Public Law 104–73
104th Congress

An Act

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

Dec. 26, 1995
[H.R. 1747]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federally Supported Health Centers Assistance Act of 1995.
42 USC 201 note.

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Federally Supported Health Centers Assistance Act of 1995".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 2. PERMANENT EXTENSION OF PROGRAM.

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

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

(1) in paragraph (1)(A)—

(A) by striking "For each of the fiscal years 1993, 1994, and 1995" and inserting "For each fiscal year"; and

(B) by striking "(except" and all that follows through "thereafter)"; and

(2) in paragraph (2), by striking "for each of the fiscal years 1993, 1994, and 1995" and inserting "for each fiscal year".

SEC. 3. CLARIFICATION OF COVERAGE.

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

(1) in subsection (g)(1), by striking "an entity described in paragraph (4)" in the first sentence and all that follows through "contractor" in the second sentence and inserting the following: "an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), 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 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, governing board member, employee, or contractor"; and

(2) in subsection (k)(3), by inserting "governing board member," after "officer,".

SEC. 4. COVERAGE FOR SERVICES FURNISHED TO INDIVIDUALS OTHER THAN CENTER PATIENTS.

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

(1) by redesignating paragraph (1) as paragraph (1)(A); and

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

"(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section shall apply with respect to services provided—

"(i) to all patients of the entity, and

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

"(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals—

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

"(ii) facilitates the provision of services to patients of the entity; or

"(iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.".

SEC. 5. APPLICATION PROCESS.

(a) APPLICATION REQUIREMENT.—Section 224(g)(1) (42 U.S.C. 233(g)(1)) (as amended by section 4) is further amended—

(1) in subparagraph (A), by inserting after "For purposes of this section" the following: "and subject to the approval by the Secretary of an application under subparagraph (D)"; and

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

"(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (C) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h).

"(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, governing board member, employee, or contractor of the entity is deemed

to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

"(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (i), the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

"(G) In the case of an entity described in paragraph (4) that has not submitted an application under subparagraph (D):

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

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

"(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

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

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

"(iii) Upon the effective date for the election, clauses (i) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

"(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application (and thereby restoring the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section.".

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

(1) in the matter preceding paragraph (1), by striking "Notwithstanding" and all that follows through "entity—" and inserting the following: "The Secretary may not approve an application under subsection (g)(1)(D) unless the Secretary determines that the entity—"; and

(2) by striking "has fully cooperated" in paragraph (4) and inserting "will fully cooperate".

(c) DELAYED APPLICABILITY FOR CURRENT PARTICIPANTS.—If, on the day before the date of the enactment of this Act, an entity was deemed to be an employee of the Public Health Service for purposes of section 224(g) of the Public Health Service Act, the 42 USC 233 note.

condition under paragraph (1)(D) of such section (as added by subsection (a) of this section) that an application be approved with respect to the entity does not apply until the expiration of the 180-day period beginning on such date.

SEC. 6. TIMELY RESPONSE TO FILING OF ACTION OR PROCEEDING.

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

"(l)(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a), the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h), that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

"(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages described in subsection (a) and issues an order consistent with such determination.".

SEC. 7. APPLICATION OF COVERAGE TO MANAGED CARE PLANS.

42 USC 233.

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

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

"(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act.

"(3) For purposes of this subsection, the term 'managed care plan' shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4)) for the delivery of such services to plan enrollees.".

SEC. 8. COVERAGE FOR PART-TIME PROVIDERS UNDER CONTRACTS.

Section 224(g)(5)(B) (42 U.S.C. 223(g)(5)(B)) is amended to read as follows: 42 USC 233.

"(B) in the case of an individual who normally performs an average of less than 32½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.".

SEC. 9. DUE PROCESS FOR LOSS OF COVERAGE.

Section 224(i)(1) (42 U.S.C. 233(i)(1)) is amended by striking "may determine, after notice and opportunity for a hearing" and inserting "may on the record determine, after notice and opportunity for a full and fair hearing".

SEC. 10. AMOUNT OF RESERVE FUND.

Section 224(k)(2) (42 U.S.C. 223(k)(2)) is amended by striking "$30,000,000" and inserting "$10,000,000". 42 USC 233.

SEC. 11. REPORT ON RISK EXPOSURE OF COVERED ENTITIES.

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

"(n)(1) Not later than one year after the date of the enactment of the Federally Supported Health Centers Assistance Act of 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

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

"(B) The risk exposure of such entities.

"(C) The value of private sector risk-management services, and the value of risk-management services and procedures required as a condition of receiving a grant under section 329, 330, 340, or 340A.

"(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account—

"(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

"(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

"(2) The report under paragraph (1) shall include the following:

"(A) A comparison of—

"(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have

been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

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

"(B) A comparison of—

"(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

"(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after the date of the enactment of the Federally Supported Health Centers Assistance Act of 1995.

"(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

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

"(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

"(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

"(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and

private entities with expertise on the matters with which the report is concerned.".

Approved December 26, 1995.

LEGISLATIVE HISTORY—H.R. 1747:

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Dec. 12, considered and passed House.
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