

AGENDA ITEM #4, B

**Appendix 1: State Licensure and Liability Policies for Volunteer Physicians;**

**American Medical Association Publication, 2007**

State	Volunteer/Limited License Offered	Liability Laws for Volunteer Physicians
Alabama	No provisions for volunteer or retired.	Medical professional who offers charitable services in established free medical clinic not liable for acts or omissions except for wanton misconduct. Requires notification of patients.
Alaska	No provisions for volunteer or retired.	No statute.
Arizona	Pro Bono license available for no fee. Must hold an active license from any state or territory or an active or inactive Arizona license. License is restricted to 60 days of practice per year.	Arizona law establishes immunity for volunteers acting in good faith and within the scope of volunteer duties for government entities or nonprofit corporations, organizations or hospitals. Vicarious liability of the organization can be established if the volunteer was working in the scope of official duties and functions.
Arkansas	No provisions for volunteer or retired.	Immunity for volunteers from civil liability unless gross negligence or willful misconduct. For immunity to apply, the patient must acknowledge the physician's immunity from civil suit. If the volunteer has liability insurance, liability is limited to the limit of the insurance policy. Statute references retired volunteer physicians

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California	Volunteer Service License, no fee. Retired license, no fee.	No statute.
Colorado	No provisions for volunteer or retired.	No civil liability except for wanton misconduct willful negligence. Patient must have notice of limited liability.
Connecticut	No provisions for volunteer or retired.	Charitable immunity for non-profit volunteer. Specifically references volunteer health care professional, retired physicians, certain health care settings, and limited to certain services.
Delaware	No provisions for volunteer or retired.	Charitable immunity for non-profit volunteer. Specifically references volunteer health care professional, retired physicians, certain health care settings, and limited to certain services.
District of Columbia	No provisions for volunteer or retired.	Licensed physicians who, in good faith, provide health care or treatment at or on behalf of a free health clinic without the expectation of receiving or intending to receive compensation shall not be liable in civil damages for any act or omission in the course of rendering the health care or treatment, unless the act or omission is an intentional wrong or manifests a willful or wanton disregard for the health or safety of others. In order to qualify for this immunity, physicians must require prospective patients to sign a written statement witnessed by two persons in which the parties agree to the rendering of the health care or treatment.



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		Free clinics that cannot afford liability insurance and their volunteers can be part of a federal indemnity program and are considered District employees for indemnification purposes.
Florida	Limited license is available for retired physicians wishing to volunteer services, no fee. Must practice in a government or 501c(3) organization in an area to be determined to be an area of critical need by the board.	Volunteer for a non-profit is not liable except for gross or negligent misconduct. Patients must receive prior notice of limited liability.
Georgia	Volunteer in Medicine license, no fee.	Volunteer for a non-profit or government organization such as a physician who renders care without the expectation of compensation, is granted civil immunity except for gross or negligent misconduct. Patients must receive prior notice of limited liability.
Hawaii	No provisions for volunteer or retired.	Not liable unless wanton misconduct or willful negligence IF the organization carries liability insurance of no less than 200K for single occurrence OR if the organization has less than 50K in assets.
Idaho	No provisions for volunteer or retired.	Health care provider at charitable clinic is immune from liability – if liability insurance exists, person is liable to the extent of the policy. Patients must

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		receive prior notice of limited liability.
Illinois	No provisions for volunteer or retired.	A physician who volunteers services at a free medical clinic to the indigent is exempt from civil liability except for wanton misconduct or gross negligence. Patients must receive prior notice of limited liability.
Indiana	Retired inactive status – can practice with no restrictions as long as there is no compensation. Fee of \$100 every 2 years. Must be fully licensed in Indiana prior to application. Physicians from other states wishing to volunteer in Indiana are limited to 30 days of practice per year with a Limited Scope license.	A health care provider, including a retired physician, who voluntarily provides health care at a medical clinic or health care facility is immune from civil liability arising from the care provided, unless in delivering care the provider's acts or omissions constitute a criminal act, gross negligence, or willful or wanton misconduct.
Iowa	No provisions for volunteer or retired.	Iowa legislators established a volunteer physician program within the Iowa Department of Public Health which provides for immunity from liability in certain circumstances. These circumstances include instances when a physician, registered with the Department as being part of the program, provides free medical care at specified hospitals and clinics. While delivering free care under the program, a physician is considered an employee of



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		the state and receive certain immunity from liability.
Kansas	Exempt status for retired physicians to provide direct patient care gratuitously. Reduced fee.	Volunteer of a non-profit is not liable if the organization has liability insurance, health care not specifically named.
Kentucky	No provisions for volunteer or retired.	Volunteer for a non-profit is not liable except for wanton misconduct or gross negligence.
Louisiana	No provisions for volunteer or retired.	Health care worker providing free care in a community health clinic is not liable for acts or omission in rendering care or for an act or failure to act in providing or arranging for further services. This immunity from liability is valid only if the patient was notified of the limited liability.
Maine	Retired physician license for those doing volunteer work.. Fee is \$75.	Maine grants civil liability immunity for physicians (including retired) who voluntarily render uncompensated medical care for a nonprofit organization or agency of the state, except in the case of wanton misconduct or willful negligence.

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<p>Maryland</p>	<p>Special volunteer license with no fee. Must submit the form to the volunteer agency and attest to the fact that the license will be used only in volunteer capacity.</p>	<p>Maryland provides civil immunity from personal liability to volunteers who render certain services under specified circumstances.</p> <p>Circumstances include health care providers or physicians who render health care services voluntarily and without compensation to any person seeking health care through a charitable organization chartered to provide health care services to homeless and indigent patients.</p> <p>Such volunteers are not liable for any amount in excess of any applicable limit of insurance coverage in any suit for civil damages for any act or omission resulting from the rendering of such services, unless the act or omission constitutes: a) willful or wanton misconduct, b) gross negligence, or c) intentionally tortuous conduct.</p>
<p>Massachusetts</p>	<p>No provisions for volunteer or retired.</p>	<p>Limit on liability to 20K for a charitable organization. Healthcare worker not liable for volunteer care.</p>
<p>Michigan</p>	<p>No provisions for volunteer or retired.</p>	<p>Law protects physicians from liability for care provided at a free clinic, or care provided as a result of a referral from a free clinic. Patients must receive prior notice of limited liability.</p>



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Minnesota	No provisions for volunteer or retired.	Physicians in certain charitable health care settings performing limited services are immune.
Mississippi	License for retired physicians who wish to volunteer services. Valid for one year, No fee.	Mississippi grants immunity from liability for any civil action to a licensed physician who, in good faith on a charitable basis, voluntarily provides medical or health services to any person without the expectation of payment. Immunity will only be extended if the physician and patient execute a written waiver in advance of the rendering of medical services, specifying that such services are provided without the expectation of payment and that the physician shall be immune from liability, unless the act or omission is the result of the physician's gross negligence or willful misconduct.
Missouri	Limited license for retired physicians who have practiced for at least 10 years. Some restrictions on services physician can offer – e.g. no controlled substances. Fee not to exceed \$25.	Volunteer at a non-profit is immune to liability with the exception of willful or wanton misconduct or gross negligence. Physicians specifically mentioned.
Montana	No provisions for volunteer or retired.	A healthcare practitioner who provides free service is not liable for civil damages with the exception of wanton misconduct, so long as patients receive

