

104TH CONGRESS
1ST SESSION

H. R. 1747

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 1995

Received

AN ACT

To amend the Public Health Service Act to permanently extend and clarify malpractice coverage for health centers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCES.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Federally Supported Health Centers Assistance Act of
4 1995”.

5 (b) REFERENCES.—Except as otherwise expressly
6 provided, whenever in this Act an amendment or repeal
7 is expressed in terms of an amendment to, or repeal of,
8 a section or other provision, the reference shall be consid-
9 ered to be made to a section or other provision of the Pub-
10 lic Health Service Act.

11 **SEC. 2. PERMANENT EXTENSION OF PROGRAM.**

12 (a) IN GENERAL.—Section 224(g)(3) (42 U.S.C.
13 233(g)(3)) is amended by striking the last sentence.

14 (b) CONFORMING AMENDMENTS.—Section 224(k)
15 (42 U.S.C. 233(k)) is amended—

16 (1) in paragraph (1)(A)—

17 (A) by striking “For each of the fiscal
18 years 1993, 1994, and 1995” and inserting
19 “For each fiscal year”; and

20 (B) by striking “(except” and all that fol-
21 lows through “thereafter)”; and

22 (2) in paragraph (2), by striking “for each of
23 the fiscal years 1993, 1994, and 1995” and insert-
24 ing “for each fiscal year”.

25 **SEC. 3. CLARIFICATION OF COVERAGE.**

26 Section 224 (42 U.S.C. 233) is amended—

1 (1) in subsection (g)(1), by striking “an entity
 2 described in paragraph (4)” in the first sentence and
 3 all that follows through “contractor” in the second
 4 sentence and inserting the following: “an entity de-
 5 scribed in paragraph (4), and any officer, governing
 6 board member, or employee of such an entity, and
 7 any contractor of such an entity who is a physician
 8 or other licensed or certified health care practitioner
 9 (subject to paragraph (5)), shall be deemed to be an
 10 employee of the Public Health Service for a calendar
 11 year that begins during a fiscal year for which a
 12 transfer was made under subsection (k)(3) (subject
 13 to paragraph (3)). The remedy against the United
 14 States for an entity described in paragraph (4) and
 15 any officer, governing board member, employee, or
 16 contractor”; and

17 (2) in subsection (k)(3), by inserting “govern-
 18 ing board member,” after “officer,”.

19 **SEC. 4. COVERAGE FOR SERVICES FURNISHED TO INDIVID-**
 20 **UALS OTHER THAN CENTER PATIENTS.**

21 Section 224(g)(1) (42 U.S.C. 233(g)) is amended—

22 (1) by redesignating paragraph (1) as para-
 23 graph (1)(A); and

24 (2) by adding at the end thereof the following:

1 “(B) The deeming of any entity or officer, governing
2 board member, employee, or contractor of the entity to
3 be an employee of the Public Health Service for purposes
4 of this section shall apply with respect to services pro-
5 vided—

6 “(i) to all patients of the entity, and

7 “(ii) subject to subparagraph (C), to individuals
8 who are not patients of the entity.

9 “(C) Subparagraph (B)(ii) applies to services pro-
10 vided to individuals who are not patients of an entity if
11 the Secretary determines, after reviewing an application
12 submitted under subparagraph (D), that the provision of
13 the services to such individuals—

14 “(i) benefits patients of the entity and general
15 populations that could be served by the entity
16 through community-wide intervention efforts within
17 the communities served by such entity;

18 “(ii) facilitates the provision of services to pa-
19 tients of the entity; or

20 “(iii) are otherwise required under an employ-
21 ment contract (or similar arrangement) between the
22 entity and an officer, governing board member, em-
23 ployee, or contractor of the entity.”.

