

SENATE, No. 239

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

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District 33 (Hudson)

Co-Sponsored by:

Senators Oroho, Beck, Allen, A.R.Bucco, Doherty and Pennacchio

SYNOPSIS

“Volunteer Medical Professional Health Care Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning immunity for civil liability for certain volunteer
2 medical professionals and supplementing Title 2A of the New
3 Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the “Volunteer
9 Medical Professional Health Care Act.”

10

11 2. The Legislature finds and declares that:

12 a. There are over one million residents in the State of New
13 Jersey without health insurance;

14 b. The State of New Jersey provides over \$700 million in
15 charity care per year;

16 c. Hospital emergency rooms are treating many non-urgent
17 medical conditions because patients perceive that they have no
18 other choices;

19 d. Medicaid expenditures in the State of New Jersey now
20 exceed \$10 billion per year;

21 e. Medicaid mandates are placing additional financial burdens
22 on hospitals, physicians, and dentists, directly impacting the quality
23 and delivery of health care services;

24 f. There is an impending fiscal crisis with the proposed
25 expansion of Medicaid;

26 g. Federal law provides full immunity to physicians and other
27 health care professionals while they volunteer in nonprofit free
28 clinics that treat the poor and charge no fee; and

29 h. Expanding physicians’ civil immunity from tort claims in
30 exchange for their ongoing commitments to charitable practice in
31 free clinics can improve low-income patients’ access to a range of
32 medical options while reducing Medicaid utilization and
33 expenditures.

34

35 3. As used in this act:

36 “Department” means the Department of Health.

37 “Free clinic” means a health care facility licensed by the
38 Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1 et
39 seq.) and operated by a nonprofit private entity, and defined in
40 section 224 of the "Public Health Service Act," (42 U.S.C. s.233)
41 and meeting the following criteria:

42 (1) The facility does not accept reimbursement for health care
43 services from any third-party payer, including reimbursement under
44 any insurance policy or health benefits plan, or under any federal or
45 State health benefits program, but the facility may accept voluntary
46 donations for the provision of services; and

1 (2) The facility either does not impose charges on the patients,
2 or imposes a charge according to the patient's ability to pay the
3 charge.

4 "Free clinic offsite program" means a program or event operated
5 by a free clinic through which qualifying health services are
6 provided to patients at a site other than the free clinic, which may
7 include a volunteer medical professional's customary practice
8 location or another location, as appropriate.

9 "Qualifying health services" means qualifying health services
10 pursuant to section 224 of the "Public Health Service Act," (42
11 U.S.C. s.233).

12 "Volunteer medical professional" means a licensed physician or
13 dentist who is certified as a volunteer medical professional pursuant
14 to this act.

15

16 4. a. The department shall certify a physician or dentist as a
17 volunteer medical professional pursuant to this act if, at the time of
18 application for certification:

19 (1) the physician or dentist is licensed pursuant to Title 45 of the
20 Revised Statutes to practice a health care profession that is regulated
21 by the State Board of Medical Examiners or the New Jersey State
22 Board of Dentistry;

23 (2) the physician or dentist provides documentation to the
24 department certifying that the physician or dentist is deemed to be
25 an employee of the federal Public Health Service as a free clinic
26 health professional providing qualifying health services pursuant to
27 section 224 of the "Public Health Service Act," (42 U.S.C. s.233);
28 and

29 (3) the physician or dentist and the medical director of a free
30 clinic provide documentation to the department certifying that the
31 physician or dentist, prior to the application date and within the
32 calendar quarter of application, has performed at least four hours of
33 qualifying health services at the free clinic or free clinic offsite
34 program per week for four consecutive weeks.

35 b. To maintain certification as a volunteer medical professional
36 pursuant to this act, a volunteer medical professional shall:

37 (1) continue to meet the criteria specified in paragraphs (1) and
38 (2) of subsection a. of this section; and

39 (2) provide documentation to the department, on a quarterly
40 basis, certifying that the volunteer medical professional has
41 provided no fewer than 48 hours per calendar quarter of qualifying
42 health services at a free clinic or a free clinic offsite program. This
43 documentation shall include verification by the medical director of
44 a free clinic of the qualifying health services provided.

45 c. the department shall immediately terminate the certification
46 of a physician or dentist as a volunteer medical professional
47 pursuant to this act if the physician or dentist fails to meet the
48 criteria specified in subsection b. of this section.

1 5. a. A physician or dentist who is certified by the department
2 as a volunteer medical professional pursuant to this act shall be
3 immune from civil liability for any personal injury or wrongful
4 death to a patient that is a result of any act or omission in the course
5 of providing care or treatment if the care or treatment was
6 reasonably provided in good faith and the volunteer medical
7 professional was acting within the scope of his practice, except that
8 the immunity granted under this section does not extend to an act or
9 omission that was the result of gross negligence or willful or
10 wanton misconduct.

11 b. The exclusive remedy for injury or damage suffered as the
12 result of any act or omission of the volunteer medical professional
13 is by commencement of an action against the State in a court of
14 competent jurisdiction.

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16 6. The Commissioner of Health shall adopt rules and
17 regulations, pursuant to the "Administrative Procedure Act,"
18 P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the
19 purposes of this act.

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21 7. This act shall take effect on the first day of the seventh
22 month next following the date of enactment, but the Commissioner
23 of Health may take such anticipatory administrative action in
24 advance thereof as shall be necessary for the implementation of this
25 act.

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STATEMENT

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30 This bill, which is designated as the "Volunteer Medical
31 Professional Health Care Act," provides that a physician or dentist
32 who is certified as a volunteer medical professional by the
33 Department of Health (DOH) is immune from civil liability in
34 accordance with its provisions.

35 In order to be certified as a volunteer medical professional and
36 receive civil immunity under the bill, an individual must, at the time
37 of application for certification:

- 38 • be a physician or dentist licensed to practice in New Jersey;
39 • be deemed to be an employee of the federal Public Health
40 Service as a free clinic health professional providing qualifying
41 health services pursuant to section 224 of the "Public Health
42 Service Act," (42 U.S.C. s.233); and
43 • have provided at least four hours of qualifying health services at
44 a free clinic or a free clinic offsite program each week for four
45 consecutive weeks within the calendar quarter of application.

46 In order to maintain certification as a volunteer medical
47 professional, an individual must:

- 1 • continue to meet the State licensure requirement;
2 • continue to be deemed as an employee of the federal Public
3 Health Service as a free clinic health professional; and
4 • provide a total of at least 48 hours per calendar quarter of
5 qualifying health services (equivalent to approximately four
6 hours per week) at a free clinic or a free clinic offsite program.

7 Physicians and dentists seeking and maintaining certification,
8 and medical directors of free clinics, as applicable, are required to
9 provide DOH with documentation certifying that the above criteria
10 have been met.

11 The bill provides that a volunteer medical professional certified
12 by DOH is immune from civil liability for any personal injury or
13 wrongful death that is a result of any act or omission in the course
14 of providing care or treatment if the care or treatment was
15 reasonably provided in good faith and the volunteer medical
16 professional was acting within the scope of his practice, except that
17 the immunity does not extend to an act or omission that was the
18 result of gross negligence or willful or wanton misconduct. The
19 exclusive remedy for injury or damage suffered as the result of any
20 act or omission of the volunteer medical professional is by
21 commencement of an action against the State in a court of
22 competent jurisdiction.

23 The bill takes effect on the first day of the seventh month next
24 following the date of enactment, but the Commissioner of Health is
25 authorized to take prior administrative action as necessary for its
26 implementation.