight the cancer (See "[Lawmakers May Use Special Power To Overturn Administrative Decision,](#)" 10/23/19).

But Vaupel, chair of the House Health Policy Committee, told *MIRS* he preferred not to call to order the special panel to consider rejecting a Certificate of Need (CON) Commission decision that only Foundation for the Accreditation of Cellular Therapy-approved (FACT) facilities can offer CAR T.

His concern was the panel of the House and Senate chairs and vice chairs of the health policy committee could open up additional review on other CON decisions, which Vaupel said he didn't want to do.

Vaupel said his goal in supporting HCR 14 was to stop what he saw as CON's mission creep into approving or disapproving specific types of therapies when its purpose is to manage the locations of hospitals and major pieces of medical equipment.

In fact, the VanderWall resolution focused only on the CON ruling on FACT certification, which would limit CAR T treatment to four health systems -- Spectrum, University of Michigan, Henry Ford and the Karmanos Cancer Institute.

Republicans, led by Senate Majority Leader Mike **SHIRKEY** (R-Clarklake), argued the limitation would be unique to Michigan. No other state requires a FACT certification and imposing one in Michigan would create barriers for cancer patients outside of metro Detroit, Grand Rapids and Ann Arbor.

"Immune cell therapy is the future of cancer treatment," VanderWall said. "Modern medicine has found a way to personalize medicine at the molecular level and save lives. This is not a one-size fits all technology. To treat it as such would be a true disservice to our constituents. Not only will Michigan be out of sync with the federal government and Medicare, Michigan will be the only state to require additional state level government oversight of this procedure."

Coincidentally or not, the move shows off a rarely used legislative power of rejecting a decision by the 11-member board of gubernatorially appointed medical professionals. It comes at a time when the Legislature is pushing the Executive Branch to scale back its power after the Governor's historic use of the Administrative Board to transfer \$625 million in spending.

Democratic lawmakers attacked today's action on a number of fronts.

Rep. Frank **LIBERATI** (D-Allen Park), minority vice chair on the Health Policy Committee, argued the measure should go to the special six-legislator committee and be properly vetted like any other policy matter that comes before the Legislature.

"I'm not saying I'm for SCR 14. I'm not saying I'm against SCR 14. I'm saying how does any person in this chamber know without any testimony?" Liberati asked. "How are we supposed to overturn a decision when we have no information whatsoever?"

Sen. Winnie **BRINKS** (D-Grand Rapids), the minority vice chair of the Senate Health Policy and Human Services Committee, called it "Without question an unconstitutional legislative veto."

"When the legislature wants to act, it has to act in a binding manner. It has to pass a bill and submit it for the Governor's consideration. Today's attempt to circumvent the Executive Branch's constitutional authority has already been struck down by the Michigan Supreme Court with '*Blank vs the Department of Corrections*' back in 2000," she said.

Passing the resolutions can take effect without a Governor's signature. Passing bills can not.

MIRS asked Senate Minority Leader Jim **ANANICH** (D-Flint) if he believed this situation would end up being decided in court.

"I think so," he responded. "They're quoting a 1988 statute the courts have ruled on. So, I think it's clearly unconstitutional. I don't think it will be much of a case. Senator VanderWall got up and made a very strong case for a bill. That's what we do here. We speak in bills and the Governor has a veto. It's just School House Rock 101."

MIRS asked Shirkey if he believed the CON situation would end up in the courts.

"I don't know," Shirkey said. "I don't know who might think they're an injured party. There's part of me that, frankly, hopes it does. Because it would provide some perfect clarity as to what I think was a wrong decision back in 2000."

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