1 **SEC. 5. APPLICATION PROCESS.**

2 (a) APPLICATION REQUIREMENT.—Section 224(g)(1)
3 (42 U.S.C. 233(g)(1)) (as amended by section 4) is fur-
4 ther amended—

5 (1) in subparagraph (A), by inserting after
6 “For purposes of this section” the following: “and
7 subject to the approval by the Secretary of an appli-
8 cation under subparagraph (D)”;

9 (2) by adding at the end thereof the following:
10 “(D) The Secretary may not under subparagraph (A)
11 deem an entity or an officer, governing board member, em-
12 ployee, or contractor of the entity to be an employee of
13 the Public Health Service for purposes of this section, and
14 may not apply such deeming to services described in sub-
15 paragraph (B)(ii), unless the entity has submitted an ap-
16 plication for such deeming to the Secretary in such form
17 and such manner as the Secretary shall prescribe. The ap-
18 plication shall contain detailed information, along with
19 supporting documentation, to verify that the entity, and
20 the officer, governing board member, employee, or con-
21 tractor of the entity, as the case may be, meets the re-
22 quirements of subparagraphs (B) and (C) of this para-
23 graph and that the entity meets the requirements of para-
24 graphs (1) through (4) of subsection (h).

25 “(E) The Secretary shall make a determination of
26 whether an entity or an officer, governing board member,

1 employee, or contractor of the entity is deemed to be an
2 employee of the Public Health Service for purposes of this
3 section within 30 days after the receipt of an application
4 under subparagraph (D). The determination of the Sec-
5 retary that an entity or an officer, governing board mem-
6 ber, employee, or contractor of the entity is deemed to be
7 an employee of the Public Health Service for purposes of
8 this section shall apply for the period specified by the Sec-
9 retary under subparagraph (A).

10 “(F) Once the Secretary makes a determination that
11 an entity or an officer, governing board member, em-
12 ployee, or contractor of an entity is deemed to be an em-
13 ployee of the Public Health Service for purposes of this
14 section, the determination shall be final and binding upon
15 the Secretary and the Attorney General and other parties
16 to any civil action or proceeding. Except as provided in
17 subsection (i), the Secretary and the Attorney General
18 may not determine that the provision of services which are
19 the subject of such a determination are not covered under
20 this section.

21 “(G) In the case of an entity described in paragraph
22 (4) that has not submitted an application under subpara-
23 graph (D):

24 “(i) The Secretary may not consider the entity
25 in making estimates under subsection (k)(1).

1 “(ii) This section does not affect any authority
2 of the entity to purchase medical malpractice liability
3 insurance coverage with Federal funds provided
4 to the entity under section 329, 330, 340, or 340A.

5 “(H) In the case of an entity described in paragraph
6 (4) for which an application under subparagraph (D) is
7 in effect, the entity may, through notifying the Secretary
8 in writing, elect to terminate the applicability of this sub-
9 section to the entity. With respect to such election by the
10 entity:

11 “(i) The election is effective upon the expiration
12 of the 30-day period beginning on the date on which
13 the entity submits such notification.

14 “(ii) Upon taking effect, the election terminates
15 the applicability of this subsection to the entity and
16 each officer, governing board member, employee, and
17 contractor of the entity.

18 “(iii) Upon the effective date for the election,
19 clauses (i) and (ii) of subparagraph (G) apply to the
20 entity to the same extent and in the same manner
21 as such clauses apply to an entity that has not sub-
22 mitted an application under subparagraph (D).

23 “(iv) If after making the election the entity
24 submits an application under subparagraph (D), the
25 election does not preclude the Secretary from ap-

1 proving the application (and thereby restoring the
2 applicability of this subsection to the entity and each
3 officer, governing board member, employee, and con-
4 tractor of the entity, subject to the provisions of this
5 subsection and the subsequent provisions of this sec-
6 tion.”.

7 (b) APPROVAL PROCESS.—Section 224(h) (42 U.S.C.
8 233(h)) is amended—

9 (1) in the matter preceding paragraph (1), by
10 striking “Notwithstanding” and all that follows
11 through “entity—” and inserting the following:
12 “The Secretary may not approve an application
13 under subsection (g)(1)(D) unless the Secretary de-
14 termines that the entity—”; and

15 (2) by striking “has fully cooperated” in para-
16 graph (4) and inserting “will fully cooperate”.

17 (c) DELAYED APPLICABILITY FOR CURRENT PAR-
18 TICIPANTS.—If, on the day before the date of the enact-
19 ment of this Act, an entity was deemed to be an employee
20 of the Public Health Service for purposes of section 224(g)
21 of the Public Health Service Act, the condition under
22 paragraph (1)(D) of such section (as added by subsection
23 (a) of this section) that an application be approved with
24 respect to the entity does not apply until the expiration
25 of the 180-day period beginning on such date.

