

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 313 Access to Health Care Practitioner Services

**SPONSOR(S):** Health Quality Subcommittee; Grant

**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE                                  | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--------------------------------------------|---------------------|---------|------------------------------------------|
| 1) Health Quality Subcommittee             | 11 Y, 0 N, As<br>CS | Siples  | McElroy                                  |
| 2) Health Care Appropriations Subcommittee | 13 Y, 0 N           | Mielke  | Pridgeon                                 |
| 3) Health & Human Services Committee       | 18 Y, 0 N           | Siples  | Calamas                                  |

### SUMMARY ANALYSIS

CS/HB 313 incentivizes physicians to provide pro bono health care services to certain low-income individuals and provides an opportunity for physicians from other jurisdictions and retired physicians to provide health services to low-income and medically underserved individuals in this state.

The bill requires Department of Health (DOH) to waive the renewal fee of an allopathic or osteopathic physician who demonstrates to DOH the provision of at least 160 hours of pro bono medical services to certain populations within the biennial licensure renewal period. Demonstration of 120 hours gains an exemption from the 40 hours of continuing medical education required for license renewal.

The bill authorizes both the Board of Medicine and the Board of Osteopathic Medicine to issue a limited number of restricted licenses to physicians not licensed in Florida who contract to practice for 36 months solely in the employ of the state, a federally funded community health center, a migrant health center, a free clinic, or a health provider in a health professional shortage area or medically underserved area. An applicant for a restricted license must hold an active, unencumbered license to practice medicine in another jurisdiction of the U. S. or Canada and pass a background screening. Prior to the end of the 36-month contract, the physician must take and pass the appropriate licensing exam to become fully licensed in this state. Breach of contract precludes full licensure.

The bill also creates a registration process for retired physicians to provide volunteer health care services if the physician held an active licensed status to practice and maintained such license in good standing in this state or in another jurisdiction of the U. S. or Canada for at least 20 years and contracts with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in a health professional shortage area or medically underserved area. Such a physician must work under the supervision of a non-retired physician who holds an active, unencumbered license, provide only medical services of the type and within the specialty performed by the physician prior to retirement, and not perform surgery or prescribe controlled substances. These physicians are exempt from any application, licensure, unlicensed activity, and renewal fees. Registration must be renewed biennially to demonstrate compliance with registration requirements.

The "Access to Health Care Act" (Act) was enacted in 1992 to encourage health care providers to provide care to low-income persons. The bill redefines low-income persons to include individuals that do not have health insurance and have a family income that does not exceed 400 percent of the federal poverty level, rather than the 200 percent in current law.

The bill may have an indeterminate positive impact and an indeterminate negative fiscal impact on DOH (see fiscal impact on state government). Current department resources are sufficient to absorb added workload. The bill will have no impact on local governments.

The bill provides an effective date of July 1, 2018

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0313e.HHS

**DATE:** 1/18/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Licensure and Regulation of Physicians**

##### **Allopathic Physicians**

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction the Department of Health (DOH). The chapter provides, among other things, licensure requirements by examination for medical school graduates and licensure by endorsement requirements.

##### *Allopathic Licensure by Examination*

An individual seeking to be licensed by examination as an allopathic physician, must meet the following requirements:<sup>1</sup>

- Pay an application fee;<sup>2</sup>
- Be at least 21 years of age;
- Be of good moral character;
- Has not committed an act or offense that would constitute the basis for disciplining a physician, pursuant to s. 458.331, F.S.;
- Complete 2 years of post-secondary education which includes, at a minimum, courses in fields such 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 recognized and approved by an accrediting agency recognized by the U.S. Office of Education or recognized by an appropriate governmental body of a U.S. territorial jurisdiction, and has completed at least one year of approved residency training;
  - Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to statute as meeting the standards required to accredit U.S. medical schools, and has completed at least one year of approved residency training; or
  - Is a graduate of an allopathic foreign medical school that has not been certified pursuant to statute; has an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG),<sup>3</sup> has passed that commission's examination; and has completed an approved residency or fellowship of at least 2 years in one specialty area;
- Has submitted to a background screening by the DOH; and
- Has obtained a passing score on:
  - The United States Medical Licensing Examination (USMLE);

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<sup>1</sup> Section 458.311(1), F.S.