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		prior notice of limited liability
Nebraska	No provisions for volunteer or retired.	Directors, officers and trustees of non-profit organization are immune from liability, no specific mention on physicians or volunteers in the organizations. No charitable immunity for volunteer health care providers.
Nevada	Special volunteer license, requires acknowledgement of no compensation and care only for indigent. No fee. Renewable annually. New legislation.	Civil immunity for physicians, including retired physicians, who offer free care and/or provide emergency obstetrical services except for willful or wanton misconduct.
New Hampshire	No provisions for volunteer or retired.	A volunteer in a non-profit organization is immune from civil liability as long as the volunteer is documented by the organization. Exception for wanton misconduct. Additionally, New Hampshire grants certain retired physicians immunity from civil liability for volunteer health education services.
New Jersey	Special volunteer license, but must practice under the supervision of a fully-licensed physician. No fee.	Volunteer health care providers are not personally liable for damages caused except if there is gross negligence or wanton misconduct.
New Mexico	No provisions for volunteer or retired.	No statutes for charitable immunity. Grants immunity only to public employees including physicians, psychologists or dentists providing services to the corrections dept and children, youth and families dep't. Only



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		mention of immunity for directors of a charitable organization.
New York	No registration renewal fee for non-compensated physicians. Must file affidavit of non-compensation. Some restrictions on practice.	No statutes for volunteers of a non-profit or volunteer organization.
North Carolina	Limited Volunteer License to serve indigent. Reduced fee.	Volunteers for charitable organizations are not liable for loss or damages or death except in cases of willful misconduct and wanton negligence.
North Dakota	No provision for volunteer. Offer retired Emeritus status for \$150 per year, but cannot practice or prescribe (more honorary).	A health care provider who renders services at a free clinic is not liable in a personal injury civil action, except for willful or wanton misconduct.
Ohio	Volunteer certificate for those who are retired and have practiced for at least 10 years. No fee. Some restrictions on services e.g. cannot deliver babies, perform surgery. Valid for 3 years.	Ohio provides physicians, retired physicians, other health care professionals, and shelters or health care facilities with qualified immunities from civil liability for providing free diagnoses, care, and treatment to indigent or uninsured patients at certain facilities. Patients must receive prior notice of limited liability.
Oklahoma	Volunteer license – new statute to go into effect November 1, 2003.	A volunteer of a charitable or non-profit organization is not liable but in cases of willful misconduct, however, the organization is liable. Oklahoma enacted a provision which relieves volunteers of

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		liability for punitive damages when providing services to nonprofit organizations unless those volunteers are currently offering the same service for profit.
Oregon	Emeritus status license for retired volunteers. Must first have active full license. \$50 per year.	A physician who volunteers services to a charitable organization is not liable for damages with the exception of gross negligence.
Pennsylvania	Volunteer license for retired physicians. No liability insurance requirement. Can be renewed every 2 years. Requires verification from the director of the approved clinic that the physician has been authorized to provide volunteer services.	A physician who holds a volunteer license under the volunteer health services act (retired physician) is not liable for damages with the exception of sub-standard care. This immunity is valid only if such a statement of immunity is posted in a conspicuous place in the clinic. This immunity does not apply to institutional healthcare organizations who hold vicarious liability for the volunteer license holder.
Rhode Island	Active Emeritus status for physicians who are 70+ and who have practiced for 15+ years in RI. Reduced fee of \$25 for license.	A person who volunteers without compensation in a non-profit or charitable organization is not liable with the exception of gross negligence.
South Carolina	Volunteer limited license for practice in underserved areas. Renewable annually. No fee. Must practice under a supervisory physician.	South Carolina law provides that no licensed health care provider, who provides voluntary medical services without compensation, is liable for any civil damages arising out of acts or omissions resulting from the services



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		rendered, unless due to gross negligence or willful misconduct. Immunity extends only if the agreement to provide voluntary, uncompensated services is made before the rendering of services by the provider.
South Dakota	No provisions for volunteer or retired.	South Dakota provides immunity from civil liability for health care professionals volunteering health care services at free clinics. The immunity extends to damages or injuries arising from care provided in good faith and within the scope of the provider's official function. Immunity does not apply to gross negligence and willful misconduct.
Tennessee	Volunteer license is available for those who practice in a not-for-profit clinic. No fee.	Liability insurance companies for healthcare providers may not exclude those who volunteer their services. No specific language for non-profit or charitable volunteer immunity, only directors.
Texas	Voluntary Charity Care license – must sign affidavit that care will be given for free. Renewable annually, no fee. No restrictions of practice.	The Act provides physician volunteers immunity for performing non-emergency care for certain charitable organizations. volunteer is a person rendering services for a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. This includes a person serving as a director, officer, trustee, or direct service

