

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 1032

SPONSOR: Senator Bennett

SUBJECT: Access to Health Care Act

DATE: April 3, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	Favorable
2.	_____	_____	HA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises the definition of “low-income” under the Access to Health Care Act, to extend eligibility for volunteer, uncompensated health care services to persons who are without health insurance and whose family income does not exceed 200 percent, rather than 150 percent, of the federal poverty level.

This bill amends section 766.1115, Florida Statutes.

II. Present Situation:

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorized the Florida Legislature in 1868 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.

Section 768.28(5), F.S., imposes a \$100,000 limit on the government’s liability to a single person and for claims arising out of a single incident, the limit is \$200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claim bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

The second form of sovereign immunity potentially available to private entities under contract with the government is set forth in s. 768.28(9), F.S. It 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. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.¹ The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. In the event, however, that the evidence of agency is susceptible of only one interpretation the court may decide the issue as a matter of law.²

Section 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), any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons referred by the Department of Health (DOH), and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

Access to Health Care Act

The Access to Health Care Act, codified at s. 766.1115, F.S., was enacted in 1992 to encourage health care providers to provide care to low-income persons. Section 766.1115, F.S., 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. Under s. 766.1115, F.S., low-income persons are those who are Medicaid-eligible, who are without health insurance and whose family income does not exceed 150 percent of the federal poverty level³, or who are clients of DOH who voluntarily choose to participate in a program offered or approved by the department and who meet the eligibility guidelines of the department.

Section 766.1115, F.S., defines "contract" to mean an agreement executed between a health care provider and a governmental contractor that allows the health care provider to deliver services to

¹ *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

² *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996). See also *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997).

³ The official poverty line defined by the Office of Management and Budget refers to the Census Bureau poverty thresholds, although it is included in the legislative section of the 1981 Omnibus Budget Reconciliation Act (OBRA) that requires the Secretary of Health and Human Services to update the poverty guidelines annually. The thresholds are mentioned in this legislative section because they are the starting point from which the poverty guidelines are calculated. (The legislative section is section 673(2) of OBRA-1981 or of the Community Services Block Grant Act; the U.S. Code citation is 42 U.S.C. 9902(2).) The Census Bureau poverty thresholds are described using this phrase because in August 1969, the Bureau of the Budget (the predecessor of the Office of Management and Budget) issued a document designating the Census Bureau poverty thresholds as the federal government's official statistical definition of poverty (The 1978 version of this document is available on the Census Bureau website). However, the role of the Office of Management and Budget (OMB) vis-à-vis the poverty line was limited to this one-time designation of the poverty thresholds as the official federal statistical definition of poverty. OMB has never issued either the poverty thresholds or the poverty guidelines.

low-income recipients as an agent of the governmental contractor. The contract must be for uncompensated services. For services to qualify as volunteer, uncompensated services under s. 766.1115, F.S., 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. "Governmental contractor" means the Department of Health, county health departments, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity. Governmental contractors other than DOH are responsible for their own costs and attorney's fees for malpractice litigation arising out of health care services delivered under s. 766.1115, F.S.

Sovereign immunity is extended to a health care provider if the contract complies with the requirements of s. 766.1115, F.S., regardless of whether the individual treated is later found to be ineligible. 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.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, stating that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damages suffered as a result of any act or omission of the provider or of any employee or agent acting within the scope of duties under the contract is an action against a state agency under the provisions of s. 768.28, F.S. The receipt of the notice must be acknowledged in writing. The governmental contractor must submit incident reports involving a licensed professional or facility to the appropriate department or agency. Patient selection and referral must be made solely by the governmental contractor, and the provider must accept all referred patients. However, the number of patients that may be accepted may be limited by the contract, and patients may not be transferred to the provider based on a violation of federal antidumping laws.

A governmental contractor that is also a health care provider is not required to enter into a contract under s. 766.1115, F.S., with respect to the health care services delivered by its employees. The governmental contractor must establish a quality assurance program to monitor services delivered under any contract between an agent and a health care provider. The Department of Health must adopt rules to administer s. 766.1115, F.S., and such rules may include services to be provided and authorized procedures.

Federal Poverty Guidelines

The federal poverty levels are designated annually by the U.S. Department of Health and Human Services (HHS) and are used in determining the eligibility for a number of federally-funded programs. The 2005 poverty level guidelines annual income figures are below:

2005 HHS Poverty Guidelines Income Figures⁴

Persons in Family Unit	100% of Poverty	150% of Poverty	200% of Poverty
1	\$9,750	\$14,355	\$19,140
2	\$12,830	\$19,245	\$25,660
3	\$16,090	\$24,135	\$32,180
4	\$19,350	\$29,025	\$38,700
5	\$22,610	\$33,915	\$45,220
6	\$25,870	\$38,805	\$51,740
7	\$29,130	\$43,695	\$58,260

III. Effect of Proposed Changes:

The bill revises the definition of “low-income” under the Access to Health Care Act, to extend eligibility for volunteer, uncompensated health care services to persons who are without health insurance and whose family income does not exceed 200 percent, rather than 150 percent, of the federal poverty level.

The effective date of the bill is July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁴ Income figures are based on information published in the Federal Register, Vol. 70, No. 33, pp. 8373-83-75, February 18, 2005.

B. Private Sector Impact:

The Department of Health indicates that an additional 468,635 persons would be eligible for volunteer health care services if the income eligibility for persons without health insurance was increased from 150 to 200 percent of the federal poverty level. The eligibility of such persons to receive services will be dependent on available resources and the number of health care providers willing to donate their services.

C. Government Sector Impact:

The Department of Health will incur costs for additional rulemaking to implement the bill and such costs are anticipated to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