<sup>2</sup> Pursuant to r. 64B8-3.002(5), F.A.C., the application fee for a person desiring to be licensed as a physician by examination is \$500. The applicant must pay an initial license fee of \$429. Section 766.314(4), F.S., assesses a fee to be paid with at time of an initial license to finance the Florida Birth-Related Neurological Injury Compensation Plan. The current assessment amount is \$250 for most practitioners and \$5,000 for obstetricians. If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of licensure.

<sup>3</sup> A graduate of a foreign medical school does not need to present an ECFMG certification or pass its exam if the graduate received his or bachelor's degree from an accredited U.S. college or university, studied at a medical school recognized by the World Health Organization, and has completed all but the internship or social service requirements, has passed parts I and II of the National Board Medical Examiners licensing examination or the ECFMG equivalent examination. (Section 458.311, F.S.)

- A combination of the USMLE, the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or
- The Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX), if the applicant was licensed on the basis of a state board examination, is currently licensed in at least one other jurisdiction of the United States or Canada, and has practiced for a period of at least 10 years.

### *Allopathic Licensure by Endorsement*

An individual who holds an active license to practice medicine in another jurisdiction may seek licensure by endorsement to practice medicine in Florida.<sup>4</sup> The applicant must meet the same requirements for licensure by examination. To qualify for licensure by endorsement, the applicant must also submit evidence of the licensed active practice of medicine in another jurisdiction for at least 2 of the preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure.<sup>5</sup>

When the allopathic board determines that any applicant for licensure by endorsement has failed to meet, to the allopathic board's satisfaction, each of the appropriate requirements for licensure by endorsement, it may enter an order requiring one or more of the following terms:<sup>6</sup>

- Refusal to certify to the DOH an application for licensure, certification, or registration;
- Certification to the DOH of an application for licensure, certification, or registration with restrictions on the scope of practice of the licensee; or
- Certification to the DOH of an application for licensure, certification, or registration with placement of the physician on probation for a period of time and subject to such conditions as the allopathic board may specify, including, but not limited to, requiring the physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another physician.

### *Allopathic License Renewal*

Physician licenses are renewed biennially. The current fee for the timely renewal of a license is \$389; this fee also applies to restricted licenses and temporary certificates for practice in areas of critical need.<sup>7</sup> However, if a physician holding a restricted license or temporary certificate for practice in areas of critical need submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services, the renewal fees are waived.<sup>8</sup>

Within each biennial licensure renewal period, a physician must complete 40 hours of continuing medical education (CME) courses approved by the allopathic board. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;<sup>9</sup>
- A one-hour course addressing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome no later than upon the first biennial licensure renewal;<sup>10</sup> and
- Two hours of CME relating to the prevention of medical errors.<sup>11</sup>

<sup>4</sup> Section 458.313, F.S.

<sup>5</sup> Section 458.313(c), F.S.

<sup>6</sup> Section 458.313(7), F.S.

<sup>7</sup> Rule 64B8-3.003, F.A.C. If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of renewal.

<sup>8</sup> Id.

<sup>9</sup> Section 456.031, F.S.

<sup>10</sup> Section 456.033, F.S.

<sup>11</sup> Section 456.013(7), F.S.

The allopathic board authorizes up to 5 hours of the required CME hours to be fulfilled by the performance of pro bono services to indigent or underserved persons or in areas of critical need.<sup>12</sup> The allopathic board has approved as pro bono service sites, federally funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with DOH, and DOH. If pro bono services are to be provided to any other entity, the licensee must obtain prior approval for such services to apply against the CME requirement.

DOH may not renew a license until a licensee complies with all CME requirements.<sup>13</sup> The allopathic board may also take action against a license for failure to comply with CME requirements.

### Osteopathic Physicians

Chapter 459, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board) in conjunction the Department of Health (DOH). The chapter provides, among other things, general licensure requirements, including by examination for medical school graduates and licensure by endorsement requirements.

