
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1102 Session of
2015

INTRODUCED BY DINNIMAN, COSTA, BREWSTER, VULAKOVICH AND HAYWOOD,
JANUARY 28, 2016

REFERRED TO PUBLIC HEALTH AND WELFARE, JANUARY 28, 2016

AN ACT

1 Providing immunity for providers of free or low-cost health
2 care.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Access to
7 Health Care Act.

8 Section 2. Legislative findings.

9 The General Assembly finds and declares as follows:

10 (1) A significant proportion of the residents of this
11 Commonwealth who are uninsured or Medicaid recipients are
12 unable to access needed health care because health care
13 providers fear the increased risk of medical negligence
14 liability.

15 (2) It is the intent of the General Assembly:

16 (i) That access to medical care for indigent
17 residents be improved by providing governmental
18 protection to health care providers who offer free or low

1 cost quality medical services to underserved populations
2 of the Commonwealth.

3 (ii) To ensure that health care professionals who
4 contract to provide such services as agents of the State
5 are provided governmental immunity.

6 Section 3. Definitions.

7 The following words and phrases when used in this act shall
8 have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Contract." An agreement executed in compliance with this
11 act between a health care provider and a governmental contractor
12 that allows a health care provider, or any employee, agent or
13 volunteer acting on behalf of the health care provider, to
14 deliver health care services to low-income patients as an agent
15 of the governmental contractor. The contract must be for
16 volunteer, uncompensated services.

17 "Department." The Department of Health of the Commonwealth.

18 "Free or charitable clinic." A health care facility,
19 institution or other organization operated by a nonprofit
20 private entity that meets all of the following:

21 (1) whose primary mission is to provide health care
22 services to low-income patients free of charge or for a
23 minimal donation. For purposes of this definition, a free or
24 charitable clinic may:

25 (i) receive a legislative appropriation, a grant
26 through a legislative appropriation or a grant from a
27 governmental entity or nonprofit corporation to support
28 the delivery of contracted services by volunteer health
29 care providers, including the employment of health care
30 providers to supplement, coordinate or support the

1 delivery of services by volunteer health care providers.
2 Such an appropriation or grant does not constitute
3 compensation under this act from the governmental
4 contractor for services provided under the contract, nor
5 does receipt and use of the appropriation or grant
6 constitute the acceptance of compensation under this act
7 for the specific services provided to the low-income
8 patients covered by the contract; and

9 (ii) provide health care services for a nominal fee
10 or a fee based on a sliding scale of rates if the clinic
11 provides essential health care services without regard to
12 the patient's ability to pay, in which case the clinic
13 may accept such compensation from a public or private
14 third-party payor.

15 (2) whose volunteer health care professionals provide a
16 significant portion of the health care services;

17 (3) has an independent governing board composed of a
18 broad representation from the community;

19 (4) has obtained or has applied for a tax exemption
20 under section 501(c)(3) of the Internal Revenue Code of 1986
21 (68A Stat. 3, 26 U.S.C. § 501(c)(3)), or is a program
22 component of a 501(c)(3) nonprofit organization that provides
23 other services;

24 (5) is committed to minimizing barriers to care and is
25 providing quality care; and

26 (6) has a varied and significant base of community
27 financial support and a proven ability to develop financial
28 and in-kind resources.

29 "Governmental contractor." The department, county or
30 municipal health departments, a special taxing district with

1 health care responsibilities or a hospital owned and operated by
2 a governmental entity.

3 "Health care provider" or "provider." The term includes:

4 (1) Any of the following:

5 (i) A health care facility as defined under section
6 802.1 of the act of Jul. 19, 1979 (P.L.130, No.48), known
7 as the Health Care Facilities Act.

8 (ii) A physician or physician assistant as defined
9 under section 2 of the act of December 20, 1985 (P.L.457,
10 No.112), known as the Medical Practice Act of 1985.

11 (iii) A chiropractor licensed under the act of
12 December 16, 1986 (P.L.1646, No.188), known as the
13 Chiropractic Practice Act.

14 (iv) A podiatrist licensed under the act of March 2,
15 1956 (1955 P.L.1206, No.375), known as the Podiatry
16 Practice Act.

17 (v) A professional nurse licensed under the act of
18 May 22, 1951 (P.L.317, No.69), known as The Professional
19 Nursing Law, or a nurse, practical nurse or licensed
20 practical nurse licensed under the act of March 2, 1956
21 (P.L.1211, No.376), known as the Practical Nurse Law, or
22 any facility which employs such nurses to supply all or
23 part of the care delivered under this section.

24 (vi) A midwife or nurse-midwife as defined under
25 section 2 of the act of December 20, 1985 (P.L.457,
26 No.112), known as the Medical Practice Act of 1985.

