HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1121 Health Care Providers/Sovereign Immunity
SPONSOR(S): Green
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 1374(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	23 Y, 1 N	Garner	Collins
2) Judiciary			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1121 amends s. 766.1115, F.S., the Access to Health Care Act, which provides criteria under which health care providers can provide care to persons under the doctrine of sovereign immunity. Sovereign immunity would be granted to “free clinics” that provide services free of charge to all low-income persons.

The bill also revises the definition of “contract” to provide that for a health care provider to qualify as a volunteer, the provider may not receive any compensation from the patient or from third-party payers.

In addition, the bill requires the Department of Health (DOH) to adopt rules regarding procedures the department would use to determine eligibility and to refer patients to providers.

The bill provides an effective date of upon becoming a law.

The Department of Health states that the bill has no fiscal effects on the department.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[X]	N/A[X]
2. Lower taxes?	Yes[X]	No[]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a "no" above, please explain:

1. The bill expands the rulemaking authority of the Department of Health to standardize the referral and eligibility process for governmental contractors.

B. EFFECT OF PROPOSED CHANGES:

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The bill also revises the definition of "contract" to provide that for a health care provider to qualify as a volunteer, the provider may not receive any compensation from the patient or from third-party payers.

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PRESENT SITUATION

Access to Heath Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act." The act was enacted in 1992 to encourage health care providers to provide care to low-income persons. The 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. Such 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 s. 766.1115, F.S.

A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided under contracts entered into under s. 766.1115, F.S. The contract must provide for specified elements which include: the right of dismissal or termination of any health care provider delivering services under the contract; access to patient records of any health care provider delivering services under the contract by the governmental contractor; and adverse incidents and information on treatment outcomes to be reported by the health care provider delivering services under contract to the governmental contractor.

Since the Act was passed in 1992, the protection from exposure to liability it offers, in tandem with the education and oversight provided by the Department of Heath, has greatly stimulated participation in charitable care initiatives and increased access to health care for uninsured and medically indigent persons throughout the state. Specifically, providers documented over $86 million dollars in medical

care to low income families and individuals as shown in the 2001-02 Florida Department of Health Statewide Volunteer Health Services Program Report.

The Use of Free Clinics in Florida

“Free clinics” provide limited medical services to low-income individuals in Florida as alternative sites to emergency rooms and other higher costs health care facilities. Many of these free clinics cooperate with the Department of Health’s (DOH) Volunteer Health Care Provider Program (VHCPP). VHCPP operates in 55 of Florida’s 67 counties and uses local health care providers who volunteer their services free of charge. Statewide, during FY 2002-03, the value of services donated totaled $107.8 million and the number of volunteers exceeded 17,000.

The intent of the VHCPPs is two-fold: 1) to increase access to health care for Floridians with low incomes through health care practitioner volunteers; and 2) to increase the number of health care volunteers by extending sovereign immunity protection. One of the criteria for a health care professional to receive sovereign immunity is that the health care services be free of charge to eligible patients who are referred solely by a governmental contractor.

For a health care practitioner to be covered under sovereign immunity, the practitioner must provide voluntary uncompensated services while being a provider under contract with the department. In addition, current law provides that patient selection and initial referral is limited solely to governmental contractors (DOH, special health care taxing districts and hospitals owned and operated by governmental entities).

HB 1121 changes the definitions in s. 766.1115, F.S., to extend the state’s protection of sovereign immunity to the clinics that deliver only medical diagnostic or nonsurgical services free of charge to all low-income recipients and revising the criteria under which a governmental contractor (DOH or AHCA) may contract with health providers.

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorizes the Florida Legislature to waive sovereign immunity by stating that, “Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.” The doctrine of sovereign immunity prohibits lawsuits in state court against a state government, and its agencies and subdivisions without the government’s consent.

Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions. The section does provide some economic relief, but imposes a $100,000 limit on the government’s liability to a single person for claims arising out of a single incident, with an overall limit of $200,000. The section also extends sovereign immunity to private entities under contract with the government under certain conditions. Specifically, s. 768.28(9), F.S., states that agents of the state or its subdivisions are not personally liable in tort; instead, the government entity is held liable for its agent’s torts. As it pertains to health care, s. 768.28(9), F.S., defines “officer, employee, or agent” to include, but not be limited to, any health care provider when providing services pursuant to s. 766.1115, F.S. (the Access to Health Care Act).

C. SECTION DIRECTORY:

Section 1. Amends s. 766.1115, F.S., revising definitions; providing qualifications for volunteer, uncompensated services; extends protection of sovereign immunity to free clinics; and authorizes the Department of Health to adopt certain rules necessary to implement this provision.

Section 2. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments section.

2. Expenditures:

   See fiscal comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Health states that the bill has no fiscal effect on the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health the rulemaking authority necessary to implement this provision.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES