

By the Committee on Health Policy; and Senator Simmons

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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

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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). A free clinic as described in
44 subparagraph (3)(d)14. may receive a legislative appropriation,
45 a grant through a legislative appropriation, or a grant from a
46 governmental entity or nonprofit corporation to support the
47 delivery of such contracted services by volunteer health care
48 providers, including the employment of health care providers to
49 supplement, coordinate, or support the delivery of services by
50 volunteer health care providers. Such an appropriation or grant
51 does not constitute compensation under this paragraph from the
52 governmental contractor for services provided under the
53 contract, nor does receipt and use of the appropriation or grant
54 constitute the acceptance of compensation under this paragraph
55 for the specific services provided to the low-income recipients
56 covered by the contract.

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

58 1. A birth center licensed under chapter 383.

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- 59 2. An ambulatory surgical center licensed under chapter
60 395.
- 61 3. A hospital licensed under chapter 395.
- 62 4. A physician or physician assistant licensed under
63 chapter 458.
- 64 5. An osteopathic physician or osteopathic physician
65 assistant licensed under chapter 459.
- 66 6. A chiropractic physician licensed under chapter 460.
- 67 7. A podiatric physician licensed under chapter 461.
- 68 8. A registered nurse, nurse midwife, licensed practical
69 nurse, or advanced registered nurse practitioner licensed or
70 registered under part I of chapter 464 or any facility which
71 employs nurses licensed or registered under part I of chapter
72 464 to supply all or part of the care delivered under this
73 section.
- 74 9. A midwife licensed under chapter 467.
- 75 10. A health maintenance organization certificated under
76 part I of chapter 641.
- 77 11. A health care professional association ~~and its~~
78 ~~employees~~ or a corporate medical group ~~and its employees~~.
- 79 12. Any other medical facility the primary purpose of which
80 is to deliver human medical diagnostic services or which
81 delivers nonsurgical human medical treatment, and which includes
82 an office maintained by a provider.
- 83 13. A dentist or dental hygienist licensed under chapter
84 466.
- 85 14. A free clinic that delivers only medical diagnostic
86 services or nonsurgical medical treatment free of charge to all
87 low-income recipients, except as provided in paragraph (4) (h).

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

93
94 The term includes any nonprofit corporation qualified as exempt
95 from federal income taxation under s. 501(a) of the Internal
96 Revenue Code, and described in s. 501(c) of the Internal Revenue
97 Code, which delivers health care services provided by licensed
98 professionals listed in this paragraph, any federally funded
99 community health center, and any volunteer corporation or
100 volunteer health care provider that delivers health care
101 services.

102 (4) CONTRACT REQUIREMENTS.—A health care provider that
103 executes a contract with a governmental contractor to deliver
104 health care services ~~on or after April 17, 1992,~~ as an agent of
105 the governmental contractor, or any employee or agent of such
106 health care provider, is an agent for purposes of s. 768.28(9),
107 while acting within the scope of duties under the contract, if
108 the contract complies with the requirements of this section and
109 regardless of whether the individual treated is later found to
110 be ineligible. A health care provider, or any employee or agent
111 of the health care provider, shall continue to be an agent for
112 purposes of s. 768.28(9) for 30 days after a determination of
113 ineligibility to allow for treatment until the individual
114 transitions to treatment by another health care provider. A
115 health care provider under contract with the state, or any
116 employee or agent of such health care provider, may not be named

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117 as a defendant in any action arising out of medical care or
118 treatment ~~provided on or after April 17, 1992,~~ under contracts
119 entered into under this section. The contract must provide that:

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

123 (b) The governmental contractor has access to the patient
124 records of any health care provider delivering services under
125 the contract.

126 (c) Adverse incidents and information on treatment outcomes
127 must be reported by any health care provider to the governmental
128 contractor if the incidents and information pertain to a patient
129 treated under the contract. The health care provider shall
130 submit the reports required by s. 395.0197. If an incident
131 involves a professional licensed by the Department of Health or
132 a facility licensed by the Agency for Health Care
133 Administration, the governmental contractor shall submit such
134 incident reports to the appropriate department or agency, which
135 shall review each incident and determine whether it involves
136 conduct by the licensee that is subject to disciplinary action.
137 All patient medical records and any identifying information
138 contained in adverse incident reports and treatment outcomes
139 which are obtained by governmental entities under this paragraph
140 are confidential and exempt from the provisions of s. 119.07(1)
141 and s. 24(a), Art. I of the State Constitution.

142 (d) Patient selection and initial referral must be made by
143 the governmental contractor or the provider. Patients may not be
144 transferred to the provider based on a violation of the
145 antidumping provisions of the Omnibus Budget Reconciliation Act

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146 of 1989, the Omnibus Budget Reconciliation Act of 1990, or
147 chapter 395.

148 (e) If emergency care is required, the patient need not be
149 referred before receiving treatment, but must be referred within
150 48 hours after treatment is commenced or within 48 hours after
151 the patient has the mental capacity to consent to treatment,
152 whichever occurs later.

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

155 ~~(g) As an agent of the governmental contractor for purposes~~
156 ~~of s. 768.28(9), while acting within the scope of duties under~~
157 ~~the contract,~~ A health care provider licensed under chapter 466,
158 as an agent of the governmental contractor for purposes of s.
159 768.28(9), may allow a patient, or a parent or guardian of the
160 patient, to voluntarily contribute a monetary amount to cover
161 costs of dental laboratory work related to the services provided
162 to the patient within the scope of duties under the contract.
163 This contribution may not exceed the actual cost of the dental
164 laboratory charges.

165 (h) A health care provider that is a free clinic under
166 subparagraph (3)(d)14., as an agent of the governmental
167 contractor for purposes of s. 768.28(9), may allow a patient, or
168 a parent or guardian of the patient, to pay a nominal fee for
169 administrative costs related to the services provided to the
170 patient under the contract. For purposes of this paragraph, a
171 nominal fee may not exceed \$10 per visit.

172

173 A governmental contractor that is also a health care provider is
174 not required to enter into a contract under this section with

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175 respect to the health care services delivered by its employees.

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

195 Section 2. Paragraph (b) of subsection (9) of section
196 768.28, Florida Statutes, is amended to read:

197 768.28 Waiver of sovereign immunity in tort actions;
198 recovery limits; limitation on attorney fees; statute of
199 limitations; exclusions; indemnification; risk management
200 programs.—

201 (9)

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

203 1. "Employee" includes any volunteer firefighter.

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204 2. "Officer, employee, or agent" includes, but is not
205 limited to, any health care provider, and its employees or
206 agents, when providing services pursuant to s. 766.1115; any
207 nonprofit independent college or university located and
208 chartered in this state which owns or operates an accredited
209 medical school, and its employees or agents, when providing
210 patient services pursuant to paragraph (10)(f); and any public
211 defender or her or his employee or agent, including, among
212 others, an assistant public defender and an investigator.

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