1 **SEC. 6. TIMELY RESPONSE TO FILING OF ACTION OR PRO-**
2 **CEEDING.**

3 Section 224 (42 U.S.C. 233) is amended by adding
4 at the end thereof the following subsection:

5 “(1)(1) If a civil action or proceeding is filed in a
6 State court against any entity described in subsection
7 (g)(4) or any officer, governing board member, employee,
8 or any contractor of such an entity for damages described
9 in subsection (a), the Attorney General, within 15 days
10 after being notified of such filing, shall make an appear-
11 ance in such court and advise such court as to whether
12 the Secretary has determined under subsections (g) and
13 (h), that such entity, officer, governing board member,
14 employee, or contractor of the entity is deemed to be an
15 employee of the Public Health Service for purposes of this
16 section with respect to the actions or omissions that are
17 the subject of such civil action or proceeding. Such advice
18 shall be deemed to satisfy the provisions of subsection (c)
19 that the Attorney General certify that an entity, officer,
20 governing board member, employee, or contractor of the
21 entity was acting within the scope of their employment or
22 responsibility.

23 “(2) If the Attorney General fails to appear in State
24 court within the time period prescribed under paragraph
25 (1), upon petition of any entity or officer, governing board
26 member, employee, or contractor of the entity named, the

1 civil action or proceeding shall be removed to the appro-
2 priate United States district court. The civil action or pro-
3 ceeding shall be stayed in such court until such court con-
4 ducts a hearing, and makes a determination, as to the ap-
5 propriate forum or procedure for the assertion of the claim
6 for damages described in subsection (a) and issues an
7 order consistent with such determination.”.

8 **SEC. 7. APPLICATION OF COVERAGE TO MANAGED CARE**
9 **PLANS.**

10 Section 224 (42 U.S.C. 223) (as amended by section
11 6) is amended by adding at the end thereof the following
12 subsection:

13 “(m)(1) An entity or officer, governing board mem-
14 ber, employee, or contractor of an entity described in sub-
15 section (g)(1) shall, for purposes of this section, be deemed
16 to be an employee of the Public Health Service with re-
17 spect to services provided to individuals who are enrollees
18 of a managed care plan if the entity contracts with such
19 managed care plan for the provision of services.

20 “(2) Each managed care plan which enters into a
21 contract with an entity described in subsection (g)(4) shall
22 deem the entity and any officer, governing board member,
23 employee, or contractor of the entity as meeting whatever
24 malpractice coverage requirements such plan may require
25 of contracting providers for a calendar year if such entity

1 or officer, governing board member, employee, or contrac-
 2 tor of the entity has been deemed to be an employee of
 3 the Public Health Service for purposes of this section for
 4 such calendar year. Any plan which is found by the Sec-
 5 retary on the record, after notice and an opportunity for
 6 a full and fair hearing, to have violated this subsection
 7 shall upon such finding cease, for a period to be deter-
 8 mined by the Secretary, to receive and to be eligible to
 9 receive any Federal funds under titles XVIII or XIX of
 10 the Social Security Act.

11 “(3) For purposes of this subsection, the term ‘man-
 12 aged care plan’ shall mean health maintenance organiza-
 13 tions and similar entities that contract at-risk with payors
 14 for the provision of health services or plan enrollees and
 15 which contract with providers (such as entities described
 16 in subsection (g)(4)) for the delivery of such services to
 17 plan enrollees.”.

18 **SEC. 8. COVERAGE FOR PART-TIME PROVIDERS UNDER**
 19 **CONTRACTS.**

20 Section 224(g)(5)(B) (42 U.S.C. 223(g)(5)(B)) is
 21 amended to read as follows:

22 “(B) in the case of an individual who normally
 23 performs an average of less than 32½ hours of serv-
 24 ices per week for the entity for the period of the con-
 25 tract, the individual is a licensed or certified pro-

1 vider of services in the fields of family practice, gen-
2 eral internal medicine, general pediatrics, or obstet-
3 rics and gynecology.”.