27 (vii) A health maintenance organization holding a
28 certificate of authority under the act of December 29,
29 1972 (P.L.1701, No.364), known as the Health Maintenance
30 Organization Act.

1 (viii) An association of licensed health care
2 professionals or a corporate medical group.

3 (ix) Any other health care facility the primary
4 purpose of which is to deliver human medical diagnostic
5 services or which delivers nonsurgical human medical
6 treatment, and which includes an office maintained by a
7 provider.

8 (x) A dentist or dental hygienist licensed under the
9 act of May 1, 1933 (P.L.216, No.76), known as The Dental
10 Law.

11 (xi) A free or charitable clinic.

12 (xii) Any other licensed health care professional,
13 health care practitioner as defined in section 103 of the
14 act of July 19, 1979 (P.L.130, No.48), known as the
15 Health Care Facilities Act, provider or health care
16 facility under contract with a governmental contractor,
17 including a student enrolled in a program at an
18 accredited medical college as defined under section 2 of
19 the act of December 20, 1985 (P.L.457, No.112), known as
20 the Medical Practice Act of 1985, that prepares the
21 student for licensure as any one of the professionals
22 listed in subparagraphs (ii), (iii), (iv), (v) and (vi)
23 of this definition.

24 (2) Any nonprofit corporation qualified as exempt from
25 federal income taxation under section 501(a) of the Internal
26 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(a)),
27 and described in section 501(c) of the Internal Revenue Code
28 of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)), which
29 delivers health care services provided by licensed
30 professionals listed in paragraph (1), any federally funded

1 community health center and any volunteer corporation or
2 volunteer licensed health care provider that delivers health
3 care services.

4 "Low-income." Includes any person who is:

5 (1) eligible for Medicaid under the laws of this
6 Commonwealth;

7 (2) without health insurance and whose family household
8 income is no greater than 300% of the Federal poverty income
9 guidelines; or

10 (3) a client of the department who voluntarily chooses
11 to participate in a program offered or approved by the
12 department and meets the program eligibility guidelines of
13 the department.

14 "Patient." A natural person receiving health care in or from
15 a health care provider.

16 "Volunteer, uncompensated services." Services for which the
17 following conditions are met:

18 (1) The health care provider receives no compensation
19 from the governmental contractor for any services provided
20 under the contract.

21 (2) In the case of a health care provider that is not a
22 free or charitable clinic as defined under this act, the
23 health care provider does not bill or accept compensation
24 from the patient, or a public or private third party payor,
25 of the specific services provided to the low-income patient
26 covered by the contract, except as provided in section 4(b)
27 (5).

28 (3) In the case of a free or charitable clinic:

29 (i) the clinic provides health care services to low-
30 income patients free of charge or for a minimal donation;

1 or

2 (ii) the clinic provides essential health care
3 services without regard to the patient's ability to pay
4 for a nominal fee or a fee based on a sliding scale of
5 rates, in which case the clinic may accept such
6 compensation from a public or private third party payor.

7 Section 4. Governmental immunity under contract.

8 (a) Governmental immunity.--The following shall apply:

9 (1) The following shall be considered a local agency or
10 employee of a local agency for purposes of 42 Pa.C.S. Ch. 85
11 Subch. C (relating to actions against local parties) while
12 acting within the scope of duties under the contract if the
13 contract complies with the requirements of this act and
14 regardless of whether the individual treated is later found
15 to be ineligible:

16 (i) a health care provider that executes a contract
17 with a governmental contractor to deliver health care
18 services as an agent of the governmental contractor; or

19 (ii) any employee, agent or volunteer acting on
20 behalf of a health care provider under subparagraph (i).

21 (2) A health care provider, or any employee, agent or
22 volunteer acting on behalf of the health care provider, shall
23 continue to be considered an agent for purposes of 42 Pa.C.S.
24 Ch. 85 Subch. C for 30 days after a determination of
25 ineligibility to allow for treatment until the individual
26 transitions to another health care provider.

27 (3) A health care provider under contract with the
28 State, or any employee, agent or volunteer acting on behalf
29 of a health care provider, may not be named as a defendant in
30 any action arising out of medical care or treatment under

1 contracts entered into under this section.

2 (b) Contract requirements.--A contract entered into under
3 this section must provide that:

4 (1) The governmental contractor retains the right to
5 dismiss or terminate any health care provider delivering
6 services under a contract.

7 (2) The governmental contractor has access to the
8 patient records of any health care provider delivering
9 services under a contract.

10 (3) The following reports are filed:

11 (i) adverse incidents and information on treatment
12 outcomes must be reported by any health care provider to
13 the governmental contractor if the incidents and
14 information pertain to a patient treated under the
15 contract.

