

By Senator Fasano

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1 A bill to be entitled
2 An act relating to contractual relationships with
3 governmental contractors; amending s. 766.1115, F.S.;
4 redefining the term "contract" to include a
5 contractual relationship between a governmental
6 contractor and certain charitable organizations or
7 health care entities; redefining the terms "health
8 care provider" or "provider" to include facilities
9 under contract with a charitable organization;
10 providing that certain charitable organizations that
11 execute a contract with a health care provider are
12 agents for purposes of sovereign immunity and may not
13 be named as a defendant in an action arising out of
14 medical care or treatment; revising contractual
15 requirements; requiring that certain charitable
16 organizations provide written notice to patients that
17 the provider is an agent of the governmental
18 contractor; revising requirements for rules adopted by
19 the Department of Health; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsections (2), (3), (4), (5), and (10) of
24 section 766.1115, Florida Statutes, are amended to read:

25 766.1115 Health care providers; creation of agency
26 relationship with governmental contractors.—

27 (2) FINDINGS AND INTENT.—The Legislature finds that a
28 significant proportion of the residents of this state who are
29 uninsured or Medicaid recipients are unable to access needed

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30 health care because health care providers fear the increased
31 risk of medical negligence liability. It is the intent of the
32 Legislature that access to medical care for indigent residents
33 be improved by providing governmental protection to health care
34 providers who offer free quality medical services to underserved
35 populations of the state. Therefore, it is the intent of the
36 Legislature to ensure that health care professionals who
37 ~~contract to~~ provide such services as agents of the state are
38 provided sovereign immunity.

39 (3) DEFINITIONS.—As used in this section, the term:

40 (a) "Contract" means an agreement executed in compliance
41 with this section between a health care provider, a charitable
42 organization, or a health care entity and a governmental
43 contractor. This contract shall allow the health care provider
44 to deliver health care services to low-income recipients who are
45 qualified to receive such services by the charitable
46 organization or health care entity as an agent of the
47 governmental contractor. The contract must be for volunteer,
48 uncompensated services. For services to qualify as volunteer,
49 uncompensated services under this section, the health care
50 provider must receive no compensation from the governmental
51 contractor for any services provided under the contract and must
52 not bill or accept compensation from the recipient, or any
53 public or private third-party payor, for the specific services
54 provided to the low-income recipients covered by the contract.

55 (b) "Charitable organization" means an organization that is
56 described in s. 501(c) (3) of the Internal Revenue Code, is
57 exempt from tax under s. 501(a) of the Internal Revenue Code,
58 and provides free health care to low-income persons.

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59 (c)~~(b)~~ "Department" means the Department of Health.

60 (d)~~(e)~~ "Governmental contractor" means the department,
61 county health departments, a special taxing district with health
62 care responsibilities, or a hospital owned and operated by a
63 governmental entity.

64 (e) "Health care entity" means a hospital that has
65 contracted with a charitable organization to provide free health
66 care to low-income persons.

67 (f)~~(d)~~ "Health care provider" or "provider" means:

- 68 1. A birth center licensed under chapter 383.
- 69 2. An ambulatory surgical center licensed under chapter
70 395.
- 71 3. A hospital licensed under chapter 395.
- 72 4. A physician or physician assistant licensed under
73 chapter 458.
- 74 5. An osteopathic physician or osteopathic physician
75 assistant licensed under chapter 459.
- 76 6. A chiropractic physician licensed under chapter 460.
- 77 7. A podiatric physician licensed under chapter 461.
- 78 8. A registered nurse, nurse midwife, licensed practical
79 nurse, or advanced registered nurse practitioner licensed or
80 registered under part I of chapter 464 or any facility which
81 employs nurses licensed or registered under part I of chapter
82 464 to supply all or part of the care delivered under this
83 section.
- 84 9. A midwife licensed under chapter 467.
- 85 10. A health maintenance organization certificated under
86 part I of chapter 641.
- 87 11. A health care professional association and its

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88 employees or a corporate medical group and its employees.

89 12. Any other medical facility the primary purpose of which
90 is to deliver human medical diagnostic services or which
91 delivers nonsurgical human medical treatment, and which includes
92 an office maintained by a medical provider.

93 13. A dentist or dental hygienist licensed under chapter
94 466.

95 14. A free clinic that delivers ~~only~~ medical diagnostic
96 services or nonsurgical medical treatment free of charge to ~~all~~
97 low-income recipients.

98 15. Any other health care professional, practitioner,
99 provider, or facility under contract with a charitable
100 organization or a governmental contractor, including a student
101 enrolled in an accredited program that prepares the student for
102 licensure as any one of the professionals listed in
103 subparagraphs 4.-9.

104
105 The term includes any nonprofit corporation qualified as exempt
106 from federal income taxation under s. 501(a) of the Internal
107 Revenue Code, and described in s. 501(c) of the Internal Revenue
108 Code, which delivers health care services provided by licensed
109 professionals listed in this paragraph, any federally funded
110 community health center, and any volunteer corporation or
111 volunteer health care provider that delivers health care
112 services.

113 (g) ~~(e)~~ "Low-income" means:

- 114 1. A person who is Medicaid-eligible under Florida law;
115 2. A person who is without health insurance and whose
116 family income does not exceed 200 percent of the federal poverty

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117 level as defined annually by the federal Office of Management
118 and Budget; or

119 3. Any client of the department who voluntarily chooses to
120 participate in a program offered or approved by the department
121 and meets the program eligibility guidelines of the department.

