HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1093	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Health & Human Services Committee; Health Quality Subcommittee; Hudson and others	116 **Y's**	0 **N's**
COMPANION BILLS:	(CS/CS/SB 1690)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 1093 passed the House on April 24, 2013, and subsequently passed the Senate on April 26, 2013. Pursuant to s. 766.1115, F.S., the Access to Health Care Act (Act), a governmental contractor, who contracts with a health care provider to provide volunteer and uncompensated health care services to low-income individuals, has exclusive control and oversight over patient eligibility, referral determinations, and patient care. The bill amends the Act to extend concurrent authority for patient eligibility and referral determinations to health care providers.

The bill requires the DOH to provide an online listing of all health care providers volunteering under this program and the number of volunteer health service hours and patient visits for each provider.

The bill creates a continuing education credit for health care providers who provide health care services in accordance with the Act.

The bill retains DOH's review and oversight authority over patient eligibility and referral determinations and requires DOH to adopt rules that specify the required methods for making and approving these determinations.

Sections 458.317 and 459.0075, F.S., set forth the requirements for the issuance of limited medical licenses to out-of-state or retired physicians. The bill amends these sections to provide the Department of Health (DOH) with greater flexibility in issuing these licenses.

There is an insignificant fiscal impact on state government that may be absorbed within existing agency resources.

The bill was approved by the Governor on June 7, 2013, ch. 2013-151, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Access to Health Care Act

Section 766.1115, F.S., is entitled the "Access to Health Care Act" (Act).[1] The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[2] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[3]

- A birth center licensed under chapter 383.
- An ambulatory surgical center licensed under chapter 395.
- A hospital licensed under chapter 395.
- A physician or physician assistant licensed under chapter 458.
- An osteopathic physician or osteopathic physician assistant licensed under chapter 459.
- A chiropractic physician licensed under chapter 460.
- A podiatric physician licensed under chapter 461.
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this section.
- A dentist or dental hygienist licensed under chapter 466.
- A midwife licensed under chapter 467.
- A health maintenance organization certificated under part I of chapter 641.
- A health care professional association and its employees or a corporate medical group and its employees.
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a health care professional.
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

[1] Chapter 64I-2, F.A.C., refers to the Access to Health Care Act as the "Volunteer Health Care Provider Program."
[2] A low-income person is defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department.
[3] Section 766.1115, F.S.

A health care provider may not subcontract for the provision of services.[4]

A "governmental contractor" is defined in the Act as DOH, a county health department, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.[5]

The definition of "contract" under the Act provides that the contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.[6]

The Act further specifies contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor must make patient selection and initial referrals.
- The health care provider must accept all referred patients, however the contract may specify limits on the number of patients to be referred and patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Acts.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider has sovereign immunity under s. 768.28, F.S., for purposes of actions related to medical negligence.[7]

The individual accepting services through the contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.[8] The health care provider cannot perform experimental procedures and clinically unproven procedures.[9] The governmental contractor must determine whether or not a procedure is authorized under the Act.[10]

DOH has adopted rules that specify required methods of determination and approval of patient eligibility and referral, as well as services and procedures authorized to be provided by the health care provider. These requirements include, but are not limited to, the following:

- The provider must accept all patients referred by DOH. The number of patients that must be accepted may be limited in the contract.
- The provider shall comply with DOH rules regarding determination and approval of the patient eligibility and referral.

[4] Rule 64I-2.004, F.A.C.
[5] *Id.*
[6] *Id.*
[7] *Id*.
[8] Rule 64I-2.002, F.A.C.
[9] Rule 64I-2.006, F.A.C.
[10] *Id*.

- The provider shall complete training by DOH regarding compliance with the approved methods of determination and approval of patient eligibility and referral.
- DOH shall retain review oversight authority of the patient eligibility and referral determination.[11]

As of June 30, 2012, there were 12,867 licensed, contracted volunteer providers in the state.[12]

Annually, DOH reports a summary to the Legislature of the efficacy of access and treatment outcomes from the provision of health care services for low-income persons under the Act.[13]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of his or her employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. In addition, the law limits the recovery of any one person to $200,000 for one incident and limits all recovery related to one incident to a total of $300,000. The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps but the plaintiff cannot recover the excess damages without action by the Legislature.[14]

