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Legislative Document

No. 1240

H.P. 863

House of Representatives, March 30, 2017

**An Act To Provide Immunity to Medical Professionals Who Provide
Free Health Care Services to Uninsured and Underserved
Populations of the State**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GINZLER of Bridgton.
Cosponsored by Senator MAKER of Washington and
Representatives: DILLINGHAM of Oxford, HYMANSON of York, SHERMAN of Hodgdon,
TUELL of East Machias, WHITE of Washburn.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24 MRSA §2908** is enacted to read:

3 **§2908. Health care providers; creation of agency relationship with governmental**
4 **contractors**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Contract" means an agreement executed in compliance with this section between
8 a health care practitioner and a governmental contractor for volunteer,
9 uncompensated services that allows the health care practitioner to deliver health care
10 services to low-income individuals as an agent of the governmental contractor.

11 B. "Department" means the Department of Health and Human Services.

12 C. "Free clinic" means an incorporated nonprofit health facility that provides health
13 care at no charge.

14 D. "Governmental contractor" means the department, a county health department or
15 a hospital owned and operated by a governmental entity.

16 E. "Low-income individual" means:

17 (1) An individual who is MaineCare-eligible under the laws of this State;

18 (2) An individual who is without health insurance and whose family income
19 does not exceed 200% of the federal poverty level as defined in Title 36, section
20 6271, subsection 1, paragraph B; or

21 (3) Any client of the department who voluntarily chooses to participate in a
22 program offered or approved by the department and meets the program eligibility
23 guidelines of the department.

24 **2. Contract requirements.** A health care practitioner that executes a contract with a
25 governmental contractor to deliver health care services on or after January 1, 2018 as an
26 agent of the governmental contractor is a state employee for purposes of Title 14, chapter
27 741 while acting within the scope of duties under the contract if the contract complies
28 with the requirements of this section and regardless of whether the patient treated is later
29 found to be ineligible. A health care practitioner continues to be a state employee for
30 purposes of Title 14, chapter 741 for 30 days after a determination of ineligibility to allow
31 for treatment until the patient transitions to treatment by another health care practitioner.
32 A health care practitioner under contract with the State may not be named as a defendant
33 in any action arising out of medical care or treatment provided on or after January 1, 2018
34 under contracts entered into under this section. The contract must provide that:

35 A. The right of dismissal or termination of a health care practitioner delivering
36 services under the contract is retained by the governmental contractor;

37 B. The governmental contractor has access to the patient records of a health care
38 practitioner delivering services under the contract;

1 C. Adverse incidents and information on treatment outcomes must be reported by a
2 health care practitioner to the governmental contractor if the incidents and
3 information pertain to a patient treated under the contract. The health care
4 practitioner shall submit the reports required by Title 22, chapter 1684. If an incident
5 involves a professional licensed under Title 32 or a facility licensed by the
6 department, the governmental contractor shall submit the incident reports to the
7 appropriate licensing board or the department, which shall review each incident and
8 determine whether the incident involves conduct by the licensee that is subject to
9 disciplinary action. All patient medical records and any identifying information
10 contained in adverse incident reports and information on treatment outcomes that are
11 obtained by governmental entities under this paragraph are confidential;

12 D. Patient selection and initial referral must be made by the governmental contractor
13 or the health care practitioner. Patients may not be transferred to the health care
14 practitioner based on a violation of the antidumping provisions of the federal
15 Omnibus Budget Reconciliation Act of 1989 or the federal Omnibus Budget
16 Reconciliation Act of 1990;

17 E. If emergency care is required, the patient need not be referred before receiving
18 treatment but must be referred within 48 hours after treatment is commenced or
19 within 48 hours after the patient has the mental capacity to consent to treatment,
20 whichever occurs later; and

21 F. A health care practitioner is subject to supervision and regular inspection by a
22 governmental contractor.

23 A governmental contractor that is also a health care provider is not required to enter into a
24 contract under this section with respect to the health care services delivered by its
25 employees.

26 **3. Volunteer, uncompensated service.** For services to qualify as volunteer,
27 uncompensated services under this section, a health care practitioner, or an employee or
28 agent of the health care practitioner, may not receive compensation from a governmental
29 contractor for any services provided under the contract and may not bill or accept
30 compensation from the recipient or a public or private 3rd-party payor for the specific
31 services provided to the low-income individuals covered by the contract.

