*O.C.G.A. § 31-8-190*

GEORGIA CODE
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\*\*\* Current Through the 2010 Regular Session \*\*\*
\*\*\* Annotations Current Through March 14, 2011 \*\*\*

TITLE 31.  HEALTH
CHAPTER 8.  CARE AND PROTECTION OF INDIGENT AND ELDERLY PATIENTS
ARTICLE 8.  "HEALTH SHARE" VOLUNTEERS IN MEDICINE

O.C.G.A. § **31-8-190**  (2011)

§ **31-8-190.**  Short title

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

§ 31-8-191.  Legislative findings and intent

   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.**  Definitions

   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. Payments made to a health care provider from the Indigent Care Trust Fund shall not constitute compensation under this article.

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

   (3) "Disciplinary action" means any action taken by a licensing board to reprimand a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section for inappropriate or impermissible behavior.

   (4) "Governmental contractor" means the department or its designee or designees.

   (5) "Health care provider" or "provider" means:

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

      (B) A hospital or nursing home 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;

      (F.1) A physical therapist licensed under Chapter 33 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 which employs nurses licensed or registered under Chapter 26 of Title 43 to supply all or part of the care delivered under this article;

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

      (I) A speech-language pathologist or audiologist licensed under Chapter 44 of Title 43;

      (J) An optometrist certified under Chapter 30 of Title 43;

      (K) A professional counselor, social worker, or marriage and family therapist licensed under Chapter 10A of Title 43;

      (L) An occupational therapist licensed under Chapter 28 of Title 43;

      (M) A psychologist licensed under Chapter 39 of Title 43;

      (N) A dietitian licensed under Chapter 11A of Title 43;

      (O) A pharmacist licensed under Chapter 4 of Title 26;

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

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

      (R) A safety net clinic, which includes any other medical facility the primary purpose of which is to deliver human dental or medical diagnostic services or which delivers nonsurgical human medical treatment and which may include an office maintained by a provider;

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

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

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

   (6) "Low-income" means:

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

      (B) A person:

         (i) Who is without health insurance; or

         (ii) Who has health insurance that does not cover the injury, illness, or condition for which treatment is sought; and whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget;

      (C) A person:

         (i) Who is without dental insurance; or

         (ii) Who has dental insurance that does not cover the injury, illness, or condition for which treatment is sought; and whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or

      (D) Any client or beneficiary of the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities who voluntarily chooses to participate in a program offered or approved by the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities and meets the program eligibility guidelines of the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget.

   (7) "Occasional-service volunteer" means a volunteer who provides one-time or occasional volunteer service.

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

   (9) "Restriction" means any limitation imposed by a licensing board on a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section.

   (10) "Sanction" means any penalty imposed by a licensing board or other regulatory entity on a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section.

   (11) "Volunteer" means any person who, of his or her own free will, and in support of or in assistance to the program of health care services provided pursuant to this article to any governmental contractor, provides goods or clerical services, computer services, or administrative support services, with or without monetary or material compensation. This term shall not include a health care provider.

**§ 31-8-193**.  Establishment of program; contracts with health care providers

   (a) The department is authorized and directed to establish a program pursuant to this article to provide for health care services to low-income recipients. The department shall enter into contracts to effectuate the purposes of this article. The department shall make reasonable efforts to promote the program to ensure awareness and participation by low-income recipients. It is the intent of the General Assembly that this program be established as soon as is practicable after July 1, 2005, and that the program be implemented state wide at the earliest possible date, subject to available funding.

(b) A health care provider that executes a contract with a governmental contractor to deliver health care services on or after July 1, 2005, 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 acting under the terms of a 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, 2005, 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 patients provided services pursuant to this article 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 Community Health, 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; and

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

(c) 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 subject to other restrictions, sanctions, or disciplinary actions imposed by the applicable licensing board. The department, in its discretion, shall determine if a past restriction, sanction, or disciplinary action imposed by the applicable licensing board is of such a **grave and offensive** nature with respect to patient safety concerns as to warrant refusal to enter into a contract with such health care provider pursuant to this subsection;

   (3) Not be subject to intermediate sanction by the Centers for Medicare and Medicaid Services for medicare or Medicaid violations or be subject to sanctions with regard to other federally funded health care programs; and

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

(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.**  Notice to patients required

   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 result of any act or omission of a provider acting within the scope of duties pursuant to a contract is by commencement of an action pursuant to the provisions of Article 2 of Chapter 21 of Title 50 and that a remedy or remedies for injury or damage suffered as the result of any act or omission of a provider acting outside the scope of duties shall be as provided for under general tort law or other applicable law.

**§ 31-8-195.**  Volunteers to provide services

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

(b) Prior to providing any services, a volunteer shall enter into a written agreement with the governmental contractor in a form as prescribed by the department.

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

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

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

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

   (4) Ensure that each volunteer enters into a written agreement with the governmental contractor in accordance with subsection (b) of this Code section.

(d) A volunteer shall be considered a state employee or officer for purposes of Article 2 of Chapter 21 of Title 50 while performing services pursuant to and in accordance with this Code section.

**§ 31-8-195.1.**  Sovereign immunity protection for health care professionals in safety net clinics

   (a) A registered professional nurse, nurse midwife, licensed practical nurse, or advanced practice registered nurse licensed or registered under Chapter 26 of Title 43 or a physician assistant licensed pursuant to Article 4 of Chapter 34 of Title 43 who is employed by a safety net clinic that executes a contract with a governmental contractor pursuant to this article shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50 while providing health care services pursuant to such contract, so long as such nurse or physician assistant provides nonemergent care and such nurse's or physician assistant's total compensation, including all cash and noncash remunerations, does not fluctuate in relation to:

   (1) The number of patients served in the clinic;

   (2) The number of patient visits to the clinic;

   (3) Treatments in the clinic; or

   (4) Any other fact relating to the number of patient contacts or services rendered
pursuant to a contract under this article.

(b) A physician licensed pursuant to Chapter 34 of Title 43 or medical resident who provides nonemergent medical care and treatment in a safety net clinic that executes a contract with a governmental contractor pursuant to this article shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50 while providing health care services pursuant to such contract, so long as the physician is practicing pursuant to a license issued under Code Section 43-34-41 or the physician or resident receives no compensation from the safety net clinic and is on staff at a local or regional hospital and provided that the physician's total compensation, including all cash and noncash remunerations, does not fluctuate in relation to:

   (1) The number of patients served in the clinic;

   (2) The number of patient visits to the clinic;

   (3) Treatments in the clinic; or

   (4) Any other fact relating to the number of patient contacts or services rendered pursuant to a contract under this article.

(c) No hospital shall require a physician to provide services at a safety net clinic as a condition for granting of staff privileges or for retaining staff privileges at such hospital.

(d) This Code section shall be supplemental to all other provisions of law that provide defenses to health care providers. This Code section shall not create any new cause of action against a health care provider or additional liability to health care providers.

**§ 31-8-196**.  Exemption from employment regulations

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

**§ 31-8-197.**  Annual report of claims statistics

   The Department of Administrative Services shall annually compile a report of all claims statistics which shall include the number and total of all claims pending and paid, and 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.**  Annual report by the department summarizing the efficiency of access and treatment outcomes

   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**.  Department's responsibilities regarding liability insurance

   The department 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 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.**  Adoption of rules and regulations

   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 providers and volunteers shall be subject to such rules and regulations. The rules may include services to be provided and authorized procedures.

**§ 31-8-201.**  Applicability; preservation of the state's rights under the Tort Claims Act
   This article applies to incidents occurring on or after July 1, 2005. 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.