

House Bill 1492

By: Representatives Channell of the 77th, O`Neal of the 117th, Childers of the 13th, Post 1, Parrish of the 102nd, and Shaw of the 143rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the
2 care and protection of indigent and elderly patients, so as to enact the "'Health Share'
3 Volunteers in Medicine Act"; to provide for a short title; to provide for legislative findings;
4 to provide for definitions; to provide for contracts between health care providers and
5 governmental entities; to provide uncompensated health care services to low-income persons;
6 to provide for notice requirements to patients; to provide for volunteers providing support
7 services; to provide for applicability of benefits; to provide for a report on claim statistics;
8 to provide for an annual report by the Department of Community Health to certain legislative
9 officers; to provide for attorney's fees for malpractice litigation; to provide for the
10 establishment of rules and regulations; to provide for applicability; to amend Chapter 9 of
11 Title 34 of the Official Code of Georgia Annotated, relating to workers' compensation, so
12 as to revise the definition of "employee"; to change certain provisions relating to basis and
13 method for computing compensation; to amend Code Section 50-21-22 of the Official Code
14 of Georgia Annotated, relating to definitions regarding state tort claims, so as to revise the
15 definition of "state officer or employee"; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the care and
19 protection of indigent and elderly patients, is amended by adding at the end thereof a new
20 Article 8 to read as follows:

21 "ARTICLE 8

22 31-8-190.

23 This article shall be known and may be cited as the "'Health Share" Volunteers in Medicine
24 Act.'

1 31-8-191.

2 The General Assembly finds that a significant proportion of the residents of this state who
3 are uninsured or Medicaid recipients are unable to access needed health care because health
4 care providers fear the increased risk of medical negligence liability. It is the intent of the
5 General Assembly that access to medical care for indigent residents be improved by
6 providing governmental protection to health care providers who offer free quality medical
7 services to underserved populations of the state. Therefore, it is the intent of the General
8 Assembly to ensure that health care professionals who contract to provide such services as
9 agents of the state are provided sovereign immunity.

10 31-8-192.

11 As used in this article, the term:

12 (1) 'Contract' means an agreement executed in compliance with this article between a
13 health care provider and a governmental contractor. This contract shall allow the health
14 care provider to deliver health care services to low-income recipients as an agent of the
15 governmental contractor. The contract must be for volunteer, uncompensated services.

16 (2) 'Department' means the Department of Community Health.

17 (3) 'Governmental contractor' means the department, county health departments, a
18 special taxing district with health care responsibilities, or a hospital owned and operated
19 by a governmental entity.

20 (4) 'Health care provider' or 'provider' means:

21 (A) An ambulatory surgical center licensed under Article 1 of Chapter 7 this title;

22 (B) A hospital licensed under Article 1 of Chapter 7 of this title;

23 (C) A physician or physician assistant licensed under Article 2 of Chapter 34 of Title
24 43;

25 (D) An osteopathic physician or osteopathic physician assistant licensed under Article
26 2 of Chapter 34 of Title 43;

27 (E) A chiropractic physician licensed under Chapter 9 of Title 43;

28 (F) A podiatric physician licensed under Chapter 35 of Title 43;

29 (G) A registered nurse, nurse midwife, licensed practical nurse, or advanced registered
30 nurse practitioner licensed or registered under Chapter 26 of Title 43 or any facility
31 which employs nurses licensed or registered under Chapter 26 of Title 43 to supply all
32 or part of the care delivered under this article;

33 (H) A midwife certified under Chapter 26 of this title;

34 (I) A health maintenance organization certificated under Chapter 21 of Title 33;

35 (J) A health care professional association and its employees or a corporate medical
36 group and its employees;

1 (K) Any other medical facility the primary purpose of which is to deliver human
2 medical diagnostic services or which delivers nonsurgical human medical treatment
3 and which includes an office maintained by a provider;

4 (L) A dentist or dental hygienist licensed under Chapter 11 of Title 43; or

5 (M) Any other health care professional, practitioner, provider, or facility under contract
6 with a governmental contractor, including a student enrolled in an accredited program
7 that prepares the student for licensure as any one of the professionals listed in
8 subparagraphs (C) through (H) of this paragraph.