#### *Osteopathic General Licensure*

An individual seeking to be licensed as an osteopathic physician must meet the following requirements:<sup>14</sup>

- Pay an application fee;<sup>15</sup>
- Be at least 21 years of age;
- Be of good moral character;
- Complete at least 3 years of pre-professional post-secondary education;
- Has not committed, or be under investigation in any jurisdiction for, an act or offense that would constitute the basis for disciplining an osteopathic physician, unless the osteopathic board determines such act does not adversely affect the applicant's present ability and fitness to practice osteopathic medicine;
- 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 in any jurisdiction;
- Has not received less than a satisfactory evaluation from an internship, residency, or fellowship training program;
- Has submitted to a background screening by the DOH;
- Is a graduate of a medical college recognized and approved by the American Osteopathic Association;
- Successfully completes a resident internship of at least 12 months in a hospital approved by the Board of Trustees of the American Osteopathic Association or any other internship approved by the osteopathic board; and
- Obtains a passing score, as established by rule of the osteopathic board, on the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the osteopathic board, no more than five years prior to applying for licensure.<sup>16</sup>

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<sup>12</sup> Rule 64B8-13.005(9), F.A.C. Indigency is persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

<sup>13</sup> Section 456.031, F.S.

<sup>14</sup> Section 459.0055(1), F.S.

<sup>15</sup> Pursuant to r. 64B15-10.002, F.A.C., the application fee for a person desiring to be licensed as an osteopathic physician by examination is \$200. The applicant must pay an initial license fee of \$305. Section 766.314(4), F.S., assesses a fee to be paid with at time of an initial license to finance the Florida Birth-Related Neurological Injury Compensation Plan. The current assessment amount is \$250.

<sup>16</sup> However, if an applicant has been actively licensed in another state, the initial licensure in the other state must have occurred no more than five years after the applicant obtained the passing score on the licensure examination.

### *Osteopathic Licensure by Endorsement*

If an applicant for a license to practice osteopathic medicine is licensed in another state, the applicant must have actively practiced osteopathic medicine within the two years prior to applying for licensure in this state.<sup>17</sup> If it has been more than two years since the active practice of osteopathic medicine and more than two years since completion of a resident internship, residency, or fellowship and if the osteopathic board determines that the disruption in practice has adversely affected the osteopathic physician's present ability to practice, the osteopathic board may:<sup>18</sup>

- Deny the application;
- Issue the license with reasonable restrictions or conditions; or
- Issue the license upon receipt of documentation confirming the applicant has met any reasonable conditions of the osteopathic board.

### *Osteopathic License Renewal*

Osteopathic physician licenses are renewed biennially. The current fee for the timely renewal of a license is \$429; this fee also applies to restricted licenses and temporary certificates for practice in areas of critical need.<sup>19</sup> However, the renewal fees are waived if an osteopathic physician holding a restricted license or temporary certificate for practice in areas of critical need submits a notarized statement from his or her employer stating that the physician will not receive monetary compensation for the provision of medical services.<sup>20</sup>

Within each biennial licensure renewal period, an osteopathic physician must complete 40 hours of CME courses approved by the osteopathic board. As a part of the 40 hours of CME, a licensee must also complete the following:

- A two-hour course regarding domestic violence every third biennial;<sup>21</sup>
- A one-hour course addressing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome no later than upon the first biennial licensure renewal;<sup>22</sup>
- Two hours of CME relating to the prevention of medical errors;<sup>23</sup>
- A one-hour course on profession and medical ethics education; and
- A one-hour course on the federal and state laws related to the prescribing of controlled substances.<sup>24</sup>

The osteopathic board authorizes up to 10 hours of the required CME hours to be fulfilled by the performance of pro bono medical services to indigent or underserved persons or in areas of critical need.<sup>25</sup> The osteopathic board has approved federally-funded community and migrant health centers, volunteer health care provider programs contracted to provide uncompensated care with DOH, and DOH as pro bono sites. If pro bono services are to be provided to any other entity, the licensee must obtain prior approval for such services to apply to the CME requirement.

DOH may not renew a license until a licensee complies with all CME requirements.<sup>26</sup> The osteopathic board may also take action against a license for failure to comply with CME requirements.<sup>27</sup>

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<sup>17</sup> Section 459.0055(2), F.S.

<sup>18</sup> Id.

