

Legislative Analysis



VOLUNTEER LICENSE & LIMITED IMMUNITY: ALLOW FOR ALL RETIRED HEALTH PROFESSIONALS

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House Bill 4156 as enrolled
Public Act 171 of 2013
Sponsor: Rep. Phil Potvin

House Committee: Health Policy
Senate Committee: Health Policy

Second Analysis (1-9-14)

BRIEF SUMMARY: The bill would allow any retired health professional to obtain a special volunteer license to provide services to the indigent and also provide civil immunity to such licensees under limited circumstances. The special volunteer license previously was only available to retired physicians, podiatrists, optometrists, and dentists for uncompensated care; the civil immunity attaches when providing such services in eligible clinics.

FISCAL IMPACT: House Bill 4156 as enrolled would have a negative fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). By amending the Public Health Code to enable all licensed or registered health professionals to obtain a "special volunteer license," the bill would increase expenditures for the Bureau of Health Care Services (Bureau), which provides support for health professional boards in drafting and reviewing applications for the special volunteer license. The Code stipulates that boards may not charge a fee for the issuance or renewal of a special volunteer license so the entire costs of application review would be borne by the Bureau.

There are approximately 55,230 professionally licensed MDs, DOs, podiatrists, optometrists, and dentists currently in the state and 52 retired medical providers with special volunteer licenses. There are approximately 400,000 licensed or registered health professionals currently in the state. While the rate of utilization (0.09%) of the special volunteer license by medical professionals who can currently obtain it is low, the Bureau could experience increased expenditures from expanding the ability to obtain the special volunteer license to all retired licensed and registered health professionals.

THE APPARENT PROBLEM:

Some uninsured and under-insured residents are able to receive medical care at free or low-cost clinics staffed by volunteers, including medical professionals who do not receive compensation for their services. Clinics that offer free or low-cost care are said to be seeing unprecedented numbers of patients as unemployment remains high. Lack of health coverage (or even insurance plans with high deductibles or co-pays) often means that people forgo or delay medical treatments. As a result, these people may suffer from poorer health and have poorer outcomes when treatment is finally received.

Several years ago, in an attempt to entice retired physicians to volunteer at free clinics, legislation was enacted that created a special volunteer license for physicians, dentists, and podiatrists, and that originally provided immunity from civil actions for retired physicians who volunteered in a clinic that provided at least 75 percent of its care to medically indigent individuals. Subsequent legislation expanded the immunity for services performed under a special volunteer license to retired dentists and podiatrists (Public Act 55 of 2011) and to retired optometrists (Public Act 4 of 2012).

Some feel that the special volunteer license and immunity for volunteer service in clinics with a predominately indigent population should be expanded once again, this time to include all retired licensed or registered health professionals. Individuals in the affected health professions, which include nurses, mental health workers, physical therapists, and pharmacists, are considered vital members of the health team. Where some are skilled at providing primary health care services, others provide important support services. Thus, clinics providing services to low-income or uninsured individuals could benefit greatly if more retired health professionals covering the spectrum of physical and behavioral health services were available to assist other active and retired providers at the clinics. Enabling any retired health professional to obtain a special volunteer license will encourage more of these retired professionals to volunteer their services.

THE CONTENT OF THE BILL:

Under Section 16184 of the Public Health Code, certain retired health practitioners who wish to donate their expertise for the care and treatment of indigent and needy individuals in Michigan or in medically underserved areas of the state can apply for a special volunteer license to provide such care on a volunteer basis. Previously, the special volunteer license was available only to a retired physician (M.D. or D.O.), podiatrist, optometrist, or dentist whose state license had been in good standing at the time the license expired.

A separate section of the health code, Section 16185, provides civil immunity for the retired health practitioner who provides care under the special volunteer license in certain types of facilities. For instance, a physician who provides medical care under a special volunteer license granted under Section 16184 is not liable in a civil action for personal injury or death that was proximately caused by the professional negligence or malpractice of the physician in providing the care if the care was provided at a health facility or agency that provided at least 75 percent of its care annually to medically indigent individuals and the physician did not receive and did not intend to receive compensation for providing the care. The immunity does not apply to negligent conduct or malpractice that is gross negligence.

House Bill 4156 amended the Public Health Code to expand both the retired special license and the civil immunity provisions to include ***all health professions***, when retired practitioners are providing services under a special volunteer license to the populations or at the type of health facilities or agencies described above. Immunity would not apply if the negligent conduct or malpractice of the individual was gross negligence.

Previously, an individual was considered retired from practice if the healthcare license has expired with the person's intention of ceasing to engage in the practice of the licensed profession. The bill clarifies that the intent to cease to engage in the practice of the licensed profession pertains to engaging in the practice *for remuneration*.

The bill defines "health profession" as the health profession for which an individual must be licensed, registered, or otherwise authorized under Article 15 of the health code to practice in this state.

House Bill 4156 would also make numerous revisions of a technical or editorial nature to improve clarity. The bill took effect November 18, 2013.

(To qualify for a special volunteer license, an applicant is required to meet the same educational and competency levels that actively licensed counterparts must meet, including continuing education. A retired provider may only provide services within the scope of practice of the profession for which he or she had been previously licensed. In addition, any retirees providing care under a special volunteer license are subject to the same requirements, restrictions, and disciplinary actions as actively licensed health professionals.)

