

HB 965

2015

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
 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
- 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
- 67 | which 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
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
 114 outcomes must be reported by any health care provider to the
 115 governmental contractor if the incidents and information pertain
 116 to a patient treated under the contract. The health care
 117 provider shall submit the reports required by s. 395.0197. If an
 118 incident involves a professional licensed by the Department of
 119 Health or 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~~
143 ~~purposes of s. 768.28(9), while acting within the scope of~~
144 ~~duties under the contract,~~ A health care provider licensed under
145 chapter 466, as an agent of the governmental contractor for
146 purposes of s. 768.28(9), may allow a patient, or a parent or
147 guardian of the patient, to voluntarily contribute a monetary
148 amount to cover costs of dental laboratory work related to the
149 services provided to the patient within the scope of duties
150 under the contract. This contribution may not exceed the actual
151 cost of the dental laboratory charges.

152 (h) A health care provider, as an agent of the
153 governmental contractor for purposes of s. 768.28(9), may
154 collect from a patient, or a parent or guardian of the patient,
155 a nominal fee for administrative costs related to the services
156 provided to the patient under the contract. For purposes of this

157 paragraph, a 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~~
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:

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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.