

Public Law 102-501
102d Congress

An Act

Oct. 24, 1992
[H.R. 6183]

To amend the Public Health Service Act to provide protections from legal liability for certain health care professionals providing services pursuant to such Act.

Federally
Supported
Health Centers
Assistance Act
of 1992.
42 USC 201 note.*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,***SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federally Supported Health Centers Assistance Act of 1992".

SEC. 2. LIABILITY PROTECTIONS FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) IN GENERAL.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding at the end the following new subsection:

"(g)(1) For purposes of this section, an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is a physician or other licensed or certified health care practitioner shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer of the full amount estimated under subsection (k)(1)(A) was made under subsection (k)(3) (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a).

"(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

"(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993. This subsection shall not apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1996.

"(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under any of the following grant programs:

"(A) Section 329 (relating to grants for migrant health centers).

"(B) Section 330 (relating to grants for community health centers).

"(C) Section 340 (relating to grants for health services for the homeless).

"(D) Section 340A (relating to grants for health services for residents of public housing).

"(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if—

"(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

"(B) in the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

"(i) the individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract, or

"(ii) the Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1)."

(b) REQUIREMENT OF APPROPRIATE POLICIES AND PROCEDURES REGARDING HEALTH CARE PROFESSIONALS.—Section 224 of the Public Health Service Act, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(h) Notwithstanding subsection (g)(1), the Secretary, in consultation with the Attorney General, may not deem an entity described in subsection (g)(4) to be an employee of the Public Health Service Act for purposes of this section unless the entity—

"(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

"(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

"(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

"(4) has fully cooperated with the Attorney General in providing information relating to an estimate described under subsection (k)."

(c) AUTHORIZATION FOR THE ATTORNEY GENERAL TO EXCLUDE CERTAIN HEALTH CARE PROFESSIONALS FROM COVERAGE.—Section 224 of the Public Health Service Act, as amended by subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding subsection (g)(1), the Attorney General, in consultation with the Secretary, may determine, after notice and opportunity for a hearing, that an individual physician or other licensed or certified health care practitioner who is an officer,

employee, or contractor of an entity described in subsection (g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual—

“(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1);

“(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

“(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

“(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this Act; or

“(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

“(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.”

SEC. 3. HOSPITAL ADMITTING PRIVILEGES FOR CERTAIN HEALTH CARE PROVIDERS.

Section 224 of the Public Health Service Act, as amended by section 2, is further amended by adding at the end the following new subsection:

“(j) In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4), section 335(e) shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.”

SEC. 4. PAYMENT OF JUDGMENTS.

Section 224 of the Public Health Service Act, as amended by sections 2 and 3, is further amended by adding at the end the following new subsection:

“(k)(1)(A) For each of the fiscal years 1993, 1994, and 1995, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year (except that an estimate shall be made for fiscal year 1993 by December 31, 1992, subject to an adjustment within 90 days thereafter) the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of title 28, United States Code, from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities.

“(B) The estimate under subparagraph (A) shall take into account—

“(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) or by officers, employees, or contractors (subject to subsection (g)(5)) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

“(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of title 28, United States Code, and

“(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

“(2) Subject to appropriations, for each of the fiscal years 1993, 1994, and 1995, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g), but not to exceed a total of \$30,000,000 for each such fiscal year.

“(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.”

SEC. 5. REPORT ON RISK EXPOSURE OF COVERED ENTITIES.

42 USC 233 note.

(a) IN GENERAL.—Not later than April 1, 1995, the Attorney General, in consultation with the Secretary of Health and Human Services (hereafter referred to as the “Secretary”), shall submit a report to Congress on the medical malpractice liability claims experience of entities subject to section 224(g) of the Public Health Service Act (as added by section 2(a)) and the risk exposure associated with such entities.

(b) EFFECT OF LIABILITY PROTECTIONS ON COSTS INCURRED BY COVERED ENTITIES.—The Attorney General’s report under subsection (a) shall include an analysis by the Secretary comparing—

(1) the Secretary’s estimate of the aggregate amounts that such entities (together with the officers, employees, and contractors of such entities who are subject to section 224(g) of such Act) would have directly or indirectly paid to obtain medical malpractice liability insurance coverage had section 224(g) of the Public Health Service Act not been enacted into law, with

(2) the aggregate amounts by which the grants received

by such entities under the Public Health Service Act were reduced as a result of the enactment of section 224(k)(2) of such Act.

42 USC 233 note. **SEC. 6. EFFECTIVE DATE.**

The amendments made by this Act shall take effect on the date of the enactment of this Act.

Approved October 24, 1992.

LEGISLATIVE HISTORY—H.R. 6183:

CONGRESSIONAL RECORD, Vol. 138 (1992):

Oct. 5, considered and passed House.

Oct. 8, considered and passed Senate.