9 The term includes any nonprofit corporation qualified as exempt from federal income
10 taxation under Section 501(c) of the Internal Revenue Code which delivers health care
11 services provided by licensed professionals listed in this paragraph, any federally funded
12 community health center, and any volunteer corporation or volunteer health care provider
13 that delivers health care services.

14 (5) 'Low-income' means:

15 (A) A person who is Medicaid eligible under the laws of this state;

16 (B) A person who is without health insurance or who has health insurance that does not
17 cover the injury, illness, or condition for which treatment is sought and whose family
18 income does not exceed 200 percent of the federal poverty level as defined annually by
19 the federal Office of Management and Budget;

20 (C) A person who is without dental insurance or who has dental insurance that does not
21 cover the injury, illness, or condition for which treatment is sought and whose family
22 income does not exceed 200 percent of the federal poverty level as defined annually by
23 the federal Office of Management and Budget; or

24 (D) Any client of the department who voluntarily chooses to participate in a program
25 offered or approved by the department and meets the program eligibility guidelines of
26 the department.

27 (6) 'Occasional-service volunteer' means a volunteer who provides one-time or
28 occasional volunteer service.

29 (7) 'Regular-service volunteer' means a volunteer engaged in specific voluntary service
30 activities on an ongoing or continuous basis.

31 (8) 'Volunteer' means any person who, of his or her own free will, provides goods or
32 services in support of or in assistance to the program of health care services provided
33 pursuant to this article to any governmental contractor, with no monetary or material
34 compensation. This term shall not include a health care provider.

1 31-8-193.

2 (a) A health care provider that executes a contract with a governmental contractor to
3 deliver health care services on or after July 1, 2004, as an agent of the governmental
4 contractor shall be considered a state officer or employee for purposes of Article 2 of
5 Chapter 21 of Title 50, while acting within the scope of duties pursuant to the contract, if
6 the contract complies with the requirements of this article and regardless of whether the
7 individual treated is later found to be ineligible. A health care provider under contract with
8 the state may not be named as a defendant in any action arising out of the medical care or
9 treatment provided on or after July 1, 2004, pursuant to contracts entered into under this
10 article. The contract must provide that:

11 (1) The right of dismissal or termination of any health care provider delivering services
12 pursuant to the contract is retained by the governmental contractor;

13 (2) The governmental contractor has access to the patient records of any health care
14 provider delivering services pursuant to the contract;

15 (3) Adverse incidents and information on treatment outcomes, as defined by the
16 department, must be reported by any health care provider to the governmental contractor
17 if such incidents and information pertain to a patient treated pursuant to the contract. If
18 an incident involves a licensed professional or a licensed facility, the governmental
19 contractor shall submit such incident reports to the appropriate department, agency, or
20 board, which shall review each incident and determine whether it involves conduct by the
21 licensee that is subject to disciplinary action. All patient medical records and any
22 identifying information contained in adverse incident reports and treatment outcomes
23 which are obtained by governmental entities pursuant to this paragraph are confidential
24 and exempt from the provisions of Article 4 of Chapter 18 of Title 50;

25 (4) Patient selection and initial referral must be made only by the governmental
26 contractor or by the provider if the governmental contractor approves the selection and
27 referral process used by the provider. The provider must accept all referred patients.
28 However, the number of patients that must be accepted may be limited by the contract,
29 and patients may not be transferred to the provider based on a violation of the
30 antidumping provisions of the Omnibus Budget Reconciliation Act of 1989 or the
31 Omnibus Budget Reconciliation Act of 1990;

32 (5) If emergency care is required, the patient need not be referred before receiving
33 treatment but must be referred within 48 hours after treatment is commenced or within
34 48 hours after the patient has the mental capacity to consent to treatment, whichever
35 occurs later;

36 (6) Patient care, including any follow-up or hospital care, is subject to approval by the
37 governmental contractor. Experimental procedures and clinically unproven procedures

1 shall not be covered. The governmental contractor shall determine whether a procedure
2 is covered. The governmental contractor may reserve the right to approve through written
3 protocols all referrals for specialty care and hospitalization, except emergency care as
4 provided for in paragraph (5) of this subsection; and

5 (7) The provider is subject to supervision and regular inspection by the governmental
6 contractor.

7 (b) In order to enter into a contract under this Code section, a health care provider shall:

8 (1) Have a current valid Georgia health professional license;

9 (2) Not be under investigation, probation, or suspension by the applicable licensing
10 board or sanctioned by Health Care Financing Administration for Medicaid or medicare
11 violations; and

12 (3) Submit to a credentialing process to determine acceptability of participation.

13 (c) A governmental contractor that is also a health care provider is not required to enter
14 into a contract under this article with respect to the health care services delivered by its
15 employees.

16 (d) The provider shall not subcontract for the provision of services under this chapter.

17 (e) A contract entered into pursuant to this Code section shall be effective for all services
18 provided by the health care provider pursuant to this chapter, without regard to when the
19 services are performed.

20 31-8-194.

21 The governmental contractor must provide written notice to each patient, or the patient's
22 legal representative, receipt of which must be acknowledged in writing, that the provider
23 is an agent of the governmental contractor and that the exclusive remedy for injury or
24 damage suffered as the result of any act or omission of the provider or of any employee or
25 agent thereof acting within the scope of duties pursuant to the contract is by
26 commencement of an action pursuant to the provisions of Article 2 of Chapter 21 of Title
27 50. With respect to any federally funded community health center, the notice requirements
28 may be met by posting in a place conspicuous to all persons a notice that the federally
29 funded community health center is an agent of the governmental contractor and that the
30 exclusive remedy for injury or damage suffered as the result of any act or omission of the
31 provider or of any employee or agent thereof acting within the scope of duties pursuant to
32 the contract is by commencement of an action pursuant to the provisions of Article 2 of
33 Chapter 21 of Title 50.

1 31-8-195.

2 (a) Every governmental contractor is authorized to recruit, train, and accept the services
3 of volunteers, including regular-service volunteers and occasional-service volunteers in
4 support of or in assistance to the program of health care services provided pursuant to this
5 article to provide services, including but not limited to clerical, computer, and
6 administrative support.

7 (b) Each governmental contractor utilizing the services of volunteers pursuant to this Code
8 section shall:

9 (1) Take such actions as are necessary to ensure that volunteers understand their duties
10 and responsibilities;

11 (2) Take such actions as are necessary to ensure that volunteers are made aware of and
12 follow all applicable health and safety rules, regulations, and procedures; and

13 (3) Take such actions as are necessary to ensure that volunteers are provided appropriate
14 oversight and guidance in the performance of their volunteer service.

15 (c) Volunteers shall have limited liability in accordance with Article 2 of Chapter 21 of
16 Title 50 while performing services pursuant to this Code section.

17 31-8-196.

18 (a) Health care providers and volunteers recruited, trained, or accepted under this article
19 shall not be subject to any provisions of the laws of this state relating to state employment,
20 collective bargaining, hours of work, rates of compensation, leave time, or employee
21 benefits. However, all health care providers and volunteers shall comply with applicable
22 department or agency rules and regulations. Health care providers and volunteers shall be
23 considered as unpaid independent volunteers and shall not be entitled to unemployment
24 compensation.

25 (b) Health care providers and volunteers shall be covered by workers' compensation in
26 accordance with Chapter 9 of Title 34.

27 31-8-197.

28 The Department of Administrative Services shall annually compile a report of all claims
29 statistics which shall include the number and total of all claims pending and paid, and
30 defense and handling costs associated with all claims brought against contract providers
31 under this article. This report shall be forwarded to the department and included in the
32 annual report submitted to the General Assembly pursuant to Code Section 31-8-198.

1 31-8-198.

2 Annually, the department shall report to the President of the Senate, the Speaker of the
3 House of Representatives, the minority leaders of each house, and chairpersons of the
4 House Health and Human Services Committee and the Senate Health and Human Services
5 Committee, summarizing the efficacy of access and treatment outcomes with respect to
6 providing health care services for low-income persons pursuant to this article.

7 31-8-199.

8 Governmental contractors other than the department are responsible for their own costs and
9 attorney's fees for malpractice litigation arising out of health care services delivered
10 pursuant to this article.

11 31-8-200.

12 The department shall adopt rules and regulations to administer this article in a manner
13 consistent with its purpose to provide and facilitate access to appropriate, safe, and
14 cost-effective health care services and to maintain health care quality. The rules may
15 include services to be provided and authorized procedures.

16 31-8-201.

17 This article applies to incidents occurring on or after July 1, 2004. Nothing in this article
18 in any way reduces or limits the rights of the state or any of its agencies or subdivisions to
19 any benefit currently provided under Article 2 of Chapter 21 of Title 50."

20

SECTION 2.

21 Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers'
22 compensation, is amended in Code Section 34-9-1, relating to definitions, by striking
23 paragraph (2) and inserting in lieu thereof the following:

24 "(2) 'Employee' means every person in the service of another under any contract of hire
25 or apprenticeship, written or implied, except a person whose employment is not in the
26 usual course of the trade, business, occupation, or profession of the employer; and, except
27 as otherwise provided in this chapter, minors are included even though working in
28 violation of any child labor law or other similar statute; provided, however, that nothing
29 contained in this chapter shall be construed as repealing or altering any such law or
30 statute. Any reference to any employee who has been injured shall, if the employee dies,
31 include such employee's legal representatives, dependents, and other persons to whom
32 compensation may be payable pursuant to this chapter. All firefighters, law enforcement
33 personnel, and personnel of emergency management or civil defense agencies, emergency

1 medical services, and rescue organizations whose compensation is paid by the state or
2 any county or municipality, regardless of the method of appointment, and all full-time
3 county employees and employees of elected salaried county officials are specifically
4 included in this definition. There shall also be included within such term any volunteer
5 firefighter of any county or municipality of this state, but only for services rendered in
6 such capacity which are not prohibited by Code Section 38-3-36 and only if the
7 governing authority of the county or municipality for which such services are rendered
8 shall provide by appropriate resolution for inclusion of such volunteer firefighters; any
9 volunteer law enforcement personnel of any county or municipality of this state who are
10 certified by the Georgia Peace Officer Standards and Training Council, for volunteer law
11 enforcement services rendered in such capacity which are not prohibited by Code Section
12 38-3-36 and only if the governing authority of the county or municipality for which such
13 services are rendered shall provide by appropriate resolution for inclusion of such
14 volunteer law enforcement personnel; any person who is a volunteer member or worker
15 of an emergency management or civil defense organization, emergency medical service,
16 or rescue organization, whether governmental or not, of any county or municipality of
17 this state for volunteer services, which are not prohibited by Code Section 38-3-36,
18 rendered in such capacity and only if the governing authority of the county or
19 municipality for which such services are rendered shall provide by appropriate resolution
20 for inclusion of such volunteer members or workers; any person who is a health care
21 provider or volunteer pursuant to Article 8 of Chapter 8 of Title 31; and any person
22 certified by the Department of Human Resources or the Composite State Board of
23 Medical Examiners and registered with any county or municipality of this state as a
24 medical first responder for any volunteer first responder services rendered in such
25 capacity, which are not prohibited by Code Section 38-3-36 and only if the governing
26 authority of the county or municipality for which such services are rendered shall provide
27 by appropriate resolution for inclusion of such responders. The various elected county
28 officers and elected members of the governing authority of an individual county shall also
29 be included in this definition, if the governing authority of said county shall provide
30 therefor by appropriate resolution. For the purposes of workers' compensation coverage,
31 employees of county and district health agencies established under Chapter 3 of Title 31
32 are deemed and shall be considered employees of the State of Georgia and employees of
33 community service boards established under Chapter 2 of Title 37 shall be considered to
34 be employees of the state. For the purpose of workers' compensation coverage, members
35 of the Georgia National Guard and the State Defense Force serving on state active duty
36 pursuant to an order by the Governor are deemed and shall be considered to be employees
37 of this state. A person shall be an independent contractor and not an employee if such

1 person has a written contract as an independent contractor and if such person buys a
 2 product and resells it, receiving no other compensation, or provides an agricultural
 3 service or such person otherwise qualifies as an independent contractor. Notwithstanding
 4 the foregoing provisions of this paragraph, any officer of a corporation may elect to be
 5 exempt from coverage under this chapter by filing written certification of such election
 6 with the insurer or, if there is no insurer, the State Board of Workers' Compensation as
 7 provided in Code Section 34-9-2.1. For purposes of this chapter, an owner-operator as
 8 such term is defined in Code Section 40-2-87 shall be deemed to be an independent
 9 contractor. Inmates or persons participating in a work release program, community
 10 service program, or similar program as part of the punishment for violation of a
 11 municipal ordinance pursuant to Code Section 36-32-5 or a county ordinance or a state
 12 law shall not be deemed to be an employee while participating in work or training or
 13 while going to and from the work site or training site, unless such inmate or person is
 14 employed for private gain in violation of Code Section 42-1-5 or Code Section 42-8-70
 15 or unless the municipality or county had voluntarily established a policy, on or before
 16 January 1, 1993, to provide workers' compensation benefits to such individuals."

