

104TH CONGRESS
1ST SESSION

S. 1471

To make permanent the program of malpractice coverage for health centers under the Federal Tort Claims Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 1995

Mr. HATCH (for himself and Mr. KENNEDY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To make permanent the program of malpractice coverage for health centers under the Federal Tort Claims Act, 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,*

3 **SECTION. 1. SHORT TITLE; FINDINGS; REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Federal Tort Claims Act Malpractice Coverage for
6 Health Centers Extension Act of 1995”.

7 (b) **REFERENCE.**—Except as otherwise expressly pro-
8 vided, whenever in this Act an amendment or repeal is
9 expressed in terms of an amendment to, or repeal of, a
10 section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the Pub-
 2 lic Health Service Act.

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

4 (a) IN GENERAL.—Section 224(g) (42 U.S.C. 233
 5 (g)) is amended by striking the last sentence of paragraph
 6 (3).

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 224(k)(1)(A) (42 U.S.C.
 9 233(k)(1)(A)) is amended by striking “each of the
 10 fiscal years 1993, 1994, and 1995” and inserting
 11 “each fiscal year”.

12 (2) Section 224(k)(2) (42 U.S.C. 233(k)(2)) is
 13 amended by striking “each of the fiscal years 1993,
 14 1994, and 1995” and inserting “each fiscal year”.

15 **SEC. 3. CLARIFICATION OF COVERAGE.**

16 Section 224(g)(1) (42 U.S.C. 233(g)(1)) is amend-
 17 ed—

18 (1) in the first sentence, by striking “officer,
 19 employee, or contractor” and inserting “officer, gov-
 20 erning board member, or employee of such an entity,
 21 and any contractor”; and

22 (2) in the second sentence, by inserting after
 23 “officer,” the following “governing board member,”.

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

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

4 (1) by redesignating paragraph (1) as para-
 5 graph (1)(A); and

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

7 “(B) The deeming of any entity or officer, governing
 8 board member, employee, or contractor of the entity to
 9 be an employee of the Public Health Service under sub-
 10 paragraph (A) shall apply with respect to services pro-
 11 vided—

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

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

15 “(C) Subparagraph (B)(ii) applies to services pro-
 16 vided to individuals who are not patients of an entity if
 17 the Secretary determines, after reviewing an application
 18 submitted under subparagraph (D), that the provision of
 19 the services to such individuals—

20 “(i) benefits patients of the entity and general
 21 populations that could be served by the entity
 22 through community-wide intervention efforts within
 23 the communities served by such entity;

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

1 “(iii) are otherwise required under an employ-
 2 ment contract (or similar arrangement) between the
 3 entity and an officer, governing board member, em-
 4 ployee, or contractor of the entity.”.

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

6 (a) APPLICATION REQUIREMENT.—Section 224(g)(1)
 7 (42 U.S.C. 233(g)(1)) (as amended by section 4) is fur-
 8 ther amended—

9 (1) in subparagraph (A), by inserting “and sub-
 10 ject to the approval by the Secretary of an applica-
 11 tion under subparagraph (D)” after “For purposes
 12 of this section”; and

13 (2) by adding at the end thereof the following
 14 new subparagraphs:

15 “(D) The Secretary may not deem an entity or an
 16 officer, governing board member, employee, or contractor
 17 of the entity to be an employee of the Public Health Serv-
 18 ice under subparagraph (A), and may not apply such
 19 deeming to services described in subparagraph (B)(ii), un-
 20 less the entity has submitted an application for such deem-
 21 ing to the Secretary in such form and such manner as
 22 the Secretary shall prescribe. The application shall contain
 23 detailed information, along with supporting documenta-
 24 tion, to verify that the entity, and the officer, governing
 25 board member, employee, or contractor of the entity, as

1 the case may be, meets the requirements of subparagraphs
2 (B) and (C) of this paragraph and that the entity meets
3 the requirements of paragraphs (1) through (4) of sub-
4 section (h).

5 “(E) The Secretary shall make a determination of
6 whether an entity or an officer, governing board member,
7 employee, or contractor of the entity is deemed to be an
8 employee of the Public Health Service for purposes of this
9 section within 30 days after the receipt of an application
10 under subparagraph (D). The determination of the Sec-
11 retary that an entity or an officer, governing board mem-
12 ber, employee, or contractor of the entity is deemed to be
13 an employee of the Public Health Service for purposes of
14 this section shall apply for the period specified by the Sec-
15 retary under subparagraph (A).

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

1 the subject of such a determination are not covered under
 2 this section.”.

3 (b) APPROVAL PROCESS.—Section 224(h) (42 U.S.C.
 4 233(h)) is amended—

5 (1) by striking the matter preceding paragraph
 6 (1) and inserting the following: “The Secretary may
 7 not approve an application under subsection
 8 (g)(1)(D) unless the Secretary determines that the
 9 entity—”; and

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

12 **SEC. 6. TIMELY RESPONSE TO FILING OF ACTION OR PRO-**
 13 **CEEDING.**

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

16 “(l)(1) If a civil action or proceeding is filed in a
 17 State court against any entity described in subsection
 18 (g)(4) or any officer, governing board member, employee,
 19 or any contractor of such an entity for damages described
 20 in subsection (a), the Attorney General, within 15 days
 21 after being notified of such filing, shall make an appear-
 22 ance in such court and advise such court as to whether
 23 the Secretary has determined under subsections (g) and
 24 (h), that such entity, officer, governing board member,
 25 employee, or contractor of the entity is deemed to be an

1 employee of the Public Health Service for purposes of this
 2 section with respect to the actions or omissions that are
 3 the subject of such civil action or proceeding. Such advice
 4 shall be deemed to satisfy the provisions of subsection (c)
 5 that the Attorney General certify that an entity, officer,
 6 governing board member, employee, or contractor of the
 7 entity was acting within the scope of their employment or
 8 responsibility.