16 (ii) a health care provider shall submit the reports
17 required under Chapter 3 of the act of Mar. 20, 2002
18 (P.L.154, No.13), known as the Medical Care Availability
19 and Reduction of Error (Mcare) Act.

20 (iv) if an incident involves a professional or
21 facility licensed by the Department of State or the
22 Department of Health, the governmental contractor shall
23 submit an incident report to the appropriate professional
24 licensure department or board, which shall review each
25 incident and determine whether it involves conduct by the
26 licensee that is subject to disciplinary action.

27 (4) All patient medical records and any identifying
28 information contained in adverse incident reports and
29 treatment outcomes which are obtained by governmental
30 entities under this paragraph are confidential and not

1 subject to disclosure under the act of February 14, 2008
2 (P.L.6, No.3), known as the Right-to-Know Law.

3 (5) If emergency care is required, the patient need not
4 be referred before receiving treatment, but must be referred
5 within 48 hours after treatment is commenced or within 48
6 hours after the patient has the mental capacity to consent to
7 treatment, whichever occurs later.

8 (6) A dentist or dental hygienist licensed under the act
9 of May 1, 1933 (P.L.216, No.76), known as The Dental Law, as
10 an agent of the governmental contractor for purposes of 42
11 Pa.C.S. Ch. 85 Subch. C (relating to actions against local
12 parties), may allow a patient, or a parent or guardian of the
13 patient, to voluntarily contribute a monetary amount to cover
14 costs of dental laboratory work related to the services
15 provided to the patient within the scope of duties under the
16 contract. This contribution may not exceed the actual cost of
17 the dental laboratory charges.

18 (c) A governmental contractor that is also a health care
19 provider is not required to enter into a contract under this
20 section with respect to the health care services delivered by
21 its employees.

22 Section 5. Notice of agency relationship.

23 (a) Initial notice.--The governmental contractor must
24 provide written notice to each patient, or the patient's legal
25 representative, that the provider is an agent of the
26 governmental contractor and that the exclusive remedy for injury
27 or damages suffered as the result of any act or omission of the
28 provider or of any employee, agent or volunteer acting on the
29 provider's behalf, if the individual acted within the scope of
30 duties pursuant to the contract is by commencement of an action

1 pursuant to 42 Pa.C.S. Ch. 85 Subch. C (relating to actions
2 against local parties).

3 (b) Receipt of notice.--Receipt of the notice under
4 subsection (a) must be acknowledged by the patient or the
5 patient's legal representative in writing at the initial visit.

6 (c) Posting notice.--Following the delivery of notice under
7 subsection (a), with respect to any federally funded community
8 health center, the notice requirement may be met by the
9 conspicuous posting of a notice that the health care provider is
10 an agent of a governmental contractor and that the exclusive
11 remedy for injury or damage suffered as the result of any act or
12 omission of the provider or of any employee, agent or volunteer
13 acting on the provider's behalf, if the individual acted within
14 the scope of duties pursuant to the contract, is by commencement
15 of an action pursuant to 42 Pa.C.S. Ch. 85 Subch. C (relating to
16 actions against local parties).

17 Section 6. Quality assurance program required.

18 The governmental contractor shall establish a quality
19 assurance program to monitor services delivered under any
20 contract between a governmental contractor and a health care
21 provider under this act.

22 Section 7. Reporting requirements.

23 (a) Report to General Assembly.--Annually, the department
24 shall submit a report in writing summarizing the efficacy of
25 access and treatment outcomes with respect to providing health
26 care services for low-income persons pursuant to this act to:

27 (1) the standing committee on Public Health and Welfare
28 of the Senate; and

29 (2) the standing committee on Health and Human Services
30 of the House of Representatives.

1 (b) The department shall publish a list of all providers
2 participating in this program and the number of volunteer
3 service hours and patient visits each provided on the
4 department's publicly accessible Internet website. A provider
5 may request in writing to the department to be excluded from the
6 online listing.

7 Section 8. Rules and regulations.--

8 (a) Department responsibilities.--The department shall adopt
9 reasonable rules and regulations to administer this act in a
10 manner consistent with its purpose to provide and facilitate
11 access to appropriate, safe and cost-effective health care
12 services and to maintain health care quality.

13 (b) Additional rules for free or charitable clinics.--The
14 department shall not adopt rules and regulations under this act
15 that impose additional requirements or restrictions on free or
16 charitable clinics than those imposed on free clinics or free
17 clinic health professionals deemed employees of the Public
18 Health Service under section 224 of the Public Health Service
19 Act (58 Stat. 682, 42 U.S.C. 233).

20 Section 9. Effective date.

21 This act shall take effect in 60 days.