

By Senator Simmons

10-00698B-15

20151146\_\_

1                   A bill to be entitled  
2           An act relating to agency relationships with  
3           governmental health care contractors; amending s.  
4           766.1115, F.S.; redefining terms; deleting an obsolete  
5           date; extending sovereign immunity to employees or  
6           agents of a health care provider that executes a  
7           contract with a governmental contractor; authorizing  
8           such health care provider to collect from a patient,  
9           or the parent or guardian of a patient, a nominal fee  
10          for administrative costs under certain circumstances;  
11          limiting the nominal fee; clarifying that a receipt of  
12          specified notice must be acknowledged by a patient or  
13          the patient's representative at the initial visit;  
14          requiring the posting of notice that a specified  
15          health care provider is an agent of a governmental  
16          contractor; amending s. 768.28, F.S.; redefining the  
17          term "officer, employee, or agent" to include  
18          employees or agents of a health care provider;  
19          providing an effective date.

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

22  
23           Section 1. Paragraphs (a) and (d) of subsection (3) and  
24           subsections (4) and (5) of section 766.1115, Florida Statutes,  
25           are amended to read:

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

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

29           (a) "Contract" means an agreement executed in compliance

10-00698B-15

20151146\_\_

30 with this section between a health care provider and a  
31 governmental contractor which allows the health care provider,  
32 or any employee or agent of the health care provider, to deliver  
33 health care services to low-income recipients as an agent of the  
34 governmental contractor. The contract must be for volunteer,  
35 uncompensated services, ~~except as provided in paragraph (4)(g).~~  
36 For services to qualify as volunteer, uncompensated services  
37 under this section, the health care provider ~~must receive no~~  
38 ~~compensation from the governmental contractor for any services~~  
39 ~~provided under the contract and~~ must not bill or accept  
40 compensation from the recipient, or a public or private third-  
41 party payor, for the specific services provided to the low-  
42 income recipients covered by the contract, except as provided in  
43 paragraphs (4)(g) and (h).

44 (d) "Health care provider" or "provider" means:

- 45 1. A birth center licensed under chapter 383.
- 46 2. An ambulatory surgical center licensed under chapter  
47 395.
- 48 3. A hospital licensed under chapter 395.
- 49 4. A physician or physician assistant licensed under  
50 chapter 458.
- 51 5. An osteopathic physician or osteopathic physician  
52 assistant licensed under chapter 459.
- 53 6. A chiropractic physician licensed under chapter 460.
- 54 7. A podiatric physician licensed under chapter 461.
- 55 8. A registered nurse, nurse midwife, licensed practical  
56 nurse, or advanced registered nurse practitioner licensed or  
57 registered under part I of chapter 464 or any facility which  
58 employs nurses licensed or registered under part I of chapter

10-00698B-15

20151146\_\_

59 464 to supply all or part of the care delivered under this  
60 section.

61 9. A midwife licensed under chapter 467.

62 10. A health maintenance organization certificated under  
63 part I of chapter 641.

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

66 12. Any other medical facility the primary purpose of which  
67 is to deliver human medical diagnostic services or which  
68 delivers nonsurgical human medical treatment, and which includes  
69 an office maintained by a provider.

70 13. A dentist or dental hygienist licensed under chapter  
71 466.

72 14. A free clinic that delivers only medical diagnostic  
73 services or nonsurgical medical treatment free of charge to all  
74 low-income recipients, except as provided in paragraph (4)(h).

75 15. Any other health care professional, practitioner,  
76 provider, or facility under contract with a governmental  
77 contractor, including a student enrolled in an accredited  
78 program that prepares the student for licensure as any one of  
79 the professionals listed in subparagraphs 4.-9.

80

81 The term includes any nonprofit corporation qualified as exempt  
82 from federal income taxation under s. 501(a) of the Internal  
83 Revenue Code, and described in s. 501(c) of the Internal Revenue  
84 Code, which delivers health care services provided by licensed  
85 professionals listed in this paragraph, any federally funded  
86 community health center, and any volunteer corporation or  
87 volunteer health care provider that delivers health care

10-00698B-15

20151146\_\_

88 services.

89 (4) CONTRACT REQUIREMENTS.—A health care provider that  
90 executes a contract with a governmental contractor to deliver  
91 health care services ~~on or after April 17, 1992,~~ as an agent of  
92 the governmental contractor, or any employee or agent of such  
93 health care provider, is an agent for purposes of s. 768.28(9),  
94 while acting within the scope of duties under the contract, if  
95 the contract complies with the requirements of this section and  
96 regardless of whether the individual treated is later found to  
97 be ineligible. A health care provider, or any employee or agent  
98 of the health care provider, shall continue to be an agent for  
99 purposes of s. 768.28(9) for 30 days after a determination of  
100 ineligibility to allow for treatment until the individual  
101 transitions to treatment by another health care provider. A  
102 health care provider under contract with the state, or any  
103 employee or agent of such health care provider, may not be named  
104 as a defendant in any action arising out of medical care or  
105 treatment ~~provided on or after April 17, 1992,~~ under contracts  
106 entered into under this section. The contract must provide that:

107 (a) The right of dismissal or termination of any health  
108 care provider delivering services under the contract is retained  
109 by the governmental contractor.