9 “(2) If the Attorney General fails to appear in a State
 10 court within the time period prescribed under paragraph
 11 (1), upon petition of any entity or officer, governing board
 12 member, employee, or contractor of the entity named, the
 13 civil action or proceeding shall be removed to the appro-
 14 priate United States district court. The civil action or pro-
 15 ceeding shall be stayed in such court until such court con-
 16 ducts a hearing, and makes a determination, as to the ap-
 17 propriate forum or procedure for the assertion of the claim
 18 for damages described in subsection (a) and issues an
 19 order consistent with such determination.”.

20 **SEC. 7. APPLICATION OF COVERAGE TO MANAGED CARE**
 21 **PLANS.**

22 Section 224 (42 U.S.C. 233) (as amended by section
 23 6) is further amended by adding at the end the following
 24 new subsection:

1 “(m)(1) An entity described in subsection (g)(4) or
2 an officer, governing board member, employee, or contrac-
3 tor of such an entity shall, for purposes of this section,
4 be deemed to be an employee of the Public Health Service
5 with respect to services provided to individuals who are
6 enrollees of a managed care plan if the entity contracts
7 with such managed care plan for the provision of services.

8 “(2) Each managed care plan which enters into a
9 contract with an entity described in subsection (g)(4) shall
10 deem the entity and any officer, governing board member,
11 employee, or contractor of the entity as meeting whatever
12 malpractice coverage requirements such plan may require
13 of contracting providers for a calendar year if such entity
14 or officer, governing board member, employee, or contrac-
15 tor of the entity has been deemed to be an employee of
16 the Public Health Service for purposes of this section for
17 such calendar year. Any plan which is found by the Sec-
18 retary on the record, after notice and an opportunity for
19 a full and fair hearing, to have violated this subsection
20 shall, upon such finding cease, for a period to be deter-
21 mined by the Secretary, to receive and to be eligible to
22 receive any Federal funds under title XVIII or XIX of
23 the Social Security Act.

24 “(3) For purposes of this subsection, the term ‘man-
25 aged care plan’ shall mean health maintenance organiza-

1 tions and similar entities that contract at-risk with payors
 2 for the provision of health services to plan enrollees and
 3 which contract with providers (such as entities described
 4 in subsection (g)(4)) for the delivery of such services to
 5 plan enrollees.”.

6 **SEC. 8. COVERAGE FOR PART-TIME PROVIDERS UNDER**
 7 **CONTRACTS.**

8 Subparagraph (B) of section 224(g)(5) (42 U.S.C.
 9 233 (g)(5)(B)) is amended to read as follows:

10 “(B) in the case of an individual who normally
 11 performs an average of less than 32½ hours of serv-
 12 ices per week for the entity for the period of the con-
 13 tract, the individual is a licensed or certified pro-
 14 vider of services in the fields of family practice, gen-
 15 eral internal medicine, general pediatrics, or obstet-
 16 rics and gynecology.”.

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

18 Section 224(i)(1) (42 U.S.C. 233(i)(1)) is amended
 19 by striking “may determine, after notice and opportunity
 20 for a hearing” and inserting “may on the record deter-
 21 mine, after notice and opportunity for a full and fair hear-
 22 ing”.

1 **SEC. 10. REPORT ON RISK EXPOSURE OF COVERED ENTI-**
2 **TIES.**

3 (a) IN GENERAL.—Not later than December 31,
4 1997, the General Accounting Office shall submit to the
5 Congress a report on the medical malpractice liability
6 claims experience of entities that have been deemed to be
7 employees for purposes of section 224 of the Public Health
8 Service Act and the risk exposure associated with such en-
9 tities.

10 (b) CONTENTS OF REPORT.—The report required
11 under subsection (a) shall include an analysis by the Gen-
12 eral Accounting Office comparing—

13 (1) the estimate of the General Accounting Of-
14 fice of the aggregate amounts that entities described
15 in subsection (a) (together with the officers, govern-
16 ing board members, employees, and contractors of
17 such entities who have been deemed to be employees
18 for purposes of section 224 of the Public Health
19 Service Act) would have paid to obtain medical mal-
20 practice liability insurance coverage if such section
21 224 were not in effect; with

22 (2) the aggregate amounts by which the grants
23 received by such entities under such section 224
24 were reduced pursuant to subsection (k)(2) of such
25 section 224.

1 (c) CONSULTATION.—In preparing the report under
2 subsection (a), the General Accounting Office shall consult
3 with public and private entities with expertise on the mat-
4 ters with which the report is concerned.

5 **SEC. 11. AMOUNT OF RESERVE FUND.**

6 Section 224(k)(2) (42 U.S.C. 233(k)(2)) is amended
7 by striking “\$30,000,000” and inserting “\$10,000,000”.

○