

UNDERSTANDING CHARITABLE IMMUNITY LEGISLATION

A Volunteers in Health Care Guide



volunteers
in health care

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UNDERSTANDING CHARITABLE IMMUNITY LEGISLATION: A VOLUNTEERS IN HEALTH CARE GUIDE

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Volunteers in Health Care

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Overview

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Thank you to **Sonya Staton, JD**, who also assisted with the initial writing of this manual.

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I. Introduction

Tens of thousands of physicians, dentists, and other health care providers volunteer their time and skills to provide primary and specialty care to patients who lack public or private health insurance and cannot afford their care. They volunteer their time in their private offices, free clinics, and through organized networks started by medical societies, health departments, hospitals, religious groups, and other community organizations.

One of the challenges to these volunteer efforts is addressing the concern of practitioners regarding the risk of malpractice liability. Either clinicians are reluctant to volunteer without adequate coverage or non-profit organizations operating on extremely limited budgets must purchase malpractice insurance, which is often incomplete or very expensive.¹

Policymakers across the country have attempted to address this barrier to volunteerism. While state laws have historically controlled liability issues in malpractice, the desire to prevent the fear of lawsuits from chilling volunteer charitable activities stimulated Congress to decide to legislate in this area. As summarized in the last section of this manual, the 1997 Congressional passage of the Volunteer Protection Act (VPA) resulted in the creation of some liability protection for all volunteers carrying out charitable duties throughout the United States.

In passing the federal legislation, Congress chose not to pre-empt states from affording additional protections, especially in this area of tort law where state laws have traditionally governed. Accordingly, it is important to review the current state laws affecting volunteer clinician liability in order to ascertain the extent of liability protection that is afforded in any particular jurisdiction. At present, as well as prior to enactment of the VPA, most states have chosen to enact laws that provide some protections from malpractice liability for volunteer clinicians.² These measures are distinct from those covering emergency situations, where state laws (usually called "Good Samaritan" laws) have been enacted to encourage people-especially trained health care professionals-to offer assistance to people in need of emergent care.

- 1 In this document, when we use the term clinician and describe state approaches, in all cases the term always includes physicians. In addition, depending on the specific laws of a state, other categories of licensed health care workers may also be included in the grant of limited immunity. We have also highlighted in the attached table the twenty-one states that specifically reference dentists in their statutory efforts.*
- 2 A few states, such as Illinois, use a single piece of legislation to address the liability of clinicians volunteering in emergent and non-emergent contexts.*

This manual examines those state laws tied to the **non-emergent volunteer context**. In addition to a discussion of the various state approaches to “charitable immunity legislation” it includes a summary table describing key aspects of each state’s legislation and a brief summary and description of federal legislation designed to provide protection from malpractice liability.

Please note that this manual does not constitute formal legal advice with respect to the current law of any particular state. In addition, it is important to keep in mind that new legislation or interpretive court decisions within a state can affect the status of the law. The best way to ensure that there has been no legislative or legal activity affecting a particular state law and/or to receive an interpretation of a specific piece of legislation is to seek legal advice from a knowledgeable attorney.

Volunteers in Health Care has on file legislation from all states with charitable immunity laws. Generally the most up-to-date versions of state laws can be obtained via a paid search using a commercial database such as Loislaw, Westlaw or Lexis (although often expensive). The Internet provides access to free on-line texts of state laws, although the comprehensiveness of information may be inconsistent from jurisdiction to jurisdiction. (One useful site to find links to legislation in all 50 states is: <http://www.prairienet.org/~scruffy/f.htm>) Finally, local libraries often have copies of their state code, but there will be variability as to how often it is updated or whether it includes addenda for recent amendments. Community and law librarians often can provide information on how best to obtain copies of the current state law.

II. Overview of State Approaches

Examining the realm of charitable immunity legislation reveals the individuality of state legislative responses to the issue. Although there is a set of basic elements that can be used as a framework for discussion, no state legislation looks exactly like any other state's. Some legislation is captured in a few sentences, while others use several paragraphs to describe the law. In some instances legislative language is transparent in its intent, in others it is more difficult to interpret.