122 (4) CONTRACT REQUIREMENTS.—A health care provider that
123 executes a contract with a charitable organization or a
124 governmental contractor to deliver health care services ~~on or~~
125 ~~after April 17, 1992,~~ as an agent of the governmental contractor
126 is an agent for purposes of s. 768.28(9)~~7~~ while acting within
127 the scope of duties under the contract, if the contract complies
128 with the requirements of this section and regardless of whether
129 the individual treated is later found to be ineligible. A health
130 care provider under contract with a charitable organization, a
131 health care entity, or the state may not be named as a defendant
132 in any action arising out of medical care or treatment provided
133 ~~on or after April 17, 1992,~~ under contracts entered into under
134 this section. The contract must provide that:

135 (a) The right of dismissal or termination of any health
136 care provider delivering services under the contract is retained
137 by the charitable organization, the health care entity, or the
138 governmental contractor.

139 (b) The governmental contractor has access to the patient
140 records of any health care provider delivering services under
141 the contract.

142 (c) Adverse incidents and information on treatment outcomes
143 must be reported by any health care provider to the governmental
144 contractor if the incidents and information pertain to a patient
145 treated under the contract. The health care provider shall

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146 submit the reports required by s. 395.0197. If an incident
147 involves a professional licensed by the Department of Health or
148 a facility licensed by the Agency for Health Care
149 Administration, the governmental contractor shall submit such
150 incident reports to the appropriate department or agency, which
151 shall review each incident and determine whether it involves
152 conduct by the licensee that is subject to disciplinary action.
153 All patient medical records and any identifying information
154 contained in adverse incident reports and treatment outcomes
155 which are obtained by governmental entities under this paragraph
156 are confidential and exempt from the provisions of s. 119.07(1)
157 and s. 24(a), Art. I of the State Constitution.

158 (d) Patient selection and initial referral must be made
159 solely by the governmental contractor or charitable
160 organization, and the provider must accept all referred
161 patients. However, the number of patients that must be accepted
162 may be limited by the contract, and patients may not be
163 transferred to the provider based on a violation of the
164 antidumping provisions of the Omnibus Budget Reconciliation Act
165 of 1989, the Omnibus Budget Reconciliation Act of 1990, or
166 chapter 395.

167 (e) If emergency care is required, the patient need not be
168 referred before receiving treatment, but must be referred within
169 48 hours after treatment is commenced or within 48 hours after
170 the patient has the mental capacity to consent to treatment,
171 whichever occurs later.

172 (f) Patient care, including any followup or hospital care,
173 is subject to approval by the charitable organization, the
174 health care entity, or the governmental contractor.

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

177
178 A governmental contractor that is also a health care provider is
179 not required to enter into a contract under this section with
180 respect to the health care services delivered by its employees.

181 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental
182 contractor or charitable organization must provide written
183 notice to each patient, or the patient's legal representative,
184 receipt of which must be acknowledged in writing, that the
185 provider is an agent of the governmental contractor and that the
186 exclusive remedy for injury or damage suffered as the result of
187 any act or omission of the provider or of any employee or agent
188 thereof acting within the scope of duties pursuant to the
189 contract is by commencement of an action pursuant to the
190 provisions of s. 768.28. With respect to any federally funded
191 community health center, the notice requirements may be met by
192 posting in a place conspicuous to all persons a notice that the
193 federally funded community health center is an agent of the
194 governmental contractor and that the exclusive remedy for injury
195 or damage suffered as the result of any act or omission of the
196 provider or of any employee or agent thereof acting within the
197 scope of duties pursuant to the contract is by commencement of
198 an action pursuant to the provisions of s. 768.28.

199 (10) RULES.—The department shall adopt rules to administer
200 this section in a manner consistent with its purpose to provide
201 and facilitate access to appropriate, safe, and cost-effective
202 health care services and to maintain health care quality. The
203 rules may include services to be provided and authorized

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204 procedures. Notwithstanding the requirements of paragraph
205 (4) (d), the department shall adopt rules that specify required
206 methods for determination and approval of patient eligibility
207 and referral and the contractual conditions under which a health
208 care provider may perform the patient eligibility and referral
209 process ~~on behalf of the department~~. These rules shall include,
210 but not be limited to, the following requirements:

211 (a) The provider must accept all patients referred by the
212 department. However, the number of patients that must be
213 accepted may be limited by the contract.

214 (b) The provider shall comply with departmental rules
215 regarding the determination and approval of patient eligibility
216 and referral.

217 (c) The provider shall complete training conducted by the
218 department regarding compliance with the approved methods for
219 determination and approval of patient eligibility and referral.

220 (d) The department shall retain review and oversight
221 authority of the patient eligibility and referral determination.

222 (e) The referral form from the Department of Health, which
223 is signed by the patient annually, applies to all health care
224 services provided for 1 year, including primary, diagnostic
225 testing, secondary and tertiary care services administered by
226 approved providers or through contracted charitable
227 organizations or health care entities. A patient does not need a
228 separate referral form for each approved provider.

229 Section 2. This act shall take effect July 1, 2009.