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		<p>volunteer, including a volunteer health care provider. “A volunteer health care provider is an individual who voluntarily provides health care services without compensation or expectation of compensation and who meets one of the ten types of health care providers included in the law. The first option is that the volunteer health care provider is an individual licensed to practice medicine under the Medical Practice Act. A second alternative is that the volunteer health care provider is a retired physician who is eligible to provide health care services, including a retired physician who is licensed but exempt from paying the required annual registration fee. Patients must receive prior notice of limited liability.”</p>
Utah	No provisions for volunteer or retired.	A health care provider who volunteers services at a health care facility and a facility that sponsors uncompensated health treatment is not liable in a malpractice suit.
Vermont	No provisions for volunteer or retired.	No specific mention of charitable immunity or volunteer health care providers in particular.
Virginia	No provisions for volunteer or retired.	Virginia law grants immunity from liability to health care providers who provide health care services to patients of a clinic which is organized for the



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		delivery of health care services without charge and allows such providers, hospitals, and clinics to charge a reasonable minimum fee and still be afforded immunity, except for gross negligence.
Washington	Retired Active status license. Can be used for uncompensated practice of up to 90 days per year. Reduced fee, 2 year license.	Limited liability for physicians in certain settings; Charitable immunity exists for retired physicians.
West Virginia	A volunteer license to work in a volunteer clinic can be applied for if the physician holds an active license. No fee. Renewable annually.	A physician with a volunteer license (retired physician) who renders service to needy people is immune from civil liability. Exception for gross negligence.
Wisconsin	No provisions for retired or volunteer. If practice is less than 240 hours/year, does not have to pay into Patient's Compensation Fund.	Volunteers of non-profit corporations are not liable, no specific mention of physicians other than in emergency and athletic circumstances.
Wyoming	New retired volunteer license statute effective 7/1/03. Must show proof of license in good standing immediately prior to retirement in any jurisdiction for minimum of 10 years. No fee, but must sign affidavit that they are not being compensated each year. Renewable annually.	Non-profit is liable for negligence of its volunteers. The volunteer is not individually liable unless gross misconduct or negligence. No specific mention of volunteer healthcare providers.

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**MODEL TYPE: Statutory Immunity - Change in the Standard of Care**

**ARIZONA**

**A.R.S. § 12-982**

**12-982. Qualified immunity; insurance coverage**

A. A volunteer is immune from civil liability in any action based on an act or omission of a volunteer resulting in damage or injury if:

1. The volunteer acted in good faith and within the scope of the volunteer's official functions and duties for a nonprofit corporation or nonprofit organization, hospital or governmental entity.
2. The damage or injury was not caused by willful, wanton or grossly negligent misconduct by the volunteer.

B. Notwithstanding subsection A of this section, in any suit against a nonprofit corporation or nonprofit organization, hospital or governmental entity for civil damages based on the negligent act or omission of a volunteer, proof that the act or omission was within the scope of the volunteer's official functions and duties is sufficient to establish the vicarious liability, if any, of the organization.

C. A motor vehicle liability policy, as defined in § 28-4001, which provides coverage to the operator of a motor vehicle is subject to the following provisions which need not be contained in the policy. The liability of the insurance carrier with respect to the insured and any other person using the vehicle with the express or implied permission of the insured shall extend to provide excess coverage for a nonprofit corporation or nonprofit organization for the acts of the operator in operating a motor vehicle at all times when the operator is acting as a volunteer for that nonprofit corporation or nonprofit organization.

**A.R.S. § 12-571**

**12-571. Qualified immunity; health professionals; nonprofit clinics; previously owned prescription eyeglasses**

A. A health professional, as defined in § 32-3201, who provides medical or dental treatment within the scope of the health professional's certificate or license at a nonprofit clinic where neither the professional nor the clinic receives compensation for any treatment provided at the clinic is not liable in a medical malpractice action, unless such health professional was grossly negligent.

B. A health professional who, within the professional's scope of practice, provides previously owned prescription eyeglasses free of charge through a charitable, nonprofit or fraternal organization is not liable for an injury to the recipient if the recipient or the recipient's parent or legal guardian has signed a medical malpractice release form and the injury is not a direct result of the health professional's intentional misconduct or gross



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negligence. For purposes of this subsection, "medical malpractice release form" means a document that the recipient or the recipient's parent or legal guardian signs before the recipient receives eyeglasses pursuant to this subsection to acknowledge that the eyeglasses were not made specifically for the recipient and to accept full responsibility for the recipient's eye safety.

**MODEL TYPE: Sovereign Immunity: "State Actor"**

**FLORIDA**

**Florida Department of Health: Volunteer Health Services Program**

The Florida Department of Health (DOH) administers the Volunteer Health Services Program in the Division of Health Access and Tobacco. The program supports the department's volunteer efforts in eleven regions throughout the state. A DOH volunteer coordinator is assigned to each region. Regional coordinators work with DOH entities, community, and faith based health care providers to promote access to quality health care for the medically underserved and uninsured residents of Florida through the commitment of volunteers.

The Volunteer Health Services Program accomplishes its mission through two volunteer programs authorized by Chapters 110 and 776, Florida Statutes.

The Chapter 110 volunteer program, an internal state agency program, provides opportunities for anyone who wants to donate goods and/or their services to those in need under the supervision of the Department of Health. A variety of volunteer opportunities are available in many DOH facilities to individuals with clerical, administrative, technical and professional skills.

The Volunteer Health Care Provider Program, s. 766.1115, F.S., allows private licensed health care providers to volunteer their services to the medically indigent residents of Florida with incomes at or below 200% of the Federal Poverty Level and be under the state's sovereign immunity. Through a contract, a provider can be designated an "agent of the state" and have sovereign immunity for uncompensated services rendered to clients determined eligible and referred by DOH. Under this program, providers have the option to volunteer in freestanding clinics or to see eligible clients in their private offices or corporate facilities.

**Florida Statute Chapter 110.501-110.504**

110.501 Definitions.--As used in this act:

(1) "Volunteer" means any person who, of his or her own free will, provides goods or services, or conveys an interest in or otherwise consents to the use of real property pursuant to chapter 260, to any state department or agency, or nonprofit organization, with no monetary or material compensation. A person registered and serving in Older American Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. No. 93-113), shall also be defined as a volunteer and shall incur no civil liability as provided by s. 768.1355. A volunteer shall be eligible for payment of volunteer benefits as specified in Pub. L. No. 93-113, this section, and s. 430.204.



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(2) "Regular-service volunteer" means any person engaged in specific voluntary service activities on an ongoing or continuous basis.

(3) "Occasional-service volunteer" means any person who offers to provide a one-time or occasional voluntary service.

(4) "Material donor" means any person who provides funds, materials, employment, or opportunities for clients of state departments or agencies, without monetary or material compensation.

### 110.502 Scope of act; status of volunteers.--

(1) Every state department or state agency, through the head of the department or agency, secretary of the department, or executive director of the department, is authorized to recruit, train, and accept, without regard to requirements of the State Career Service System as set forth in part II of this chapter, the services of volunteers, including regular service volunteers, occasional-service volunteers, or material donors, to assist in programs administered by the department or agency.

(2) Volunteers recruited, trained, or accepted by any state department or agency shall not be subject to any provisions of law relating to state employment, to any collective bargaining agreement between the state and any employees' association or union, or to any laws relating to hours of work, rates of compensation, leave time, and employee benefits, except those consistent with s. 110.504. However, all volunteers shall comply with applicable department or agency rules.

(3) Every department or agency utilizing the services of volunteers is hereby authorized to provide such incidental reimbursement or benefit consistent with the provisions of s. 110.504, including transportation costs, lodging, and subsistence, recognition, and other accommodations as the department or agency deems necessary to assist, recognize, reward, or encourage volunteers in performing their functions. No department or agency shall expend or authorize an expenditure therefor in excess of the amount provided for to the department or agency by appropriation in any fiscal year.

(4) Persons working with state agencies pursuant to this part shall be considered as unpaid independent volunteers and shall not be entitled to unemployment compensation.

### **110.503 Responsibilities of departments and agencies.--**Each department or agency utilizing the services of volunteers shall:

(1) Take such actions as are necessary and appropriate to develop meaningful opportunities for volunteers involved in state-administered programs.

(2) Comply with the uniform rules adopted by the Department of Management Services governing the recruitment, screening, training, responsibility, use, and supervision of volunteers.

(3) Take such actions as are necessary to ensure that volunteers understand their duties



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and responsibilities.

(4) Take such actions as are necessary and appropriate to ensure a receptive climate for citizen volunteers.

(5) Provide for the recognition of volunteers who have offered continuous and outstanding service to state-administered programs. Each department or agency using the services of volunteers is authorized to incur expenditures not to exceed \$100 each plus applicable taxes for suitable framed certificates, plaques, or other tokens of recognition to honor, reward, or encourage volunteers for their service.

(6) Recognize prior volunteer service as partial fulfillment of state employment requirements for training and experience pursuant to rules adopted by the Department of Management Services.

### 110.504 Volunteer benefits.--

(1) Meals may be furnished without charge to regular-service volunteers serving state departments, provided the scheduled assignment extends over an established meal period, and to occasional-service volunteers at the discretion of the department head. No department shall expend or authorize any expenditure in excess of the amount provided for by appropriation in any fiscal year.

(2) Lodging, if available, may be furnished temporarily, in case of a department emergency, at no charge to regular-service volunteers.

(3) Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Volunteers may utilize state vehicles in the performance of department-related duties. No department shall expend or authorize an expenditure in excess of the amount appropriated in any fiscal year.

(4) Volunteers shall be covered by state liability protection in accordance with the definition of a volunteer and the provisions of s. 768.28.

(5) Volunteers shall be covered by workers' compensation in accordance with chapter 440.

(6) Incidental recognition benefits or incidental nonmonetary awards may be furnished to volunteers serving in state departments to award, recognize, or encourage volunteers for their service. The awards may not cost in excess of \$100 each plus applicable taxes.

(7) Volunteers, including volunteers receiving a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), shall be covered by s. 768.1355, the Florida Volunteer Protection Act.

### **Florida Statute 766.1115**

**766.1115 Health care providers; creation of agency relationship with governmental contractors.--**



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(1) SHORT TITLE.--This section may be cited as the "Access to Health Care Act."

(2) FINDINGS AND INTENT.--The Legislature finds that a significant proportion of the residents of this state who are uninsured or Medicaid recipients are unable to access needed health care because health care providers fear the increased risk of medical negligence liability. It is the intent of the Legislature that access to medical care for indigent residents be improved by providing governmental protection to health care providers who offer free quality medical services to underserved populations of the state. Therefore, it is the intent of the Legislature to ensure that health care professionals who contract to provide such services as agents of the state are provided sovereign immunity.

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor. This contract shall allow the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(b) "Department" means the Department of Health.

(c) "Governmental contractor" means the department, county health departments, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.