<sup>19</sup> Rule 64B8-3.003, F.A.C. If a practitioner dispenses medicinal drugs, an additional fee of \$100 must be paid at the time of renewal.

<sup>20</sup> Id.

<sup>21</sup> Section 456.031, F.S.

<sup>22</sup> Section 456.033, F.S.

<sup>23</sup> Section 456.013(7), F.S.

<sup>24</sup> Rule 64B15-13.001, F.A.C.

<sup>25</sup> Rule 64B15-13.005, F.A.C. Indigency refers to persons of low-income (no greater than 150 percent of the federal poverty level) or uninsured persons.

<sup>26</sup> Section 456.0361, F.S.

<sup>27</sup> Section 456.0361(2), F.S.

## **Financial Responsibility**

Both allopathic and osteopathic physicians must carry malpractice insurance or demonstrate proof of financial responsibility as a condition of licensure or renewal of licensure. A physician may meet this requirement by:

- Maintaining financial liability coverage in an amount of at least \$100,000 per claim, with a minimum annual aggregate of at least \$300,000 if the licensee does not have hospital privileges;
- Maintaining financial liability coverage in an amount of at least \$250,000 per claim, with a minimum annual aggregate of at least \$750,000 if the licensee has hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least \$100,000 per claim, with a minimum aggregate availability of at least \$300,000 if the licensee does not have hospital privileges;
- Maintaining an unexpired, irrevocable letter of credit or an escrow account in an amount of at least \$250,000 per claim, with a minimum aggregate availability of at least \$750,000 if the licensee has hospital privileges; or
- Not obtaining malpractice insurance or demonstrating financial ability but agreeing to satisfy any adverse judgments and prominently posting a notice in the reception area to notify all patients of such decision.<sup>28</sup>

## **Physician Licensure for Volunteer and Low-Income Practice**

### **Allopathic Restricted Licenses**

Current law authorizes the allopathic board to issue restricted licenses to practice medicine in this state, without examination, for physicians who contracts to practice for 24 months solely in the employ of the state or a federally funded community health center or migrant health center. An applicant for a restricted license must also:<sup>29</sup>

- Meet the requirements for licensure by examination; and
- Have actively practiced medicine in another jurisdiction for at least two years of the immediately preceding four years or has completed board-approved postgraduate training within the year preceding submission of the application.

A restricted licensee must take and pass the licensure examination prior to completion of the 24-month practice period.<sup>30</sup> A restricted licensee who breaches the terms of his or her contract is prohibited from being licensed as a physician in this state.<sup>31</sup>

The allopathic board may issue up to 100 restricted licenses annually.<sup>32</sup>

### **Osteopathic Limited Licenses**

Current law authorizes the osteopathic board to issue limited licenses to certain osteopathic physicians who will only practice in areas of critical need or in medically underserved areas. A limited license may be issued to an individual who:<sup>33</sup>

- Submits the licensure application and required application fee of \$100;

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<sup>28</sup> Sections 458.320, F.S., and 459.0085, F.S.

<sup>29</sup> Section 458.310, F.S.

<sup>30</sup> Section 458.310(3), F.S.

<sup>31</sup> Section 458.310(4), F.S.

<sup>32</sup> Section 458.310(2), F.S.

<sup>33</sup> Section 459.0075, F.S., and r. 64B15-12.005, F.A.C.

- Provides proof that he or she has been licensed to practice osteopathic medicine in any jurisdiction of the United States in good standing for at least 10 years;
- Has completed at least 40 hours of continuing education within the preceding two year period; and
- Will only practice in the employ of public agencies, nonprofit entities, or agencies or institutions in areas of critical need or in medically underserved areas.

If it has been more than three years since the applicant has actively practiced osteopathic medicine, the full-time director of the local county health department must supervise the applicant for at least six months after issuance of the limited license.<sup>34</sup>

The osteopathic board must review the practice of each physician who holds a limited license at least biennially to ensure that he or she is in compliance with the practice act and rules adopted thereunder.<sup>35</sup>

### Temporary Certificate for Practice in Areas of Critical Need

The boards may issue a temporary certificate to practice in areas of critical need to an allopathic or osteopathic physician who will practice in an area of critical need. An applicant for a temporary certificate must:<sup>36</sup>

- Be actively licensed to practice medicine in any jurisdiction of the U.S.;
- Be employed by or practice in a county health department, correctional facility, Department of Veterans' Affairs clinic, federally-funded community health care center, or any other agency or institution designated by the State Surgeon General and provides health care to underserved populations; or
- Practice for a limited time to address critical physician-specialty, demographic, or geographic needs for this state's workforce as determined by the Surgeon General.

