

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1401 School Health Services Program
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee		Schiefelbein	Brown-Barrios
2) PreK-12 Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5) _____			

SUMMARY ANALYSIS

The bill adds school-based health centers to the definition of “entity” or “health care entity” for purposes of the School Health Services Act, thereby extending sovereign immunity to such centers. The bill defines “school-based health center” to mean an entity that provides an array of services as outlined in the bill.

This bill amends section 381.0056, Florida Statutes.

There is a fiscal impact associated with this bill.

This bill provides for an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empowers Families – Families would have an additional opportunity to receive health care services in a school-based setting.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 381.0056, F.S., to revise the definition of “entity” or “health care entity” to include a “school based health center,” for purposes of the School Health Services Act. The effect of this would be to extend sovereign immunity to such centers. A “school-based health center” is defined in the act to mean an entity that:

- Provides a minimum of 15 hours per week of primary care services to adolescents or other school-age children in accordance with state law for the majority of the year;
- Provides services onsite at the school, but may also offer linkages and referrals to primary care providers if confidentiality is maintained;
- Provides comprehensive services that include, but are not limited to:
 - Acute management and ongoing monitoring of chronic conditions
 - Well-child or adolescent examinations
 - Immunizations
 - Diagnosis and treatment of acute illnesses and injuries
 - Basic diagnostic laboratory tests
 - Prescriptions or dispensing of commonly used medications
 - Individual health education and guidance for students and parents
- Provides comprehensive services that may include, but not limited to:
 - Age-appropriate reproductive health services including health education; pelvic examinations; diagnosis and treatment of sexually transmitted diseases; testing and counseling for HIV and AIDS; and prescribing, dispensing, or referring for birth control including condoms
 - Basic mental health services
- Maintains health records in a manner that is current, detailed, confidential, organized and permits effective student care and quality review;
- Provides health care service access regardless of insurance status or ability to pay and does not discriminate regarding race, ethnicity, national origin, age, disability, gender or sexual orientation.

Background:

Florida’s Coordinated School Health Program - The Florida Department of Education, in cooperation with the Department of Health, administers the Centers for Disease Control and Prevention (CDC) Coordinated School Health Program (CSHP) grant to assist in the development and enhancement of school-based programs that protect and maintain student health and support academic achievement. The eight components of the CHSP program focus on community health; consumer health; disease prevention and control; environmental health; family life; injury prevention and safety; personal health and fitness; mental and emotional health; nutrition education; prevention of tobacco, alcohol and other drug use. School-based programs assist students to increase health knowledge; support health decision-making and behavior; improve access to nutritious food, physical activity and mental health services; and assure a healthy school environment that includes positive, healthy role models such as teachers, parents, and community members. Coordinated School Health Programs provide a strategy for improving the health and learning of Florida’s school age children. According to the *State of Florida 2003-04 Summary of School Health Services* the average state-wide student health room visits per day was 76,379.

School Health Services Act

Section 381.0056, F.S., establishes the School Health Services Act. The Department of Health (DOH) has responsibility, in cooperation with the Department of Education (DOE), to supervise the administration of the school health services program and perform periodic program reviews. Basic school health services supplement parental responsibilities for child health and include low cost population-based preventive health services. The act provides definitions and defines "entity" or "health care entity" to mean a unit of local government or a political subdivision of Florida; a licensed hospital; a health maintenance organization; a health insurer; a community, migrant, or federally qualified health center; a nonprofit organization; a private industry or business; or a philanthropic foundation that agrees to participate in a public-private partnership with a county health department, local school district, or school in the delivery of school health services, and agrees to the terms and conditions for the delivery of such services as required under the act and as documented in the local school health services plan. The state plan for school health services must be developed by DOH in cooperation with DOE to include, at a minimum, a plan for the delivery of school health services; accountability and outcome indicators; strategies for assessing and blending financial resources; and the establishment of a data system.¹

School-based Health Centers

According to officials at DOH, school-based health centers have been established in select schools to provide primary medical care. Such care is distinct from the school health services required by s. 381.0056, F.S. School-based health centers have been created with funding from federal or community grants. DOH officials note that as of September, 2004, there were about 116 centers located at schools in seven counties in Florida. Seven of the school-based health centers are sponsored by county health departments, and the remainder of the centers are sponsored by hospitals, community health centers, school districts, or universities.

Under the school health services program, entities or health care entities receive a limitation on their civil liability under the doctrine of sovereign immunity. Under s. 381.0056(10), F.S., any health care entity that provides school health services under contract with DOH under a school health plan developed under the act, and as part of a school nurse service public-private partnership, is deemed to be a corporation acting primarily as an instrumentality of Florida solely for the purpose of limiting liability under s. 768.28(5), F.S. The limitations on tort actions in s. 768.28(5), F.S., must apply to any action against the entity with respect to the provision of school health services, if the entity is acting within the scope of and pursuant to guidelines established in the contract or by rule of DOH. The contract must require the entity, or the partnership on behalf of the entity, to obtain general liability insurance coverage, with any additional endorsement necessary to insure the entity for liability assumed by its contract with DOH.

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, but 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.

¹ See Rule 64F-6.002, Florida Administrative Code.

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., 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 DOH, and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

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.²

C. SECTION DIRECTORY:

Section 1. Amends s. 381.0056 (3), F.S., relating to school health services program and provides a definition of a *school-based health center*.

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:
None

2. Expenditures:
According to the Department of Health, the potential impact cannot be determined, because of the lack of specificity regarding how school-based health centers would be staffed and funded. If school-based health centers were to be included as a contracting entity for school health services, staff costs for site monitoring and quality assurance by the county health departments and Health Quality School Health Program would be incurred.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None

2. Expenditures:
School-based health centers located on school grounds would require designated space appropriate for the services provided and student population served.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While some students receiving primary care services on school grounds will be uninsured, many students could receive services that replace or duplicate those from local medical providers and private medical insurance. This would lead to the fragmentation of care if not coordinated with the primary care provider for the family.

² *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).
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D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rule-making authority to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES