

House Bill 1521

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

To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the care and protection of indigent and elderly patients, so as to enact the "'Health Share' Volunteers in Medicine Act"; to provide for a short title; to provide for legislative findings; to provide for definitions; to provide for contracts between health care providers and governmental contractors; to provide uncompensated health care services to low-income persons; to provide for notice requirements to patients; to provide for volunteers providing support services; to provide for applicability of benefits; to provide for a report on claim statistics; to provide for an annual report by the Department of Community Health to certain legislative officers; to provide for liability coverage for claims and defense of litigation; to provide for the establishment of rules and regulations; to provide for applicability; to amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to workers' compensation, so as to revise the definition of "employee"; to change certain provisions relating to basis and method for computing compensation; to amend Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to state tort claims, so as to revise the definition of "state officer or employee"; to change certain provisions relating to trial of actions and limitations on amounts of damages; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"ARTICLE 8

31-8-190.

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

31-8-191.

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

31-8-192.

As used in this article, the term:

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

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

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

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

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

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

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

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

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

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

(G) A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under Chapter 26 of Title 43 or any facility

1 which employs nurses licensed or registered under Chapter 26 of Title 43 to supply all
2 or part of the care delivered under this article;

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

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

5 (J) A professional association, professional corporation, limited liability company,
6 limited liability partnership, or other entity which provides or has members which
7 provide health care services;

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

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

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

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

21 (5) 'Low-income' means:

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

23 (B) A person:

24 (i) who is without health insurance; or

25 (ii) who has health insurance that does not cover the injury, illness, or condition for
26 which treatment is sought; and

27 whose family income does not exceed 200 percent of the federal poverty level as
28 defined annually by the federal Office of Management and Budget;

29 (C) A person:

30 (i) who is without dental insurance; or

31 (ii) who has dental insurance that does not cover the injury, illness, or condition for
32 which treatment is sought; and

33 whose family income does not exceed 200 percent of the federal poverty level as
34 defined annually by the federal Office of Management and Budget; or

35 (D) Any client or beneficiary of the department or the Department of Human
36 Resources who voluntarily chooses to participate in a program offered or approved by

the department or the Department of Human Resources and meets the program eligibility guidelines of the department or the Department of Human Resources.

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

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

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

31-8-193.

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

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

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

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

(4) The health care provider shall provide services to patients on a walk-in and referral basis, in accordance with the terms of the contract. The provider must accept all referred patients; provided, however, that the number of patients that must be accepted may be limited under the terms of the contract.

(5) The health care provider shall not provide services to a patient unless such patient has received and signed the notice required in Code Section 31-8-194; provided, however, in cases of emergency care, the patient's legal representative shall be required to receive and sign the notice, or if such individual is unavailable, such patient shall receive and sign the notice within 48 hours after the patient has the mental capacity to consent to treatment.

(6) Patient care and health care services shall be provided in accordance with the terms of the contract and with rules and regulations as established by the department pursuant to this article. Experimental procedures and clinically unproven procedures shall not be provided or performed pursuant to this article. The governmental contractor may reserve the right to approve through written protocols any specialty care services and hospitalization, except emergency care as provided for in paragraph (5) of this subsection.

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

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

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

(2) Not be under probation or suspension by the applicable licensing board or intermediate sanction by the Centers for Medicare and Medicaid Services for medicare or Medicaid violations; and

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

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

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

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

31-8-194.

The governmental contractor or the health care provider if designated in the contract must provide written notice to each patient or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is a state employee or officer for purposes of this article and that the exclusive remedy for injury or damage suffered as the

1 result of any act or omission of a provider acting within the scope of duties pursuant to a
2 contract is by commencement of an action pursuant to the provisions of Article 2 of
3 Chapter 21 of Title 50.

4 31-8-195.

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

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

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

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

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

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

20 31-8-196.

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

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

30 31-8-197.

31 The Department of Administrative Services shall annually compile a report of all claims
32 statistics which shall include the number and total of all claims pending and paid, and
33 defense and handling costs associated with all claims brought against contract providers

under this article. This report shall be forwarded to the department and included in the annual report submitted to the General Assembly pursuant to Code Section 31-8-198.

31-8-198.