The allopathic and osteopathic boards are authorized to administer an abbreviated oral examination to determine a physician's competency, but a written examination is not required.<sup>37</sup> The boards may deny the application, issue the temporary certificate with reasonable restrictions, or require the applicant to meet any reasonable conditions of the allopathic or osteopathic board prior to issuing the temporary certificate if it has been more than three years since the applicant has actively practiced and the board determines the applicant lacks clinical competency, adequate skills, necessary medical knowledge, or sufficient clinical decision-making.<sup>38</sup>

Fees for the temporary certificate for practice in areas of critical need include a \$300 application fee and \$429 initial licensure fee; however, these fees may be waived if the individual is not compensated for his or her practice.<sup>39</sup> The temporary certificate is only valid for as long as the Surgeon General determines that critical need remains an issue in this state.<sup>40</sup> However, the allopathic and osteopathic boards must review the temporary certificate holder at least annually to ensure that he or she is in compliance with the practice act and rules adopted thereunder.<sup>41</sup> The allopathic board may revoke or restrict the temporary certificate for practice in areas of critical need, if noncompliance is found.<sup>42</sup>

<sup>34</sup> Section 459.0075(2), F.S.

<sup>35</sup> Section 459.0075(5), F.S.

<sup>36</sup> Sections 458.315, and 459.0076, F.S.

<sup>37</sup> Id.

<sup>38</sup> Sections 458.315(3)(b), and 459.0076(3)(b), F.S.

<sup>39</sup> Rules 64B8-3.003, and 64B15-10.002, F.A.C.

<sup>40</sup> Sections 458.315(3), and 459.0076(3), F.S.

<sup>41</sup> Sections 458.315(3)(c), and 459.0076(3)(c), F.S.

<sup>42</sup> Id.

## Florida Volunteer Protection Act

The Florida Volunteer Protection Act (FVPA), s. 768.1355, F.S., limits the civil liability for volunteers. Under the FVPA, any person who volunteers to perform any service for any nonprofit organization, without compensation from the nonprofit organization, regardless of whether the person is receiving compensation from another source, is an agent of the nonprofit organization when acting within the scope of any official duties.<sup>43</sup> The FVPA exempts volunteers from civil liability for any act or omission which results in personal injury or property damage if:<sup>44</sup>

- The volunteer was acting in good faith within the scope of any official duties;
- The volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct of the volunteer in the performance of such duties.

If a volunteer is determined not to be liable pursuant to these provisions, the nonprofit organization for which the volunteer was performing services when the damages were caused is liable for the damages to the same extent as the nonprofit organization would have been liable if the liability limitation under the Act had not been provided.<sup>45</sup>

## Access to Health Care Act

The “Access to Health Care Act” (Act), s. 766.1115, F.S., was enacted in 1992 to encourage health care providers to provide care to low-income persons.<sup>46</sup> Low-income persons include:

- 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;<sup>47</sup> or
- Any eligible client of DOH who voluntarily chooses to participate in a program offered or approved by the department.

Health care providers under the Act include, among others, allopathic and osteopathic physicians.<sup>48</sup> DOH administers the Act through the Volunteer Health Services Program, which works with DOH entities and community and faith-based health care providers to promote access to quality health care for the medically underserved and uninsured in this state.<sup>49</sup>

The Act grants sovereign immunity<sup>50</sup> to health care providers who execute a contract with a governmental contractor<sup>51</sup> and who, as agents of the state, provide volunteer, uncompensated health

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<sup>43</sup> Section 766.1355, F.S. Compensation does not include reimbursement for actual expenses, a stipend under the Domestic Service Volunteer Act of 1973 (i.e. AmeriCorps and SeniorCorps), or other financial assistance that is valued at less than two-thirds of the federal minimum wage.