110 (b) The governmental contractor has access to the patient  
111 records of any health care provider delivering services under  
112 the contract.

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

10-00698B-15

20151146\_\_

117 submit the reports required by s. 395.0197. If an incident  
118 involves a professional licensed by the Department of Health or  
119 a facility licensed by the Agency for Health Care  
120 Administration, the governmental contractor shall submit such  
121 incident reports to the appropriate department or agency, which  
122 shall review each incident and determine whether it involves  
123 conduct by the licensee that is subject to disciplinary action.  
124 All patient medical records and any identifying information  
125 contained in adverse incident reports and treatment outcomes  
126 which are obtained by governmental entities under this paragraph  
127 are confidential and exempt from the provisions of s. 119.07(1)  
128 and s. 24(a), Art. I of the State Constitution.

129 (d) Patient selection and initial referral must be made by  
130 the governmental contractor or the provider. Patients may not be  
131 transferred to the provider based on a violation of the  
132 antidumping provisions of the Omnibus Budget Reconciliation Act  
133 of 1989, the Omnibus Budget Reconciliation Act of 1990, or  
134 chapter 395.

135 (e) If emergency care is required, the patient need not be  
136 referred before receiving treatment, but must be referred within  
137 48 hours after treatment is commenced or within 48 hours after  
138 the patient has the mental capacity to consent to treatment,  
139 whichever occurs later.

140 (f) The provider is subject to supervision and regular  
141 inspection by the governmental contractor.

142 ~~(g) As an agent of the governmental contractor for purposes~~  
143 ~~of s. 768.28(9), while acting within the scope of duties under~~  
144 ~~the contract,~~ A health care provider licensed under chapter 466,  
145 as an agent of the governmental contractor for purposes of s.

10-00698B-15

20151146\_\_

146 768.28(9), may allow a patient, or a parent or guardian of the  
147 patient, to voluntarily contribute a monetary amount to cover  
148 costs of dental laboratory work related to the services provided  
149 to the patient within the scope of duties under the contract.  
150 This contribution may not exceed the actual cost of the dental  
151 laboratory charges.

152 (h) A health care provider, as an agent of the governmental  
153 contractor for purposes of s. 768.28(9), may collect from a  
154 patient, or a parent or guardian of the patient, a nominal fee  
155 for administrative costs related to the services provided to the  
156 patient under the contract. For purposes of this paragraph, a  
157 nominal fee may not exceed \$10.

158  
159 A governmental contractor that is also a health care provider is  
160 not required to enter into a contract under this section with  
161 respect to the health care services delivered by its employees.

162 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental  
163 contractor must provide written notice to each patient, or the  
164 patient's legal representative, receipt of which must be  
165 acknowledged in writing at the initial visit, that the provider  
166 is an agent of the governmental contractor and that the  
167 exclusive remedy for injury or damage suffered as the result of  
168 any act or omission of the provider or of any employee or agent  
169 thereof acting within the scope of duties pursuant to the  
170 contract is by commencement of an action pursuant to ~~the~~  
171 ~~provisions of s. 768.28.~~ Thereafter, and with respect to any  
172 federally funded community health center, the notice  
173 requirements may be met by posting in a place conspicuous to all  
174 persons a notice that the health care provider ~~federally funded~~

10-00698B-15

20151146\_\_

175 ~~community health center~~ is an agent of the governmental  
176 contractor and that the exclusive remedy for injury or damage  
177 suffered as the result of any act or omission of the provider or  
178 of any employee or agent thereof acting within the scope of  
179 duties pursuant to the contract is by commencement of an action  
180 pursuant to ~~the provisions of~~ s. 768.28.

181 Section 2. Paragraph (b) of subsection (9) of section  
182 768.28, Florida Statutes, is amended to read:

183 768.28 Waiver of sovereign immunity in tort actions;  
184 recovery limits; limitation on attorney fees; statute of  
185 limitations; exclusions; indemnification; risk management  
186 programs.—

187 (9)

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

189 1. "Employee" includes any volunteer firefighter.

190 2. "Officer, employee, or agent" includes, but is not  
191 limited to, any health care provider, and its employees or  
192 agents, when providing services pursuant to s. 766.1115; any  
193 nonprofit independent college or university located and  
194 chartered in this state which owns or operates an accredited  
195 medical school, and its employees or agents, when providing  
196 patient services pursuant to paragraph (10) (f); and any public  
197 defender or her or his employee or agent, including, among  
198 others, an assistant public defender and an investigator.

199 Section 3. This act shall take effect July 1, 2015.