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

31-8-199.

Governmental contractors shall be responsible for and shall pay such amounts as determined by the Department of Administrative Services for insurance premiums for liability coverage for the cost of claims and defense against litigation arising out of health care services delivered pursuant to this article. The department shall be responsible for collecting from all governmental contractors and for submitting to the Department of Administrative Services all underwriting information requested by and all insurance premiums assessed by the Department of Administrative Services. The department shall annually report to the Department of Administrative Services the number and type of providers who have entered into a contract pursuant to this article.

31-8-200.

The department shall adopt rules and regulations to administer this article in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. All governmental contractors and providers shall be subject to such rules and regulations. The rules may include services to be provided and authorized procedures.

31-8-201.

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

SECTION 2.

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

1 "(2) 'Employee' means every person in the service of another under any contract of hire
2 or apprenticeship, written or implied, except a person whose employment is not in the
3 usual course of the trade, business, occupation, or profession of the employer; and, except
4 as otherwise provided in this chapter, minors are included even though working in
5 violation of any child labor law or other similar statute; provided, however, that nothing
6 contained in this chapter shall be construed as repealing or altering any such law or
7 statute. Any reference to any employee who has been injured shall, if the employee dies,
8 include such employee's legal representatives, dependents, and other persons to whom
9 compensation may be payable pursuant to this chapter. All firefighters, law enforcement
10 personnel, and personnel of emergency management or civil defense agencies, emergency
11 medical services, and rescue organizations whose compensation is paid by the state or
12 any county or municipality, regardless of the method of appointment, and all full-time
13 county employees and employees of elected salaried county officials are specifically
14 included in this definition. There shall also be included within such term any volunteer
15 firefighter of any county or municipality of this state, but only for services rendered in
16 such capacity which are not prohibited by Code Section 38-3-36 and only if the
17 governing authority of the county or municipality for which such services are rendered
18 shall provide by appropriate resolution for inclusion of such volunteer firefighters; any
19 volunteer law enforcement personnel of any county or municipality of this state who are
20 certified by the Georgia Peace Officer Standards and Training Council, for volunteer law
21 enforcement services rendered in such capacity which are not prohibited by Code Section
22 38-3-36 and only if the governing authority of the county or municipality for which such
23 services are rendered shall provide by appropriate resolution for inclusion of such
24 volunteer law enforcement personnel; any person who is a volunteer member or worker
25 of an emergency management or civil defense organization, emergency medical service,
26 or rescue organization, whether governmental or not, of any county or municipality of
27 this state for volunteer services, which are not prohibited by Code Section 38-3-36,
28 rendered in such capacity and only if the governing authority of the county or
29 municipality for which such services are rendered shall provide by appropriate resolution
30 for inclusion of such volunteer members or workers; any person who is a health care
31 provider or volunteer pursuant to Article 8 of Chapter 8 of Title 31; and any person
32 certified by the Department of Human Resources or the Composite State Board of
33 Medical Examiners and registered with any county or municipality of this state as a
34 medical first responder for any volunteer first responder services rendered in such
35 capacity, which are not prohibited by Code Section 38-3-36 and only if the governing
36 authority of the county or municipality for which such services are rendered shall provide
37 by appropriate resolution for inclusion of such responders. The various elected county

1 officers and elected members of the governing authority of an individual county shall also
2 be included in this definition, if the governing authority of said county shall provide
3 therefor by appropriate resolution. For the purposes of workers' compensation coverage,
4 employees of county and district health agencies established under Chapter 3 of Title 31
5 are deemed and shall be considered employees of the State of Georgia and employees of
6 community service boards established under Chapter 2 of Title 37 shall be considered to
7 be employees of the state. For the purpose of workers' compensation coverage, members
8 of the Georgia National Guard and the State Defense Force serving on state active duty
9 pursuant to an order by the Governor are deemed and shall be considered to be employees
10 of this state. A person shall be an independent contractor and not an employee if such
11 person has a written contract as an independent contractor and if such person buys a
12 product and resells it, receiving no other compensation, or provides an agricultural
13 service or such person otherwise qualifies as an independent contractor. Notwithstanding
14 the foregoing provisions of this paragraph, any officer of a corporation may elect to be
15 exempt from coverage under this chapter by filing written certification of such election
16 with the insurer or, if there is no insurer, the State Board of Workers' Compensation as
17 provided in Code Section 34-9-2.1. For purposes of this chapter, an owner-operator as
18 such term is defined in Code Section 40-2-87 shall be deemed to be an independent
19 contractor. Inmates or persons participating in a work release program, community
20 service program, or similar program as part of the punishment for violation of a
21 municipal ordinance pursuant to Code Section 36-32-5 or a county ordinance or a state
22 law shall not be deemed to be an employee while participating in work or training or
23 while going to and from the work site or training site, unless such inmate or person is
24 employed for private gain in violation of Code Section 42-1-5 or Code Section 42-8-70
25 or unless the municipality or county had voluntarily established a policy, on or before
26 January 1, 1993, to provide workers' compensation benefits to such individuals."

