

Legislative Analysis



ADD RETIRED NURSES TO THOSE ELIGIBLE FOR VOLUNTEER LICENSE & LIMITED IMMUNITY

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House Bill 4156 (Substitute H-2)

Sponsor: Rep. Phil Potvin

Committee: Health Policy

First Analysis (5-20-13)

BRIEF SUMMARY: The bill would allow a retired nurse 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 is currently 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 would have a nominal fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). By amending the Public Health Code to enable nurses to obtain a "special volunteer license," HB 4156 would increase expenditures for the Bureau of Health Care Services (Bureau), which oversees the Board of Nursing in drafting and reviewing applications for the special volunteer license. The Code stipulates that the Board 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 175,783 licensed nurses currently in the state. Given the low rate of utilization (0.09%) of the special volunteer license by medical providers who can currently obtain it, the Bureau does not expect a large increase in expenditures from expanding the ability to obtain the special volunteer license to nurses.

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. Unfortunately, clinics that offer free or low-cost care are seeing unprecedented numbers of patients as unemployment rates stay high and more people find themselves without insurance coverage. Lack of health insurance 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 provided immunity from civil actions for a retired physician who

provide care under a special volunteer license in a clinic that provides 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 retired nurses. Nurses are considered vital members of the health team. Nurse practitioners, who have graduate degrees in advanced practice nursing, are skilled at providing primary health care services. Thus, clinics providing services to low income or uninsured individuals could benefit greatly if more retired nurses were available to assist other active and retired providers at the clinics. If retired nurses could obtain a special volunteer license, more of these retired professionals would be encouraged to volunteer their services.

THE CONTENT OF THE BILL:

Under Section 16184 of the Public Health Code, certain retired health care professionals 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. Currently, the special volunteer license is 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 care professionals who provide 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 would amend the Public Health Code to expand both the retired special license and the civil immunity provisions to include retired nurses when they 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.

Currently, an individual is 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 would clarify that the intent to cease to engage in the practice of the licensed profession pertained to engaging in the practice *for remuneration*.

The bill would also define the practices of dentistry, medicine, nursing, optometry, osteopathic medicine and surgery, and podiatric medicine and surgery as those terms are defined in their respective licensing statutes (that is, Sections 16601, 17001, 17201, 17401, 17501, and 18001, respectively).

House Bill 4156 would also make numerous revisions of a technical or editorial nature to improve clarity. The bill would take effect 90 days after enactment.

(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

ARGUMENTS:

For:

Depending on their degree and certification status, nurses provide a wide array of care in the healthcare setting. From basic care under the supervision of a registered nurse, to giving physical examinations or dispensing medication, to providing primary care services that include diagnosing and treating illnesses and writing prescriptions, nurses are a vital and important member of any health team. Today there are still about one million residents without health insurance. Many receive basic care at free or charitable clinics around the state which rely on health providers to volunteer their services. Expanding the special volunteer license to retired nurses 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 nurse 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 nurse would still have to meet the same continuing education credits and other requirements as do actively licensed nurses. A retired nurse with the special volunteer license would also be subject to disciplinary actions and license sanctions the same as actively licensed nurses. Thus, a retired nurse 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.

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:

There appears to be some misunderstanding about the special volunteer license for certain retired professionals. Currently, the Public Health Code provides civil immunity to actively licensed or registered health professionals 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.

However, a physician or other health professional who allows a license to lapse can no longer legally render a health service. In addition, once a physician, podiatrist, dentist, or optometrist closes out a practice, or a nurse retires, 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 would expire. Thus, some doctors 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 could obtain the special volunteer license immediately after letting their active license lapse – a time when their skills were still honed. They could be 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.

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. 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.

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.

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.

POSITIONS:

The Department of Licensing and Regulatory Affairs indicated support for the bill. (4-30-13)

A representative of AARP Michigan testified in support of the bill. (4-30-13)

The Michigan Health & Hospital Association indicated support for the bill. (4-30-13)

The Michigan Association of Health Plans indicated support for the bill. (4-30-13)

MidMichigan Health indicated support for the bill. (4-30-13)

The American Red Cross indicated support for the bill. (4-30-13)

The Michigan Academy of Family Physicians indicated support for the bill. (4-30-13)

The School-Community Health Alliance of Michigan indicated support for the bill. (4-30-13)

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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.