

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; extending sovereign  
 5           immunity to employees or agents of a health care  
 6           provider that executes a contract with a governmental  
 7           contractor; specifying that a receipt of certain  
 8           notice must be acknowledged by a patient or the  
 9           patient's representative at the initial visit;  
 10          amending s. 768.28, F.S.; redefining the term  
 11          "officer, employee, or agent" to include employees or  
 12          agents of a health care provider; providing an  
 13          effective date.

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 15 Be It Enacted by the Legislature of the State of Florida:

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

20           766.1115 Health care providers; creation of agency  
 21           relationship with governmental contractors.—

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

23           (a) "Contract" means an agreement executed in compliance  
 24           with this section between a health care provider and a  
 25           governmental contractor which allows the health care provider,  
 26           or any employee or agent of the health care provider, to deliver

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

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

52 1. A birth center licensed under chapter 383.

- 53           2. An ambulatory surgical center licensed under chapter  
54 395.
- 55           3. A hospital licensed under chapter 395.
- 56           4. A physician or physician assistant licensed under  
57 chapter 458.
- 58           5. An osteopathic physician or osteopathic physician  
59 assistant licensed under chapter 459.
- 60           6. A chiropractic physician licensed under chapter 460.
- 61           7. A podiatric physician licensed under chapter 461.
- 62           8. A registered nurse, nurse midwife, licensed practical  
63 nurse, or advanced registered nurse practitioner licensed or  
64 registered under part I of chapter 464 or any facility which  
65 employs nurses licensed or registered under part I of chapter  
66 464 to supply all or part of the care delivered under this  
67 section.
- 68           9. A midwife licensed under chapter 467.
- 69           10. A health maintenance organization certificated under  
70 part I of chapter 641.
- 71           11. A health care professional association ~~and its~~  
72 ~~employees~~ or a corporate medical group ~~and its employees~~.
- 73           12. Any other medical facility the primary purpose of  
74 which is to deliver human medical diagnostic services or which  
75 delivers nonsurgical human medical treatment, and which includes  
76 an office maintained by a provider.
- 77           13. A dentist or dental hygienist licensed under chapter  
78 466.

79 14. A free clinic that delivers only medical diagnostic  
 80 services or nonsurgical medical treatment free of charge to all  
 81 low-income recipients.

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

87  
 88 The term includes any nonprofit corporation qualified as exempt  
 89 from federal income taxation under s. 501(a) of the Internal  
 90 Revenue Code, and described in s. 501(c) of the Internal Revenue  
 91 Code, which delivers health care services provided by licensed  
 92 professionals listed in this paragraph, any federally funded  
 93 community health center, and any volunteer corporation or  
 94 volunteer health care provider that delivers health care  
 95 services.

96 (4) CONTRACT REQUIREMENTS.—A health care provider that  
 97 executes a contract with a governmental contractor to deliver  
 98 health care services ~~on or after April 17, 1992,~~ as an agent of  
 99 the governmental contractor, or any employee or agent of such  
 100 health care provider, is an agent for purposes of s. 768.28(9),  
 101 while acting within the scope of duties under the contract, if  
 102 the contract complies with the requirements of this section and  
 103 regardless of whether the individual treated is later found to  
 104 be ineligible. A health care provider, or any employee or agent

105 of the health care provider, shall continue to be an agent for  
106 purposes of s. 768.28(9) for 30 days after a determination of  
107 ineligibility to allow for treatment until the individual  
108 transitions to treatment by another health care provider. A  
109 health care provider under contract with the state, or any  
110 employee or agent of such health care provider, may not be named  
111 as a defendant in any action arising out of medical care or  
112 treatment ~~provided on or after April 17, 1992,~~ under contracts  
113 entered into under this section. The contract must provide that:

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

117 (b) The governmental contractor has access to the patient  
118 records of any health care provider delivering services under  
119 the contract.

120 (c) Adverse incidents and information on treatment  
121 outcomes must be reported by any health care provider to the  
122 governmental contractor if the incidents and information pertain  
123 to a patient treated under the contract. The health care  
124 provider shall submit the reports required by s. 395.0197. If an  
125 incident involves a professional licensed by the Department of  
126 Health or a facility licensed by the Agency for Health Care  
127 Administration, the governmental contractor shall submit such  
128 incident reports to the appropriate department or agency, which  
129 shall review each incident and determine whether it involves  
130 conduct by the licensee that is subject to disciplinary action.

131 All patient medical records and any identifying information  
132 contained in adverse incident reports and treatment outcomes  
133 which are obtained by governmental entities under this paragraph  
134 are confidential and exempt from the provisions of s. 119.07(1)  
135 and s. 24(a), Art. I of the State Constitution.

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

142 (e) If emergency care is required, the patient need not be  
143 referred before receiving treatment, but must be referred within  
144 48 hours after treatment is commenced or within 48 hours after  
145 the patient has the mental capacity to consent to treatment,  
146 whichever occurs later.

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

149 ~~(g) As an agent of the governmental contractor for~~  
150 ~~purposes of s. 768.28(9), while acting within the scope of~~  
151 ~~duties under the contract,~~ A health care provider licensed under  
152 chapter 466, as an agent of the governmental contractor for  
153 purposes of s. 768.28(9), may allow a patient, or a parent or  
154 guardian of the patient, to voluntarily contribute a monetary  
155 amount to cover costs of dental laboratory work related to the  
156 services provided to the patient within the scope of duties

157 under the contract. This contribution may not exceed the actual  
158 cost of the dental laboratory charges.

159

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

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

182 Section 2. Paragraph (b) of subsection (9) of section

CS/HB 1431

2016

183 768.28, Florida Statutes, is amended to read:

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

188 (9)

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

190 1. "Employee" includes any volunteer firefighter.

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

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