<sup>44</sup> Section 768.1355(1), F.S.

<sup>45</sup> Section 768.1355(3), F.S.

<sup>46</sup> Section 766.115, F.S.

<sup>47</sup> A single individual whose annual income does not exceed \$24,120 or a family of four whose household or family income does not exceed \$49,200 is at 200 percent of the federal poverty level. U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2017*, (January 26, 2017), available at <https://aspe.hhs.gov/poverty-guidelines> (last visited November 21, 2017).

<sup>48</sup> Section 766.1115(3)(d), F.S.,

<sup>49</sup> DOH, *Volunteer Health Services*, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/index.html> (last visited November 21, 2017).

<sup>50</sup> The legal doctrine of sovereign immunity prevents a government from being sued in its own courts without its consent. According to United States Supreme Court Justice Oliver Wendell Holmes, citing the noted 17th century Hobbes work, *Leviathan*, “a sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.” State governments in the United States, as sovereigns, inherently possess sovereign immunity. Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive 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



care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., so have sovereign immunity while acting within the scope of duties required under the Act.<sup>52</sup> Therefore, the state will defend a health care provider covered under the Act in any action alleging harm or injury, and any recovery would be limited to \$200,000 for one incident and a total of \$300,000 for all recoveries related to one incident.

A contract under the Act must pertain to volunteer, uncompensated services for which the provider may not receive 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.<sup>53</sup>

The Act establishes several contractual requirements for government contractors and health care providers. The contract must require the government contractor to retain the right of dismissal or termination of any health care provider delivering services under the contract<sup>54</sup> and to have access to the patient records of any health care provider delivering services under the contract.<sup>55</sup> The health care provider must, under the contract, report adverse incidents and information on treatment outcomes to the governmental contractor.<sup>56</sup> The governmental contractor or the health care provider must make patient selection and initial referrals.<sup>57</sup> The health care provider is subject to supervision and regular inspection by the governmental contractor.<sup>58</sup>

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 is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.<sup>59</sup>

In Fiscal Year 2016-2017, 13,538 licensed health care professionals (plus an additional 12,446 clinic staff volunteers) provided 442,608 health care services under the Act.<sup>60</sup>

Since February 15, 2000, 10 claims have been filed against the Volunteer Health Services Program.<sup>61</sup>

## **Effect of Proposed Changes**

### **Restricted Licenses to Practice Medicine or Osteopathic Medicine**

The bill amends the criteria for the allopathic board to issue restricted licenses to practice allopathic medicine, and authorizes the osteopathic board to issue restricted licenses to practice osteopathic medicine to physicians who contract to practice for 36 months in certain settings. The contract must be for employment by:

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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 her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. When an officer, employee, or agency of the state is sued, the state steps in as the party litigant and defends against the claim. A person may recover no more than \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$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. See Black's Law Dictionary, 3rd Pocket Edition, 2006; *Kawanakoa v Polyblank*, 205 U.S. 349, 353 (1907); Fla. Jur. 2d, Government Tort Liability, Sec. 1.; Section 768.28, F.S.

<sup>51</sup> A governmental contractor is the DOH, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity. Section 766.1115(3)(c), F.S.

<sup>52</sup> Section 766.1115(4), F.S.

<sup>53</sup> Section 766.1115(3)(a), F.S.

<sup>54</sup> Section 766.1115(4)(a), F.S.

<sup>55</sup> Section 766.1115(4)(b), F.S.

<sup>56</sup> Section 766.1115(4)(c), F.S.

<sup>57</sup> Section 766.1115(4)(d), F.S.

<sup>58</sup> Section 766.1115(4)(f), F.S.

<sup>59</sup> Section 766.1115(5), F.S.

<sup>60</sup> E-mail correspondence with DOH staff dated November 27, 2017, (on file with the Health Quality Subcommittee).

<sup>61</sup> E-mail correspondence with DOH staff dated November 29, 2017, (on file with the Health Quality Subcommittee).