17 SECTION 3.

18 Said chapter is further amended by striking Code Section 34-9-260, relating to basis and
 19 method for computing compensation generally, and inserting in lieu thereof the following:

20 "34-9-260.

21 Except as otherwise provided in this chapter, the average weekly wages of the injured
 22 employee at the time of the injury shall be taken as the basis upon which to compute
 23 compensation and shall be determined, subject to limitations as to the maximum and
 24 minimum amounts provided for in Code Sections 34-9-261 and 34-9-265, as follows:

25 (1) If the injured employee shall have worked in the employment in which he was
 26 working at the time of the injury, whether for the same or another employer, during
 27 substantially the whole of 13 weeks immediately preceding the injury, his or her average
 28 weekly wage shall be one-thirteenth of the total amount of wages earned in such
 29 employment during the 13 weeks;

30 (2) If the injured employee shall not have worked in such employment during
 31 substantially the whole of 13 weeks immediately preceding the injury, the wages of a
 32 similar employee in the same employment who has worked substantially the whole of
 33 such 13 weeks shall be used in making the determination under the preceding paragraph;

34 (3) If either of the foregoing methods cannot reasonably and fairly be applied, the
 35 full-time weekly wage of the injured employee shall be used;

1 (4) If compensation is due for a fractional part of the week, the compensation for such
 2 fractional part shall be determined by dividing the weekly compensation rate by the
 3 number of days employed per week to compute the amount due for each day;

4 (5) If the injured employee is a volunteer firefighter included under this chapter for
 5 volunteer fire-fighting services rendered to a county or municipality of this state or a
 6 volunteer law enforcement officer included under this chapter for volunteer law
 7 enforcement services rendered to a county or municipality of this state, such firefighter's
 8 or volunteer law enforcement officer's average weekly wage shall be deemed to be the
 9 Georgia average weekly earnings of production workers in manufacturing industries for
 10 the immediately preceding calendar year, as published by the Georgia Department of
 11 Labor;

12 (6) If the injured employee is a health care provider or volunteer pursuant to Article 8
 13 of Chapter 8 of Title 31 in the course of providing services for a governmental contractor,
 14 as defined in Code Section 31-8-192, such health care provider's or volunteer's average
 15 weekly wage shall be deemed to be the Georgia average weekly earnings of a health care
 16 professional or individual performing similar services for the immediately preceding
 17 calendar year, as published by the Georgia Department of Labor;

18 ~~(7)~~ The average weekly wage of a member of the Georgia National Guard or State
 19 Defense Force serving on state active duty pursuant to an order by the Governor shall be
 20 the greater of:

21 (A) Seven-thirtieths of the monthly pay and allowances of the individual at the time
 22 of the injury, computed in accordance with Code Section 38-2-250, adjusted from time
 23 to time for appropriated increases in such monthly pay and allowances, excluding
 24 longevity increases; or

25 (B) If the injured member of the Georgia National Guard or the State Defense Force
 26 worked at the time of the injury in any employment other than serving as a member of
 27 the Georgia National Guard or the State Defense Force, the average weekly wage of the
 28 individual in such other employment as determined pursuant to paragraphs (1) through
 29 ~~(5)~~ (6) of this Code section or, if such individual worked at the time of the injury for
 30 more than one employer, the average combined weekly wage of the individual in such
 31 multiple employment as determined pursuant to paragraphs (1) through ~~(5)~~ (6) of this
 32 Code section."

33 SECTION 4.

34 Code Section 50-21-22 of the Official Code of Georgia Annotated, relating to definitions
 35 regarding state tort claims, is amended by striking paragraph (7) in its entirety and inserting
 36 in lieu thereof the following:

