

By Representatives Reddick, Sindler, Bloom, Feeney,  
Trovillion and Logan

1                                   A bill to be entitled  
2           An act relating to health care providers;  
3           amending s. 766.1115, F.S.; revising  
4           legislative findings and intent with respect to  
5           sovereign immunity for health care providers  
6           that provide free medical services; revising  
7           definitions; redefining the term "low-income"  
8           to remove application of the act to persons who  
9           are eligible for Medicaid; deleting obsolete  
10          dates; revising terminology to reflect the  
11          transfer of duties to the Department of Health  
12          and the Agency for Health Care Administration;  
13          deleting alternative notice provisions that  
14          apply to federally funded community health  
15          centers; extending sovereign immunity to  
16          certain teaching hospitals; requiring specified  
17          state agencies to contract with teaching  
18          hospitals for provision of indigent health care  
19          services and medical education services;  
20          abrogating the repeal of s. 766.1115, F.S., as  
21          it appears in s. 1 of chapter 92-278, Laws of  
22          Florida; reenacting s. 768.28(9), F.S.,  
23          relating to waiver of sovereign immunity in  
24          tort actions, to incorporate said amendment in  
25          a reference; providing effective dates.

26  
27   Be It Enacted by the Legislature of the State of Florida:

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29           Section 1. Subsections (2), (3), (4), and (5) of  
30   section 766.1115, Florida Statutes, 1996 Supplement, are  
31   amended, present subsections (10) and (11) are renumbered as

1 subsections (11) and (12), respectively, and new subsection  
2 (10) is added to said section, to read:

3           766.1115 Health care providers; creation of agency  
4 relationship with governmental contractors.--

5           (2) FINDINGS AND INTENT.--The Legislature finds that a  
6 significant proportion of the indigent, uninsured residents of  
7 this state ~~who are uninsured or Medicaid recipients~~ are unable  
8 to access needed health care because health care providers  
9 fear the increased risk of medical malpractice liability. It  
10 is the intent of the Legislature that access to medical care  
11 for indigent, uninsured residents be expanded and improved by  
12 providing governmental protection to health care providers  
13 that ~~who~~ offer free quality medical services to such  
14 underserved populations of the state. Therefore, it is the  
15 intent of the Legislature to ensure that health care providers  
16 that voluntarily contract to deliver uncompensated health care  
17 services to indigent, uninsured residents of the state when  
18 referred by a governmental contractor are ~~professionals who~~  
19 ~~contract to provide such services as~~ agents of the state and  
20 are protected by ~~provided~~ sovereign immunity.

21           (3) DEFINITIONS.--As used in this section, the term:

22           (a) "Contract" means an agreement executed in  
23 compliance with this section between a health care provider  
24 and a governmental contractor. This contract shall allow the  
25 health care provider to deliver health care services to  
26 low-income recipients as an agent of the governmental  
27 contractor. The contract must be for volunteer, uncompensated  
28 services.

29           (b) "Department" means the Department of Health ~~and~~  
30 ~~Rehabilitative Services~~.

31

1 (c) "Governmental contractor" means the department,  
2 counties, county health departments, municipalities, other  
3 units of local government, a special taxing district with  
4 health care responsibilities, or a hospital owned and operated  
5 by a governmental entity.

6 (d) "Health care provider" or "provider" means an  
7 individual, a corporation, a partnership, an organization, a  
8 facility, a federally qualified health center, a professional  
9 association, or a local professional society that delivers  
10 health care services or whose primary mission is health care.†

11 ~~1. A birth center licensed under chapter 383.~~

12 ~~2. An ambulatory surgical center licensed under~~  
13 ~~chapter 395.~~

14 ~~3. A hospital licensed under chapter 395.~~

15 ~~4. A physician licensed, or physician assistant~~  
16 ~~certified, under chapter 458.~~

17 ~~5. An osteopathic physician licensed, or osteopathic~~  
18 ~~physician assistant certified, under chapter 459.~~

19 ~~6. A chiropractic physician licensed under chapter~~  
20 ~~460.~~

21 ~~7. A podiatrist licensed under chapter 461.~~

22 ~~8. A registered nurse, nurse midwife, licensed~~  
23 ~~practical nurse, or advanced registered nurse practitioner~~  
24 ~~licensed or registered under chapter 464 or any facility which~~  
25 ~~employs nurses licensed or registered under chapter 464 to~~  
26 ~~supply all or part of the care delivered under this section.~~

27 ~~9. A midwife licensed under chapter 467.~~

28 ~~10. A health maintenance organization certificated~~  
29 ~~under part I of chapter 641.~~

30 ~~11. A health care professional association and its~~  
31 ~~employees or a corporate medical group and its employees.~~

1           ~~12. Any other medical facility the primary purpose of~~  
2 ~~which is to deliver human medical diagnostic services or which~~  
3 ~~delivers nonsurgical human medical treatment, and which~~  
4 ~~includes an office maintained by a provider.~~

5           ~~13. Any other health care professional, practitioner,~~  
6 ~~provider, or facility under contract with a governmental~~  
7 ~~contractor.~~

8  
9           ~~The term includes any nonprofit corporation qualified as~~  
10 ~~exempt from federal income taxation under s. 501(c) of the~~  
11 ~~Internal Revenue Code which delivers health care services~~  
12 ~~provided by licensed professionals listed in this paragraph,~~  
13 ~~any federally funded community health center, and any~~  
14 ~~volunteer corporation or volunteer health care provider that~~  
15 ~~delivers health care services.~~

16           (e) "Low-income" means:

17           ~~1. A person who is Medicaid-eligible under Florida~~  
18 ~~law.~~

19           1.2. A person who is without health insurance and  
20 whose family income does not exceed 150 percent of the federal  
21 poverty level as defined annually by the federal Office of  
22 Management and Budget; or

23           ~~2.3.~~ Any client of the department who voluntarily  
24 chooses to participate in a program offered or approved by the  
25 department and who meets the program eligibility guidelines of  
26 the department.

27           (4) CONTRACT REQUIREMENTS.--A health care provider  
28 that executes a contract with a governmental contractor to  
29 deliver health care services ~~on or after April 17, 1992,~~ as an  
30 agent of the governmental contractor is an agent for purposes  
31 of s. 768.28(9), while acting within the scope of duties

1 pursuant to the contract, if the contract complies with the  
2 requirements of this section. A health care provider under  
3 contract with the state may not be named as a defendant in any  
4 action arising out of the medical care or treatment provided  
5 ~~on or after April 17, 1992,~~ pursuant to contracts entered into  
6 under this section. The contract must provide that:

7 (a) The right of dismissal or termination of any  
8 health care provider delivering services pursuant to the  
9 contract is retained by the governmental contractor.

10 (b) The governmental contractor has access to the  
11 patient records of any health care provider delivering  
12 services pursuant to the contract.

13 (c) Adverse incidents and information on treatment  
14 outcomes must be reported by any health care provider to the  
15 governmental contractor if such incidents and information  
16 pertain to a patient treated pursuant to the contract. The  
17 health care provider shall annually submit an adverse incident  
18 report that includes all information required by s.  
19 395.0197(5)(a), unless the adverse incident involves a result  
20 described by s. 395.0197(6), in which case it shall be  
21 reported within 15 days of the occurrence of such incident. If  
22 an incident involves a professional licensed by the Department  
23 of Health Business and Professional Regulation or a facility  
24 licensed by the Agency for Health Care Administration  
25 ~~Department of Health and Rehabilitative Services~~, the  
26 governmental contractor shall submit such incident reports to  
27 the appropriate department, which shall review each incident  
28 and determine whether it involves conduct by the licensee  
29 which that is subject to disciplinary action. All patient  
30 medical records and any identifying information contained in  
31 adverse incident reports and treatment outcomes which are

1 obtained by governmental entities pursuant to this paragraph  
2 are confidential and exempt from the provisions of s.  
3 119.07(1) and s. 24(a), Art. I of the State Constitution.

4 (d) Patient selection and initial referral must be  
5 made solely by the governmental contractor, and the provider  
6 must accept all referred patients. However, the number of  
7 patients that must be accepted may be limited by the contract,  
8 and patients may not be transferred to the provider based on a  
9 violation of the antidumping provisions of the Omnibus Budget  
10 Reconciliation Act of 1989, the Omnibus Budget Reconciliation  
11 Act of 1990, or chapter 395.

12 (e) If emergency care is required, the patient need  
13 not be referred before receiving treatment, but must be  
14 referred within 48 hours after treatment is commenced or  
15 within 48 hours after the patient has the mental capacity to  
16 consent to treatment, whichever occurs later.

17 (f) Patient care, including any followup or hospital  
18 care, is subject to approval by the governmental contractor.

19 (g) The provider is subject to supervision and regular  
20 inspection by the governmental contractor.

21  
22 A governmental contractor that is also a health care provider  
23 is not required to enter into a contract under this section  
24 with respect to the health care services delivered by its  
25 employees.

26 (5) NOTICE OF AGENCY RELATIONSHIP.--The governmental  
27 contractor must provide written notice to each patient, or the  
28 patient's legal representative, that the provider is an agent  
29 of the governmental contractor and that the exclusive remedy  
30 for injury or damage suffered as the result of any act or  
31 omission of the provider, or of any employee or agent thereof,

1 acting within the scope of duties pursuant to the contract is  
2 by commencement of an action pursuant to the provisions of s.  
3 768.28. ~~With respect to any federally funded community health~~  
4 ~~center, the notice requirements may be met by posting in a~~  
5 ~~place conspicuous to all persons a notice that the federally~~  
6 ~~funded community health center is an agent of the governmental~~  
7 ~~contractor and that the exclusive remedy for injury or damage~~  
8 ~~suffered as the result of any act or omission of the provider~~  
9 ~~or of any employee or agent thereof acting within the scope of~~  
10 ~~duties pursuant to the contract is by commencement of an~~  
11 ~~action pursuant to the provisions of s. 768.28.~~

12 (10) TEACHING HOSPITALS.--

13 (a) The Legislature finds that teaching hospitals  
14 provide access to health care to a significant number of  
15 indigent, uninsured residents of this state, that teaching  
16 hospitals provide benefits to the people of this state through  
17 their medical education programs, that these benefits are at  
18 significant risk because health care providers that are  
19 teaching hospitals fear the increased risk of medical  
20 malpractice liability, and that the continued viability of  
21 teaching hospitals must be protected for the purposes of  
22 providing indigent care and medical education. It is,  
23 therefore, the intent of the Legislature to ensure that health  
24 care providers that are teaching hospitals are agents of the  
25 state and are protected by sovereign immunity pursuant to this  
26 section.

27 (b) As used in this subsection, the term "teaching  
28 hospital" shall have the same meaning as in s. 408.07(49).

29 (c) Notwithstanding the requirements of paragraph  
30 (3)(a), a contract between a governmental contractor and a  
31 health care provider that is a teaching hospital shall allow

1 the health care provider to deliver health care services to  
2 low-income recipients as well as to other patients, as an  
3 agent of the governmental contractor. A contract between a  
4 governmental contractor and a health care provider that is a  
5 teaching hospital does not have to be for volunteer,  
6 uncompensated services.

7 (d) The provisions of paragraphs (4)(d) and (f) do not  
8 apply when a health care provider is a teaching hospital.

9 (e) The Agency for Health Care Administration, the  
10 Department of Health, and the Department of Education shall  
11 enter contracts with teaching hospitals for the provision of  
12 indigent health care services and medical education services  
13 under which a teaching hospital shall be an agent of the  
14 state.