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- This state;
- A federally funded community health center;
- A migrant health center;
- A free clinic that only delivers medical diagnostic services or nonsurgical medical treatment free of charge to all low-income residents; or
- A health provider in a health professional shortage area or medical underserved areas, as designated by the U.S. Department of Health and Human Services.<sup>62</sup>

Each board may issue no more than 300 restricted licenses; however, the boards may issue an unlimited number of restricted licenses to physicians who hold active unencumbered licenses in Canada. To obtain a restricted license, an applicant must:

- Submit a completed application, along with a nonrefundable fee not to exceed \$50;
- Be at least 21 years old;
- Be of good moral character;
- Have not committed an act or offense that would constitute the basis for disciplining a physician pursuant to s. 458.331, F.S., or an osteopathic physician pursuant to ch. 459, F.S.;
- Submit to a background screening by DOH; however, a Canadian applicant must also provide the applicable board with a printed or electronic copy of his or her national, fingerprint-based Canadian criminal history records check, which must have been completed within six months of the date of application;
- Submit evidence of the active licensed practice of medicine or osteopathic medicine, as appropriate in another jurisdiction for at least two of the immediately preceding four years, or completion of postgraduate training approved by the appropriate board within the year preceding the filing of an application;
- Enter into a contract to practice for 36 months solely in the employ of the state, a federally funded community health center, a migrant health center, a free clinic, or a health provider in a health professional shortage area or medical underserved areas, as designated by the U.S. Department of Health and Human Services.

Additionally, an osteopathic physicians applying for a restricted license must demonstrate completion of at least three years of pre-professional postsecondary education, that he or she is not under investigation in any jurisdiction that would constitute a violation of the osteopathic medicine practice act, and that he or she 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 in any jurisdiction.

Prior to the conclusion of the contracted practice period, an allopathic or osteopathic physician must take the appropriate licensure examination to become fully licensed in this state. However, a physician who breaches the terms of the employment contract may not be licensed as a physician in this state.

The bill also repeals the authority of the Board of Medicine to adopt rules related to the criteria for the issuance of restricted licenses. However, both the allopathic and osteopathic boards have broad grants of rulemaking authority to adopt rules implementing statutes related to the licensure and regulation of physicians.<sup>63</sup> Therefore, the boards may adopt any rules necessary to implement the restricted licenses.

The bill maintains current law authorizing limited licenses for osteopathic physicians.

<sup>62</sup> As of November 2017, Florida has 641 health professional shortage areas and 128 medically underserved areas. See <https://datawarehouse.hrsa.gov/topics/shortageAreas.aspx> (last visited November 21, 2017) (hover over Florida on the map to get the number of health professional shortage areas and click on the State Summary of Medically Underserved Areas/Populations to obtain the number of medically underserved areas).

<sup>63</sup> See s. 458.309 and 459.005, F.S.

## Volunteer Retired Physician Registration

The bill creates a registration program to allow retired physicians to practice medicine under contact with a health care provider to provide free, volunteer health care services to indigent persons or medically underserved populations in a health professional shortage area or medically underserved area, as designated by the U.S. Department of Health and Human Services.

The bill authorizes a retired physician to register as a volunteer retired physician if the physician:

- Submits an application to the board within two years of changing the license to practice from active status to retired status for an allopathic physician, or if he or she submits an application to board no more than six months before the license permanently expires and no later than two years after such expiration for an osteopathic physician;
- Provides proof of active practice medical practice for at least three of the five years immediately preceding the date on which the license changed from active status to retired status for an allopathic physician;
- Has held an active licensed status to practice and maintained such license in good standing in this state or in another jurisdiction or the United States or Canada for at least 20 years;
- Works under the supervision of a non-retired allopathic physician or osteopathic physician, as applicable, who holds an active unencumbered license;
- Only provides medical services of the type and within the specialty performed by the physician prior to retirement; and
- Does not perform surgery or prescribe controlled substances.

DOH must waive all application, licensure, unlicensed activity, and renewal fees for retired physicians who qualify for registration under the provisions of the bill. Registration must be renewed biennially to demonstrate compliance with registration requirements. A board may deny, revoke, or impose restrictions or conditions on a registration if there is a violation of the practice act or the core licensing statute (ch. 456, F.S.) A board may also revoke or deny a registration for failure to comply with registration requirements.