The Florida Supreme Court, in *Stoll v. Noel* set forth the test to be utilized in determining whether a health care provider is entitled to sovereign immunity.[15] Specifically, whether a health care provider is entitled to sovereign immunity turns on the degree of control retained or exercised by the governmental entity.[16] The degree of control over a health care provider necessary for agency status cannot be established through contractual language but rather must be based upon the actual relationship between the parties.[17]

Limited Medical Licenses

Sections 458.317 and 459.0075, F.S., set forth the requirements for the issuance of limited medical licenses to allopathic and osteopathic physicians. Under these sections licensed out-of-state or retired physicians may obtain from the Board of Medicine and the Board of Osteopathic Medicine respectively, a limited medical license to provide volunteer health services.[18] The recipient of a limited license may

[11] Section 766.1115 (10), F.S.
[12] *Id*.
[13] Department of Health, Volunteer Health Services Program Annual Report 2010-2011, available at: http://doh.state.fl.us/workforce/vhs/index.html (last visited on March 23, 2013).
[14] Section 768.28(5), F.S.
[15] *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997)
[16] *Id*.
[17] *Robinson v. Linzer*, 758 So.2d 1163 (Fla. 4th DCA 2000).
[18] Sections 458.317 and 459.0075, F.S.

not be compensated for his or her work and may practice only in the employ of public or nonprofit agencies or institutions which are located in the areas of critical medical need.[19]

Any allopathic physician interested in obtaining a limited license must submit to the Board of Medicine an application and an affidavit stating that he or she has been licensed to practice medicine in any jurisdiction in the United States for at least 10 years and intends to practice only pursuant to the restrictions of a limited license.[20] To be eligible for a limited license, the Board of Medicine must certify that an applicant:

- Is at least 21 years of age;
- Is of good moral character;
- Has not committed any act or offense in this or any other jurisdiction which would constitute the basis for disciplining a physician under Chapter 458, F.S.;
- For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of pre-professional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school;
- Meets one of the following medical education and postgraduate training requirements:
    - Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education or is a graduate of an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction;
    - Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314, F.S., as having met the standards required to accredit medical schools in the United States or reasonably comparable standards;
    - Is a graduate of an allopathic foreign medical school which has not been certified pursuant to s. 458.314, F.S., but has had his or her medical credentials evaluated by the Educational Commission for Foreign Medical Graduates, holds an active, valid certificate issued by that commission, passed the examination utilized by that commission and has completed an approved residency of at least 1 year; and
- Has submitted to the Department of Health (DOH) a set of fingerprints on a form and under procedures specified by the DOH.[21]

The Board of Medicine may not certify for licensure any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of Chapter 458, F.S., until such investigation is completed.[22]

Any osteopathic physician interested in obtaining a limited license must submit an affidavit to the Board of Osteopathic Medicine stating that he or she has been in good standing and licensed to practice osteopathic medicine in any jurisdiction in the United States for at least 10 years.[23] To be eligible for a limited license the Board of Osteopathic Medicine must certify that an applicant:

- Is at least 21 years of age;
- Is of good moral character;
- Has not previously committed any act that would constitute a violation of Chapter 459, F.S., unless the board determines that such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;

[19] *Id.*
[20] Section 458.311, F.S.
[21] *Id.*
[22] *Id.*
[23] Section 459.0055, F.S.

- Is not under investigation in any jurisdiction for an act that would constitute a violation of Chapter 459, F.S.;
- Has not had an application for a license to practice osteopathic medicine denied or a license to practice osteopathic medicine revoked, suspended, or otherwise acted against by the licensing authority of any jurisdiction unless the board determines that the grounds on which such action was taken do not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- Has not received less than a satisfactory evaluation from an internship, residency, or fellowship training program, unless the board determines that such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- Is a graduate of a medical college recognized and approved by the American Osteopathic Association;
- Has successfully completed a resident internship of not less than 12 months in a hospital approved for this purpose by the Board of Trustees of the American Osteopathic Association or any other internship program approved by the board upon a showing of good cause by the applicant;
- Has obtained a passing score, as established by rule of the board, on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the board no more than 5 years before making application in this state or, if holding a valid active license in another state, that the initial licensure in the other state occurred no more than 5 years after the applicant obtained a passing score on the examination conducted by the National Board of Osteopathic Medical Examiners or other substantially similar examination approved by the board; and
- Has submitted to the DOH a set of fingerprints on a form and under procedures specified by the DOH.[24]