27 **SECTION 3.**

28 Said chapter is further amended by striking Code Section 34-9-260, relating to basis and
29 method for computing compensation generally, and inserting in lieu thereof the following:
30 "34-9-260.

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

35 (1) If the injured employee shall have worked in the employment in which he was
36 working at the time of the injury, whether for the same or another employer, during

1 substantially the whole of 13 weeks immediately preceding the injury, his or her average
2 weekly wage shall be one-thirteenth of the total amount of wages earned in such
3 employment during the 13 weeks;

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

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

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

13 (5) If the injured employee is a volunteer firefighter included under this chapter for
14 volunteer fire-fighting services rendered to a county or municipality of this state or a
15 volunteer law enforcement officer included under this chapter for volunteer law
16 enforcement services rendered to a county or municipality of this state, such firefighter's
17 or volunteer law enforcement officer's average weekly wage shall be deemed to be the
18 Georgia average weekly earnings of production workers in manufacturing industries for
19 the immediately preceding calendar year, as published by the Georgia Department of
20 Labor;

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

27 ~~(6)~~(7) The average weekly wage of a member of the Georgia National Guard or State
28 Defense Force serving on state active duty pursuant to an order by the Governor shall be
29 the greater of:

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

34 (B) If the injured member of the Georgia National Guard or the State Defense Force
35 worked at the time of the injury in any employment other than serving as a member of
36 the Georgia National Guard or the State Defense Force, the average weekly wage of the
37 individual in such other employment as determined pursuant to paragraphs (1) through

(5) (6) of this Code section or, if such individual worked at the time of the injury for more than one employer, the average combined weekly wage of the individual in such multiple employment as determined pursuant to paragraphs (1) through (5) (6) of this Code section."

SECTION 4.

Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to state tort claims, is amended in Code Section 50-21-22, relating to definitions, by striking paragraph (7) in its entirety and inserting in lieu thereof the following:

"(7) 'State officer or employee' means an officer or employee of the state, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the state. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include foster parents and foster children. The Except as otherwise provided for in this paragraph, the term shall not include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association, or other such private entity."

SECTION 5.

Said article is further amended by striking Code Section 50-21-29, relating to trial of actions and limitations on amounts of damages, in its entirety and inserting in lieu thereof:

"50-21-29.

(a) Trial of tort actions against the state under this article shall be conducted by a judge with a jury; provided, however, the parties may agree that the same be tried by a judge without a jury.

(b)(1) Except as provided for in paragraph (2) of this subsection, in ~~In~~ any action or claim for damages brought under the provisions of this article, no person shall recover a sum exceeding \$1 million because of loss arising from a single occurrence, regardless of the number of state government entities involved; and the state's aggregate liability per

1 occurrence shall not exceed \$3 million. The existence of these caps on liability shall not
2 be disclosed or suggested to the jury during the trial of any action brought under this
3 article.

4 (2) In any action or claim for damages brought under the provisions of this article
5 pursuant to Article 8 of Chapter 8 of Title 31, the state's aggregate liability per
6 occurrence shall not exceed \$250,000.00, regardless of the number of state government
7 entities involved. The existence of this cap on liability shall not be disclosed or suggested
8 to the jury during the trial of any action brought under this article."

9 **SECTION 6.**

10 All laws and parts of laws in conflict with this Act are repealed.