32 **4. Notice of agency relationship.** A governmental contractor must provide written
33 notice to each patient, or the patient's legal representative, receipt of which must be
34 acknowledged in writing, that a health care practitioner under contract with the
35 governmental contractor is an agent of the governmental contractor and that the exclusive
36 remedy for injury or damage suffered as the result of any act or omission of the health
37 care practitioner or of any employee or agent thereof acting within the scope of duties
38 pursuant to the contract is by commencement of an action pursuant to the provisions of
39 Title 14, chapter 741. With respect to any federally funded community health center, the
40 notice requirements may be met by posting in a place conspicuous to all persons a notice
41 that the federally funded community health center is an agent of the governmental
42 contractor and that the exclusive remedy for injury or damage suffered as the result of
43 any act or omission of the provider or of any employee or agent thereof acting within the

1 scope of duties pursuant to the contract is by commencement of an action pursuant to the
2 provisions of Title 14, chapter 741.

3 **5. Quality assurance program required.** A governmental contractor shall establish
4 a quality assurance program to monitor services delivered under a contract between the
5 contractor and a health care practitioner pursuant to this section.

6 **6. Risk management report.** The division of risk management within the
7 Department of Administrative and Financial Services shall annually compile a report of
8 all claims statistics for all entities participating in risk management programs
9 administered by the division, which must include the number and total of all claims
10 pending and paid, and defense and handling costs associated with all claims brought
11 against contract providers under this section. This report must be forwarded to the
12 department and included in the annual report submitted to the Legislature pursuant to this
13 section.

14 **7. Reporting.** The following reports are required.

15 A. Beginning January 1, 2019, the department shall annually report to the
16 Legislature summarizing the efficacy of access to treatment outcomes with respect to
17 providing health care services for low-income individuals pursuant to this section.

18 B. The department shall provide an online listing of all health care practitioners
19 under this section and the number of volunteer service hours and patient visits each
20 provided. A health care practitioner may request in writing to the department to be
21 excluded from the online listing.

22 **8. Malpractice litigation costs.** Governmental contractors other than the
23 department are responsible for their own costs and attorney's fees for malpractice
24 litigation arising out of health care services delivered pursuant to this section.

25 **9. Continuing education credit.** A health care practitioner may fulfill one hour of
26 continuing education credit pursuant to Title 32, chapter 36 or chapter 48 by performing
27 one hour of volunteer services to low-income individuals as provided in this section, up
28 to a maximum of 8 continuing education hours per licensure renewal period.

29 **10. Free clinic.** A free clinic may receive a legislative appropriation, a grant through
30 a legislative appropriation or a grant from a governmental entity or nonprofit corporation
31 to support the delivery of contracted services by volunteer health care practitioners,
32 including the employment of health care practitioners to supplement, coordinate or
33 support the delivery of those services. The appropriation or grant for the free clinic does
34 not constitute compensation from the governmental contractor for services provided
35 under the contract, nor does receipt or use of the appropriation or grant constitute the
36 acceptance of compensation for the specific services provided to the low-income
37 individuals covered by the contract.

38 **11. Rules.** The department shall adopt rules to administer this section.
39 Notwithstanding the requirements of subsection 2, paragraph D, the department shall
40 adopt rules that specify required methods for determination and approval of patient
41 eligibility and referral by governmental contractors and health care practitioners. The

1 rules adopted by the department under this subsection must give health care practitioners
2 the greatest flexibility possible in order to serve eligible patients. Rules adopted under
3 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
4 2-A.

5 **12. Application.** This section applies to adverse incidents arising out of the
6 treatment of individuals by health care practitioners acting under contract on or after
7 January 1, 2018. This section does not reduce or limit the rights of the State or any of its
8 agencies or subdivisions to any benefit currently provided by Title 14, chapter 741.

9 **SUMMARY**

10 This bill improves access to medical care for low-income individuals by providing
11 governmental protection to health care practitioners who offer free medical services to
12 underserved populations of the State. Health care professionals who contract to provide
13 such services as agents of the State are provided immunity under the Maine Tort Claims
14 Act.

15 For those health care practitioners with continuing education requirements, each hour
16 of volunteer service provides credit for one hour of continuing education, up to a total of
17 8 continuing education credit hours per calendar year.

18 This bill applies to adverse incidents occurring on or after January 1, 2018.

19 This bill is modeled on Florida law.