4 **SEC. 9. DUE PROCESS FOR LOSS OF COVERAGE.**

5 Section 224(i)(1) (42 U.S.C. 233(i)(1)) is amended
6 by striking “may determine, after notice and opportunity
7 for a hearing” and inserting “may on the record deter-
8 mine, after notice and opportunity for a full and fair hear-
9 ing”.

10 **SEC. 10. AMOUNT OF RESERVE FUND.**

11 Section 224(k)(2) (42 U.S.C. 223(k)(2)) is amended
12 by striking “\$30,000,000” and inserting “\$10,000,000”.

13 **SEC. 11. REPORT ON RISK EXPOSURE OF COVERED ENTI-**
14 **TIES.**

15 Section 224 (as amended by section 7) is amended
16 by adding at the end thereof the following subsection:

17 “(n)(1) Not later than one year after the date of the
18 enactment of the Federally Supported Health Centers As-
19 sistance Act of 1995, the Comptroller General of the Unit-
20 ed States shall submit to the Congress a report on the
21 following:

22 “(A) The medical malpractice liability claims
23 experience of entities that have been deemed to be
24 employees for purposes of this section.

25 “(B) The risk exposure of such entities.

1 “(C) The value of private sector risk-manage-
2 ment services, and the value of risk-management
3 services and procedures required as a condition of
4 receiving a grant under section 329, 330, 340, or
5 340A.

6 “(D) A comparison of the costs and the benefits
7 to taxpayers of maintaining medical malpractice li-
8 ability coverage for such entities pursuant to this
9 section, taking into account—

10 “(i) a comparison of the costs of premiums
11 paid by such entities for private medical mal-
12 practice liability insurance with the cost of cov-
13 erage pursuant to this section; and

14 “(ii) an analysis of whether the cost of pre-
15 miums for private medical malpractice liability
16 insurance coverage is consistent with the liabil-
17 ity claims experience of such entities.

18 “(2) The report under paragraph (1) shall include the
19 following:

20 “(A) A comparison of—

21 “(i) an estimate of the aggregate amounts
22 that such entities (together with the officers,
23 governing board members, employees, and con-
24 tractors of such entities who have been deemed
25 to be employees for purposes of this section)

1 would have directly or indirectly paid in pre-
2 miums to obtain medical malpractice liability
3 insurance coverage if this section were not in
4 effect; with

5 “(ii) the aggregate amounts by which the
6 grants received by such entities under this Act
7 were reduced pursuant to subsection (k)(2).

8 “(B) A comparison of—

9 “(i) an estimate of the amount of privately
10 offered such insurance that such entities (to-
11 gether with the officers, governing board mem-
12 bers, employees, and contractors of such enti-
13 ties who have been deemed to be employees for
14 purposes of this section) purchased during the
15 three-year period beginning on January 1,
16 1993; with

17 “(ii) an estimate of the amount of such in-
18 surance that such entities (together with the of-
19 ficers, governing board members, employees,
20 and contractors of such entities who have been
21 deemed to be employees for purposes of this
22 section) will purchase after the date of the en-
23 actment of the Federally Supported Health
24 Centers Assistance Act of 1995.

1 “(C) An estimate of the medical malpractice li-
2 ability loss history of such entities for the 10-year
3 period preceding October 1, 1996, including but not
4 limited to the following:

5 “(i) Claims that have been paid and that
6 are estimated to be paid, and legal expenses to
7 handle such claims that have been paid and
8 that are estimated to be paid, by the Federal
9 Government pursuant to deeming entities as
10 employees for purposes of this section.

11 “(ii) Claims that have been paid and that
12 are estimated to be paid, and legal expenses to
13 handle such claims that have been paid and
14 that are estimated to be paid, by private medi-
15 cal malpractice liability insurance.

16 “(D) An analysis of whether the cost of premiums
17 for private medical malpractice liability insurance
18 coverage is consistent with the liability claims experi-
19 ence of entities that have been deemed as employees
20 for purposes of this section.

21 “(3) In preparing the report under paragraph (1), the
22 Comptroller General of the United States shall consult

1 with public and private entities with expertise on the mat-
 2 ters with which the report is concerned.”.

Passed the House of Representatives December 12,
 1995.

Attest:

ROBIN H. CARLE,
Clerk.