15 (f) This subsection applies to incidents occurring on  
16 or after the effective date of this subsection.

17 Section 2. Effective June 30, 1997, subsection (12) of  
18 section 766.1115, Florida Statutes, as created by and  
19 appearing in section 1 of chapter 92-278, Laws of Florida, is  
20 repealed.

21 Section 3. For the purpose of incorporating the  
22 amendment to s. 766.1115, Florida Statutes, 1996 Supplement,  
23 in a reference thereto, subsection (9) of section 768.28,  
24 Florida Statutes, 1996 Supplement, is reenacted to read:

25 768.28 Waiver of sovereign immunity in tort actions;  
26 recovery limits; limitation on attorney fees; statute of  
27 limitations; exclusions; indemnification; risk management  
28 programs.--

29 (9)(a) No officer, employee, or agent of the state or  
30 of any of its subdivisions shall be held personally liable in  
31 tort or named as a party defendant in any action for any



1 injury or damage suffered as a result of any act, event, or  
2 omission of action in the scope of his employment or function,  
3 unless such officer, employee, or agent acted in bad faith or  
4 with malicious purpose or in a manner exhibiting wanton and  
5 willful disregard of human rights, safety, or property.  
6 However, such officer, employee, or agent shall be considered  
7 an adverse witness in a tort action for any injury or damage  
8 suffered as a result of any act, event, or omission of action  
9 in the scope of his employment or function. The exclusive  
10 remedy for injury or damage suffered as a result of an act,  
11 event, or omission of an officer, employee, or agent of the  
12 state or any of its subdivisions or constitutional officers  
13 shall be by action against the governmental entity, or the  
14 head of such entity in his official capacity, or the  
15 constitutional officer of which the officer, employee, or  
16 agent is an employee, unless such act or omission was  
17 committed in bad faith or with malicious purpose or in a  
18 manner exhibiting wanton and willful disregard of human  
19 rights, safety, or property. The state or its subdivisions  
20 shall not be liable in tort for the acts or omissions of an  
21 officer, employee, or agent committed while acting outside the  
22 course and scope of his employment or committed in bad faith  
23 or with malicious purpose or in a manner exhibiting wanton and  
24 willful disregard of human rights, safety, or property.

25 (b) As used in this subsection, the term:

- 26 1. "Employee" includes any volunteer firefighter.
- 27 2. "Officer, employee, or agent" includes, but is not  
28 limited to, any health care provider when providing services  
29 pursuant to s. 766.1115, any member of the Florida Health  
30 Services Corps, as defined in s. 381.0302, who provides  
31 uncompensated care to medically indigent persons referred by

1 the Department of Health and Rehabilitative Services, and any  
2 public defender or his employee or agent, including, among  
3 others, an assistant public defender and an investigator.

4 (c) For purposes of the waiver of sovereign immunity  
5 only, a member of the Florida National Guard is not acting  
6 within the scope of state employment when performing duty  
7 under the provisions of Title 10 or Title 32 of the United  
8 States Code or other applicable federal law; and neither the  
9 state nor any individual may be named in any action under this  
10 chapter arising from the performance of such federal duty.

11 Section 4. Except as otherwise expressly provided in  
12 this act, this act shall take effect upon becoming a law.

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15 LEGISLATIVE SUMMARY

16 Abrogates the repeal of s. 766.1115, F.S., which provides  
17 sovereign immunity for a health care provider who, as an  
18 agent of a governmental contractor, voluntarily provides  
19 health care for low-income persons. Redefines the term  
20 "governmental contractor" to include within the scope of  
21 the law counties, municipalities, and other units of  
22 local government. Redefines the term "health care  
23 provider" to clarify the health care entities that may  
24 act as agents of a governmental contractor. Extends  
25 sovereign immunity to certain teaching hospitals.  
26 Requires specified state agencies to contract with  
27 teaching hospitals for provision of indigent health care  
28 services and medical education services.  
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