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

1. A birth center licensed under chapter 383.
2. An ambulatory surgical center licensed under chapter 395.
3. A hospital licensed under chapter 395.
4. A physician or physician assistant licensed under chapter 458.
5. An osteopathic physician or osteopathic physician assistant licensed under chapter 459.
6. A chiropractic physician licensed under chapter 460.
7. A podiatric physician licensed under chapter 461.
8. A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of chapter 464 or any facility which employs nurses licensed or registered under part I of chapter 464 to supply all or part of the care delivered under this

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section.

9. A midwife licensed under chapter 467.
10. A health maintenance organization certificated under part I of chapter 641.
11. A health care professional association and its employees or a corporate medical group and its employees.
12. Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.
13. A dentist or dental hygienist licensed under chapter 466.
14. A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.
15. Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.  
The term includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(e) "Low-income" means:

1. A person who is Medicaid-eligible under Florida law;
2. A person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or
3. Any client of the department who voluntarily chooses to participate in a program offered or approved by the department and meets the program eligibility guidelines of the department.

(4) CONTRACT REQUIREMENTS.--A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the



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requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

- (a) The right of dismissal or termination of any health care provider delivering services under the contract is retained by the governmental contractor.
  - (b) The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
  - (c) Adverse incidents and information on treatment outcomes must be reported by any health care provider to the governmental contractor if the incidents and information pertain to a patient treated under the contract. The health care provider shall submit the reports required by s. 395.0197. If an incident involves a professional licensed by the Department of Health or a facility licensed by the Agency for Health Care Administration, the governmental contractor shall submit such incident reports to the appropriate department or agency, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities under this paragraph are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
  - (d) Patient selection and initial referral must be made solely by the governmental contractor, and the provider must accept all referred patients. However, the number of patients that must be accepted may be limited by the contract, and patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, or chapter 395.
  - (e) If emergency care is required, the patient need not be referred before receiving treatment, but must be referred within 48 hours after treatment is commenced or within 48 hours after the patient has the mental capacity to consent to treatment, whichever occurs later.
  - (f) Patient care, including any followup or hospital care, is subject to approval by the governmental contractor.
  - (g) The provider is subject to supervision and regular inspection by the governmental contractor.
- A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

(5) NOTICE OF AGENCY RELATIONSHIP.--The governmental contractor must



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provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28. With respect to any federally funded community health center, the notice requirements may be met by posting in a place conspicuous to all persons a notice that the federally funded community health center is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider or of any employee or agent thereof acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28.

(6) QUALITY ASSURANCE PROGRAM REQUIRED.--The governmental contractor shall establish a quality assurance program to monitor services delivered under any contract between an agency and a health care provider pursuant to this section.

(7) RISK MANAGEMENT REPORT.--The Division of Risk Management of the Department of Financial Services shall annually compile a report of all claims statistics for all entities participating in the risk management program administered by the division, which shall include the number and total of all claims pending and paid, and defense and handling costs associated with all claims brought against contract providers under this section. This report shall be forwarded to the department and included in the annual report submitted to the Legislature pursuant to this section.

(8) REPORT TO THE LEGISLATURE.--Annually, the department shall report to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders and relevant substantive committee chairpersons of both houses, summarizing the efficacy of access and treatment outcomes with respect to providing health care services for low-income persons pursuant to this section.

(9) MALPRACTICE LITIGATION COSTS.--Governmental contractors other than the department are responsible for their own costs and attorney's fees for malpractice litigation arising out of health care services delivered pursuant to this section.

(10) RULES.--The department shall adopt rules to administer this section in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. The rules may include services to be provided and authorized procedures. Notwithstanding the requirements of paragraph (4)(d), the department shall adopt rules that specify required methods for determination and approval of patient eligibility and referral and the contractual conditions under which a health care provider may perform the patient eligibility and referral process on behalf of the department. These rules shall include, but not be limited to, the following requirements:

(a) The provider must accept all patients referred by the department. However, the



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number of patients that must be accepted may be limited by the contract.