## Licensure Renewals

The bill requires DOH to waive the licensure renewal fee of an allopathic or osteopathic physician who demonstrates to DOH, in a manner provided by board rule, that he or she has provided at least 160 hours of pro bono medical services to indigent persons or medically underserved populations within the biennial renewal period.

If an allopathic or osteopathic physician provides documentation to DOH that he or she has provided at least 120 hours of pro bono medical services within the biennial licensure period, he or she is exempt from the 40 hours of continuing medical education required for license renewal. This exemption would also apply to any of the specific courses, such as the courses on domestic violence and prevention of medical errors, that are calculated as a part of the required 40 hours of continuing medical education.

A physician may receive both the waiver of the licensure renewal fee and an exemption from the continuing medical education requirements if the required number of pro bono hours are provided.

## Physician Licensure by Examination

Currently, allopathic physicians who hold an active unencumbered license to practice medicine in Canada who have practiced at least 10 years may use a passing score the Special Purpose Examination of the Federation of State Medical Boards of the United States to qualify for licensure in this state. The bill clarifies the requirement that allopathic physicians licensed in Canada must practice

for 10 years to use the Special Purpose Examination of the Federation of State Medical Boards of the United States to qualify for licensure in this state.

### Access to Health Care Act

The bill increases the eligibility for services under the Act by amending the definition of low-income to mean a person without health insurance and whose family income does not exceed 400 percent of the federal poverty level, rather than the 200 percent in current law.

The bill provides an effective date of July 1, 2018.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 456.013, F.S., relating to department; general licensing provisions.

**Section 2:** Amends s. 458.310, F.S., relating to restricted licenses.

**Section 3:** Creates s. 458.3105, F.S., relating to registration of volunteer retired physicians.

**Section 4:** Amends s. 458.311, F.S., relating to licensure by examination; requirements; fees.

**Section 5:** Amends s. 458.319, F.S., relating to renewal of license.

**Section 6:** Creates s. 459.00751, F.S., relating to restricted licenses.

**Section 7:** Creates s. 459.00752, F.S., relating to registration of volunteer retired osteopathic physicians.

**Section 8:** Amends s. 459.008, F.S., relating to renewal of licenses and certificates.

**Section 9:** Amends s. 766.1115, F.S., relating to health care providers; creation of agency relationship with governmental contractors.

**Section 10:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may have an indeterminate positive fiscal impact on DOH associated with the new application fees for osteopathic physician restricted licenses.<sup>64</sup> It is unknown how many may apply, but is not likely to be significant.

##### 2. Expenditures:

The bill may have an insignificant negative fiscal impact on DOH associated with the loss of application, licensure, unlicensed activity, and/or renewal fees for those physicians who qualify for the waiver of such fees. It is unknown how many may apply, but is not likely to be significant.

DOH may experience an insignificant, negative nonrecurring fiscal impact for rulemaking activities and an insignificant, negative recurring fiscal impact for labor costs associated with processing the restricted licenses and registrations authorized under the provisions of the bill. However, current resources are sufficient to absorb such costs.<sup>65</sup>

DOH may experience an indeterminate, nonrecurring negative fiscal impact for modifications to its Licensing and Enforcement Information Database to accommodate requirements of the bill.<sup>66</sup> DOH estimates that current resources are sufficient to absorb these costs.<sup>67</sup>

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<sup>64</sup> DOH, *2018 Agency Legislative Bill Analysis: House Bill 313*, (October 25, 2017), on file with the Health Quality Subcommittee.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Physicians performing pro bono medical services may not have to pay licensure renewal fees or pay for continuing education courses.

Entities providing continuing education courses may experience reduced enrollment if physicians provide at least 120 hours of pro bono medical services and take advantage of the continuing education exemption.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Both the allopathic and osteopathic boards have broad grants of rulemaking authority to adopt rules under their respective practice acts; therefore, no additional rulemaking authority is needed

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 6, 2017, the Health Quality Subcommittee adopted an amendment that did the following:

- Required the Canadian background screening for a restricted license be a fingerprint-based, national criminal history check performed within six months of the date of application;
- Clarified that DOH must waive all application, licensure, and renewal fees for registered volunteer retired physicians; and
- Made other technical, non-substantive changes.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.