The Board of Medicine and the Board of Osteopathic Medicine must review biennially the practice of each physician issued a limited license to verify compliance with the restrictions prescribed in Chapters 458 and 459, F.S.[25]

Effect of Proposed Changes

The Act currently grants governmental contractors exclusive control and oversight over patient eligibility, referral determinations, and patient care. The bill amends the Act to authorize health care providers to make patient eligibility, referral, and care determinations and thereby diminishes governmental control. The bill specifies that the patient selection and initial referral must be made by either the government contractor or the provider. Removing the exclusivity of the governmental contractor's authority to make these determinations may result in a court determining that there was not sufficient government control to create an agency relationship, and, thereby sovereign immunity.[26]

The bill requires the DOH to provide an online listing of all health care providers volunteering under this program and the number of volunteer health service hours and patient visits for each provider. Providers may elect to be excluded from the listing by submitting a written request to DOH. There is currently no reporting requirement for this information either online or in the annual report required under the Act.

The bill creates a continuing education credit, in addition to continuing education credits already authorized under the law, for health care providers who provide services under the Act. Specifically,

[24] *Id.*
[25] Sections 458.317 and 459.0075, F.S.
[26] Correspondence from DOH, 2013 Florida Legislative Session, Review of Proposed Amendments to s. 766.115, F.S., HB 1093 (on file with the Florida House of Rep. Health Care Appropriations Subcommittee).

health care providers can earn one credit hour for every one hour volunteered up to a maximum of 8 credit hours.[27]

The bill retains DOH's review and oversight authority over patient eligibility and referral determinations, and requires DOH to adopt rules that specify the required methods under which these determinations must be made and approved. The bill requires such rules to give providers the greatest flexibility possible in order to serve eligible patients.

The bill also deletes the requirement that DOH adopt a rule requiring a provider to complete training conducted by DOH regarding compliance with the approved methods for determination and approval of patient eligibility and referral.

Sections 458.317 and 459.0075, F.S., set forth the requirements for the issuance of limited medical licenses to allopathic and osteopathic physicians. These requirements are virtually identical to the requirements for the issuance of standard medical licenses. However, limited licenses can only be issued to physicians who have previously held standard medical licenses and practiced medicine for at least ten years.[28] As such, the limited license requirements set forth in ss. 458.317 and 459.0075, F.S., appear to be redundant. The bill eliminates the redundancy by deleting these requirements and streamlines the application process by allowing applicants to submit certain documentation in lieu of affidavits and notarized statements.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an insignificant fiscal impact that may be absorbed within existing agency resources.

   The bill requires the DOH to provide an online listing of all health care providers volunteering under this program and the number of volunteer health service hours and patient visits for each provider. According to DOH, reporting data by volunteer physicians can be done within existing resources by using the existing Medical Quality Assurance licensure and enforcement database, COMPAS.[29] The use of this existing system will eliminate the need to create a new online database.[30]

   The bill retains DOH's review and oversight authority over patient eligibility and referral determinations, and requires DOH to adopt rules that specify the required methods under which these determinations must be made and approved. The fiscal impact associated with rule promulgation may be absorbed within existing agency resources.

[27] Section 456.013(9), F.S., provides the DOH with authority to waive up to 25% of the continuing education hours required for licensure renewal if the health care practitioner provides health care services to low-income or indigent individuals, or underserved populations. The 25% cap is not applicable to the volunteer health services hours provided under the Act. As such, a provider may earn up to 8 credit hours irrespective of whether this amount exceeds 25% of the total continuing education hours required for the provider during a renewal cycle.
[28] Footnote 9, supra.
[29] Correspondence from DOH, 2013 Legislative Session, Review of Proposed Amendments to s. 766.1115, F.S., Data Reporting Requirement Fiscal Impact (on file with the Florida House of Rep. Health Care Appropriations Subcommittee).
[30] *Id*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates the exclusive control for eligibility determinations and patient care previously held by the governmental contractors. The bill specifies that the patient selection and initial referral must be made by either the governmental contractor or the provider. Removing the exclusivity of the governmental contractor's authority to make these determinations may result in a court determining that there was not sufficient government control to create an agency relationship. Although the state still retains some review and oversight authority over the providers, there may be an increase in the number and duration of lawsuits filed against the health care providers who deliver services under the Act.

D. FISCAL COMMENTS:

None.