

By the Committee on Judiciary; and Senator Simmons

590-03681-16

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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
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).~~

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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.
- 59 4. A physician or physician assistant licensed under
60 chapter 458.
- 61 5. An osteopathic physician or osteopathic physician

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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. A pharmacy or pharmacist licensed under chapter 465.

86 ~~16.15.~~ Any other health care professional, practitioner,
87 provider, or facility under contract with a governmental
88 contractor, including a student enrolled in an accredited
89 program that prepares the student for licensure as any one of
90 the professionals listed in subparagraphs 4.-9.

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

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

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

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120 by the governmental contractor.

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

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

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

146 (e) If emergency care is required, the patient need not be
147 referred before receiving treatment, but must be referred within
148 48 hours after treatment is commenced or within 48 hours after

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149 the patient has the mental capacity to consent to treatment,
150 whichever occurs later.

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

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

163

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

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

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

186 Section 2. Paragraph (b) of subsection (9) of section
187 768.28, Florida Statutes, is amended to read:

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

192 (9)

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

194 1. "Employee" includes any volunteer firefighter.

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

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