

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.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 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.