

SPECIAL VOLUNTEER LICENSE & LIMITED IMMUNITY FOR RETIRED OPTOMETRISTS

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House Bill 4893 (Substitute H-1)

Sponsor: Rep. Mike Callton

Committee: Health Policy

First Analysis (9-27-11)

BRIEF SUMMARY: The bill would allow a retired *optometrist* to obtain a special volunteer license to provide services to the indigent and also provide civil immunity to those licensees under limited circumstances. The special volunteer license and immunity is currently only available to retired physicians, podiatrists, and dentists when providing services in eligible clinics.

FISCAL IMPACT: House Bill 4893 would have a modest fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). By amending the Public Health Code to enable optometrists to obtain a "special volunteer license," HB 4893 would increase expenditures for the Bureau of Health Professions (Bureau), which oversees the Board of Optometry 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 52,504 professionally licensed MDs, DOs, podiatrists, and dentists currently in the state and 29 retired medical providers with special volunteer licenses. There are approximately 1,627 licensed optometrists currently in the state. Given the low rate of utilization 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 optometrists.

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 provided care under a special volunteer license 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, enrolled House Bill 4389).

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 optometrists. Without regular eye examinations throughout the lifespan, vision problems and diseases that affect vision cannot be caught early when they are the most treatable. If retired optometrists could obtain a special volunteer license, more of these retired professionals would be encouraged to volunteer their services.

THE CONTENT OF THE BILL:

Under provisions of the Public Health Code, a retired Michigan physician (M.D. or D.O.), podiatrist, or dentist who wishes to provide medical care or dental care for the indigent and needy or in medically underserved areas of the state can apply for a special volunteer license to provide such care on a volunteer basis. A separate section of the health code provides civil immunity for these 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 provisions of the code 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 4893 would amend the Public Health Code to expand both the retired special license and the civil immunity provisions to include retired optometrists providing services under a special volunteer license 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.

An individual who was granted a special volunteer license under the bill could only engage in activities within the scope of practice of the profession for which he or she was licensed prior to retirement.

MCL 333.16184 and 333.16185

ARGUMENTS:

For:

According to the website of the Michigan Optometric Association, "[d]octors of optometry (ODs) are the primary health care professionals for the eye. Optometrists examine, diagnose, treat, and manage diseases, injuries, and disorders of the visual system, the eye, and associated structures as well as identify related systemic conditions

affecting the eye." Optometrists are not medical doctors, but work with ophthalmologists (who are medical doctors) to provide eye and vision care to patients.

The bill is very much needed. Many residents of the state are without vision insurance and so forego important regular eye examinations because they cannot afford to see an optometrist. Such examinations are important in order to correct vision problems such as nearsightedness or farsightedness and also to catch eye infections such as pink eye and diseases such as glaucoma or macular degeneration – diseases that if not caught in their early stages can progress and cause blindness.

The bill would simply allow retired optometrists to be eligible to obtain a special license that would enable them to volunteer their services. Many residents stand to benefit if the result is that more retired optometrists volunteer at free clinics or in other settings.

Against:

Some feel that it isn't fair that certain retired health professionals can be immune from malpractice lawsuits when active professionals must retain expensive medical malpractice insurance. Others feel that to give immunity to those providing services to the poor 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.

Response:

There appears to be misunderstanding about the special volunteer license. 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, 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:

A representative of the Michigan Optometric Association testified in support of the bill.
(9-22-11)

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Fiscal Analyst: Paul Holland

■ 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.