MCL 333.16184 and 333.16185

BACKGROUND INFORMATION:

The following health professions are licensed or registered under the Public Health Code:

- ❖ Acupuncturists
- ❖ Chiropractors
- ❖ Audiologists
- ❖ Dentists
- ❖ Physicians (M.D.s and D.O.s)
- ❖ Marriage and Family Therapists
- ❖ Nurses
- ❖ Nursing Home Administrators
- ❖ Optometrists
- ❖ Speech-language Pathologists
- ❖ Pharmacists
- ❖ Physical Therapists
- ❖ Athletic Trainers
- ❖ Massage Therapists
- ❖ Podiatrists
- ❖ Professional Counselors
- ❖ Psychologists
- ❖ Occupational Therapists
- ❖ Sanitarians
- ❖ Social Workers

- ❖ Respiratory Therapists
- ❖ Veterinarians
- ❖ Dietitians and Nutritionists (House Bill 4688 would repeal Part 183a and thus deregulate the profession. The bill has passed the House.)

ARGUMENTS:

For:

Today there are perhaps one million residents without health insurance in Michigan. Many receive basic care at free or charitable clinics around the state which rely on health providers to volunteer their services. Not all low-income individuals will qualify for benefits under the soon-to-be implemented Medicaid expansion and some may still find insurance to be out of reach; these folks could still benefit from utilizing a charitable or free clinic. Expanding the special volunteer license to retired individuals from any of the regulated health professions would enable such clinics to have a broader pool from which to attract volunteers to staff these clinics.

Simply put, the bill would allow a retired health professional to volunteer his or her services, with no compensation, in a healthcare setting that provides care to the indigent and in medically underserved areas.

The retired health professional would still have to meet the same continuing education credits and other requirements as do actively licensed providers. A retired health professional with the special volunteer license would also be subject to disciplinary actions and license sanctions the same as actively licensed providers. Thus, a retired health professional must still be able to provide quality, competent care in order to obtain, and retain, a volunteer license under the bill. Even when the federal healthcare reform is fully implemented, there will still be pockets of people who will need the services provided by free clinics and charitable organizations. Thus, the bill will help fill a need so that all residents may have access to timely and quality health care.

For:

As a way of background, the Public Health Code allows actively licensed or registered health professionals to volunteer their services and provides civil immunity to those who provide uncompensated, nonemergency care in certain health facilities or entities, with certain restrictions. By providing immunity from lawsuits, the focus is to increase volunteer participation by actively practicing health care workers at free clinics serving low-income individuals and the uninsured and also to increase the numbers of physicians providing free services in their offices to those in need. The need is so great in some communities that some retired health professionals have expressed a desire to also volunteer their services.

However, a physician or other health professional who allows a license to lapse can no longer legally render a health service. In addition, once certain health providers close out a practice (such as a physician, dentist, or member of the counseling professions), medical malpractice insurance is no longer maintained. Retired professionals are

therefore understandably reticent about volunteering their services during retirement. In addition, at the time the special volunteer license was created, many were unclear whether volunteering shortly after retiring would interfere with "tail coverage" provided by their malpractice insurance. "Tail coverage" is the coverage that continues past the date of retirement and end of the malpractice policy to cover services provided when the policy was in effect but for which lawsuits could still be filed into the future until the statute of limitations expires. Thus, some providers felt they either had to wait at least three years before donating their time and expertise, at which time they would be rusty, or start volunteering right away and risk interfering with the tail coverage.

The 2006 legislation that created the special volunteer license for physicians and podiatrists was thought to address the concerns raised at the time. Doctors, dentists, and podiatrists were able to obtain a special volunteer license immediately after letting their active license lapse – a time when their skills were still honed. They were protected from lawsuits for negligence, but only for services performed for free in clinics that served predominantly Medicaid recipients or people below the federal poverty level. Any conduct rising to the level of gross negligence (the same standard in the Governmental Immunity Act) would still be actionable, as would negligent care provided in other settings. Optometrists were added later.

The hope was that many more of these retired professionals would donate their services. However, to date, only a few dozen of these licenses have been issued. By expanding the professions that are eligible for the special volunteer license, it is expected that a greater number of retired health practitioners will step forward and that greater numbers of people will be helped.

Against:

The bill expands the types of professions for which a retired practitioner is immune from civil suits for medical malpractice. This is inherently unfair, as it creates a two-tier system of justice in which those wealthy enough to maintain health insurance can sue for medical negligence but those who are poor must waive their rights to justice if injured by a retired health professional's mistake or incompetence.

Moreover, even though the bill exempts gross negligence from immunity, a 2005 Michigan Supreme Court interpretation of the term elevated it to a standard closer to showing intent to do harm and has therefore created a nearly impossible hurdle that an injured party would have to overcome, according to the Michigan Association of Justice.

Response:

Regarding the immunity piece, apparently, there are only a handful of qualifying clinics around the state (maybe as few as six or seven) with the required medically indigent population. Thus, most of the retired providers would in theory be volunteering in settings that would not offer immunity from lawsuits.

While immunity from lawsuits is provided in some settings, it should be remembered that these clinics for which immunity would attach provide basic health care – not surgery or other invasive procedures. Thus, it is unlikely that the type of care rendered would result

in harm to patients. Any measure that would enable the poor to obtain needed health care services should be encouraged.

Moreover, a person applying for a special volunteer license is required to meet the same educational and competency levels that actively licensed counterparts must meet, including continuing education. Though the bill would specify that a retired provider could only provide services within the scope of practice of the profession for which he or she had been previously licensed, the 2006 legislation already addressed that concern. In addition, any retirees providing care under a special volunteer license are subject to the same requirements, restrictions, and disciplinary actions as actively licensed health professionals.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.