

By Senator Simmons

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1                   A bill to be entitled  
2       An act relating to health care providers; amending s.  
3       766.1115, F.S.; revising the definitions of the terms  
4       "contract" and "health care provider"; deleting an  
5       obsolete date; extending sovereign immunity to  
6       employees or agents of a health care provider that  
7       executes a contract with a governmental contractor;  
8       clarifying that a receipt of specified notice must be  
9       acknowledged by a patient or the patient's  
10      representative at the initial visit; requiring the  
11      posting of notice that a specified health care  
12      provider is an agent of a governmental contractor;  
13      amending s. 768.28, F.S.; revising the definition of  
14      the term "officer, employee, or agent" to include  
15      employees or agents of a health care provider;  
16      providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20       Section 1. Paragraphs (a) and (d) of subsection (3) and  
21      subsections (4) and (5) of section 766.1115, Florida Statutes,  
22      are amended to read:

23       766.1115 Health care providers; creation of agency  
24      relationship with governmental contractors.—

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

26       (a) "Contract" means an agreement executed in compliance  
27      with this section between a health care provider and a  
28      governmental contractor for volunteer, uncompensated services  
29      which allows the health care provider to deliver health care

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30 services to low-income recipients as an agent of the  
31 governmental contractor. ~~The contract must be for volunteer,~~  
32 ~~uncompensated services, except as provided in paragraph (4)(g).~~  
33 For services to qualify as volunteer, uncompensated services  
34 under this section, the health care provider, or any employee or  
35 agent of the health care provider, must receive no compensation  
36 from the governmental contractor for any services provided under  
37 the contract and must not bill or accept compensation from the  
38 recipient, or a public or private third-party payor, for the  
39 specific services provided to the low-income recipients covered  
40 by the contract, except as provided in paragraph (4)(g). A free  
41 clinic as described in subparagraph (d)14. may receive a  
42 legislative appropriation, a grant through a legislative  
43 appropriation, or a grant from a governmental entity or  
44 nonprofit corporation to support the delivery of contracted  
45 services by volunteer health care providers, including the  
46 employment of health care providers to supplement, coordinate,  
47 or support the delivery of such services. The appropriation or  
48 grant for the free clinic does not constitute compensation under  
49 this paragraph from the governmental contractor for services  
50 provided under the contract, nor does receipt or use of the  
51 appropriation or grant constitute the acceptance of compensation  
52 under this paragraph for the specific services provided to the  
53 low-income recipients covered by the contract.

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

- 55 1. A birth center licensed under chapter 383.  
56 2. An ambulatory surgical center licensed under chapter  
57 395.  
58 3. A hospital licensed under chapter 395.

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

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88 program that prepares the student for licensure as any one of  
89 the professionals listed in subparagraphs 4.-9.

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

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

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

120 (b) The governmental contractor has access to the patient  
121 records of any health care provider delivering services under  
122 the contract.

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

139 (d) Patient selection and initial referral must be made by  
140 the governmental contractor or the provider. Patients may not be  
141 transferred to the provider based on a violation of the  
142 antidumping provisions of the Omnibus Budget Reconciliation Act  
143 of 1989, the Omnibus Budget Reconciliation Act of 1990, or  
144 chapter 395.

145 (e) If emergency care is required, the patient need not be

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146 referred before receiving treatment, but must be referred within  
147 48 hours after treatment is commenced or within 48 hours after  
148 the patient has the mental capacity to consent to treatment,  
149 whichever occurs later.

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

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

162

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

166 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental  
167 contractor must provide written notice to each patient, or the  
168 patient's legal representative, receipt of which must be  
169 acknowledged in writing at the initial visit, that the provider  
170 is an agent of the governmental contractor and that the  
171 exclusive remedy for injury or damage suffered as the result of  
172 any act or omission of the provider or of any employee or agent  
173 thereof acting within the scope of duties pursuant to the  
174 contract is by commencement of an action pursuant to ~~the~~

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175 ~~provisions of s. 768.28. Thereafter, or~~ with respect to any  
176 federally funded community health center, the notice  
177 requirements may be met by posting in a place conspicuous to all  
178 persons a notice that the health care provider, or federally  
179 funded community health center, is an agent of the governmental  
180 contractor and that the exclusive remedy for injury or damage  
181 suffered as the result of any act or omission of the provider or  
182 of any employee or agent thereof acting within the scope of  
183 duties pursuant to the contract is by commencement of an action  
184 pursuant to ~~the provisions of s. 768.28.~~

185 Section 2. Paragraph (b) of subsection (9) of section  
186 768.28, Florida Statutes, is amended to read:

187 768.28 Waiver of sovereign immunity in tort actions;  
188 recovery limits; limitation on attorney fees; statute of  
189 limitations; exclusions; indemnification; risk management  
190 programs.—

191 (9)

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

193 1. "Employee" includes any volunteer firefighter.

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

203 Section 3. This act shall take effect July 1, 2016.