(b) The provider shall comply with departmental rules regarding the determination and approval of patient eligibility and referral.

(c) The provider shall complete training conducted by the department regarding compliance with the approved methods for determination and approval of patient eligibility and referral.

(d) The department shall retain review and oversight authority of the patient eligibility and referral determination.

(11) APPLICABILITY.--This section applies to incidents occurring on or after April 17, 1992. This section does not apply to any health care contract entered into by the Department of Corrections which is subject to s. 768.28(10)(a). Nothing in this section in any way reduces or limits the rights of the state or any of its agencies or subdivisions to any benefit currently provided under s. 768.28.

**MODEL TYPE: State-Purchased Liability Insurance**

**WASHINGTON STATE**

**Washington 43.70.460. Retired primary and specialty care provider liability malpractice insurance—Program Authorized**

(1) The department may establish a program to purchase and maintain liability malpractice insurance for retired primary and specialty care providers who provide health care services to low-income patients. The following conditions apply to the program:

(a) Health care services shall be provided at clinics serving low-income patients that are public or private taxexempt corporations or other established practice settings as defined by the department;

(b) Health care services provided at the clinics shall be offered to low-income patients based on their ability to pay;

(c) Retired health care providers providing health care services shall not receive compensation for their services; and

(d) The department shall contract only with a liability insurer authorized to offer liability malpractice insurance in the state.

(e) Specialists in this program will be limited to those whose malpractice insurance premiums are comparable to primary care providers.

(2) This section and RCW 43.70.470 shall not be interpreted to require a liability insurer to provide coverage to a health care provider should the insurer determine that coverage should not be offered to a health care provider because of past claims experience or for other appropriate reasons.

(3) The state and its employees who operate the program shall be immune from any civil or criminal action involving claims against clinics or health care providers that provided health care services under this section and RCW 43.70.470. This protection of immunity shall not extend to any clinic or health care provider participating in the program.

(4) The department may monitor the claims experience of retired health care providers covered by liability insurers contracting with the department.

(5) The department may provide liability insurance under chapter 113, Laws of 1992 only to the extent funds are provided for this purpose by the legislature. If there are insufficient funds to support all applications for liability insurance coverage, priority shall be given to those retired health care providers working at clinics operated by



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public or private tax-exempt corporations rather than clinics operated by for-profit corporations.

### **Washington RCW 4.24.300**

#### **Immunity from liability for certain types of medical care.**

(1) Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this subsection.

(2) Any licensed health care provider regulated by a disciplining authority under RCW 18.130.040 in the state of Washington who, without compensation or the expectation of compensation, provides health care services at a community health care setting is not liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(3) For purposes of subsection (2) of this section, "community health care setting" means an entity that provides health care services and:

(a) Is a clinic operated by a public entity or private tax exempt corporation, except clinic that is owned, operated, or controlled by a hospital licensed under chapter 70.41 RCW unless the hospital-based clinic either:

(i) Maintains and holds itself out to the public as having established hours on a regular basis for providing free health care services to members of the public to the extent that care is provided without compensation or expectation of compensation during those established hours; or

(ii) Is participating, through a written agreement, in a community-based program to provide access to health care services for uninsured persons, to the extent that:

(A) Care is provided without compensation or expectation of compensation to individuals who have been referred for care through that community-based program; and

(B) The health care provider's participation in the community-based program is conditioned upon his or her agreement to provide health services without expectation of compensation;

(b) Is a for-profit corporation that maintains and holds itself out to the public as having established hours on a regular basis for providing free health care services to members of

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the public to the extent that care is provided without compensation or expectation of compensation during those established hours; or

(c) Is a for-profit corporation that is participating, through a written agreement, in a community-based program to provide access to health care services for uninsured persons, to the extent that:

(i) Care is provided without compensation or expectation of compensation to individuals who have been referred for care through that community-based program; and

(ii) The health care provider's participation in the community-based program is conditioned upon his or her agreement to provide health services without expectation of compensation.