There are, however, a few summary statements that can be made:

- 43 states and the District of Columbia have some sort of charitable immunity legislation;
- 7 states have none: Alaska, California, Massachusetts, Nebraska, New Mexico, New York and Vermont;
- 38 states and the District of Columbia have legislation which creates some sort of limit in liability (or some opportunity for indemnification) by specifically referencing volunteer health care providers, while the 5 other jurisdictions that offer some protection, do so by making reference only to volunteers generally;
- 21 states have legislation that makes specific reference to dentists or dental care;
- 13 states specifically reference retired physicians in their charitable immunity statutes; three—Pennsylvania, West Virginia and Washington—have legislation in this area **only** for retired physician volunteers.

Most states choose one of the following routes in providing charitable immunity: **1) changing the negligence standard of care** (that is, raising the standard from simple negligence to gross negligence) or **2) indemnifying the volunteer provider** as if s/he were a governmental employee (that is, extending the liability protections state public employees routinely receive to the volunteer provider). (See *Sections IV and V.*) A few states combine aspects of both approaches within their state laws.

In addition, practically all states that have charitable immunity legislation have qualifying conditions that affect coverage. These conditions are usually one of the following:

- restrictions on the setting in which the health care can be delivered;
- restrictions on the type of care provided;
- requirement of patient notification of liability limitations.

Some states also place limits on the amount that can be recovered by a patient through a lawsuit.

Several states have legislation that is not easily categorized. In Hawaii, for example, individuals are immune from liability if they provide volunteer care under the auspices of a nonprofit or governmental organization that has total assets under \$50,000 or that carries malpractice insurance of at least \$200,000 per occurrence (in which case the injured party can sue the volunteer clinician's sponsoring organization). In Delaware and North Carolina, if neither the free clinic nor the volunteer clinician carries malpractice insurance covering care at the clinic, a suit may go forward only in cases of gross negligence.

One must remember, however, that no matter what the statute, charitable immunity legislation is not guaranteed protection from litigation or assurance of early dismissal of a lawsuit. It does not mean that a patient cannot sue a volunteer clinician. What it can do—and this is not insignificant—is set the “bar” for winning a malpractice case high enough so as to make it more unlikely that a lawyer would advise his/her client to pursue malpractice litigation against a clinician.

It is also important to remember that the non-profit organization for which the clinician is volunteering may be not be protected by state law. Whether the sponsoring organization, its staff and/or board of directors is covered by legislation is a distinct issue from the question of volunteer clinician liability.

While some states have attempted to protect both clinicians and their sponsoring organizations/administrators, others have legislated only to protect the volunteer clinicians. A discussion of this issue is beyond the scope of this manual and the information that follows addresses charitable immunity legislation only as it relates to individual clinician volunteers.

III. Malpractice

When a patient seeks medical care from a clinician and appears to be harmed by the treatment (or lack of it), the law provides a remedy for patients to seek damages from that clinician. While a bad medical result does not necessarily indicate negligent practice on the clinician's part (as even with the best of care things can go wrong), patients sometimes sue in state court for monetary damages in such circumstances. Determining whether a clinician's actions caused the injury and were the result of negligent care is a question that may be put to a jury or judge after preliminary evidence is presented in court. Generally, for the injured patient to win a medical malpractice case, the judge or jury must accept expert medical testimony that no reasonable health care provider would have done what the clinician allegedly did.

"Reasonableness" is generally determined by looking at what is reasonable care in view of the available knowledge and the state of medical practices at the time of the illness or injury.

There must also be proof through expert testimony that the negligence of the clinician was also the cause of the injury. A clinician can be negligent, for example, and still not be liable if the injury was caused by some other factor.

Clinicians may be fearful of increasing their liability exposure by offering their services to patients through organized volunteer programs. This may be especially true for clinicians whose malpractice coverage (for negligence acts) does not apply to their volunteer activities. For example, for clinicians employed by an institution such as a hospital or medical center, malpractice coverage may be limited to patients seen in the scope of their employment. These clinicians may need explicit permission to include their free clinic practice under their insurance umbrella. This is generally more restrictive than the situation of clinicians in private practice, whose insurance coverage usually follows them no matter where within the state they are practicing their approved specialty.

IV. State Approaches

CHANGING THE NEGLIGENCE STANDARD OF CARE

Usual elements

Standard of care at which a clinician can be held liable is raised from simple negligence to gross negligence

The most common approach to charitable immunity legislation is changing the standard of care owed by the volunteer clinician to the patient. The standard is raised from simple negligence to one of a higher order—the latter being much more difficult to prove.

Thirty-six states and the District of Columbia have enacted legislation with the intention of changing the standard from negligence to a higher standard usually referred to as “gross negligence” (sometimes also called a “willful or wanton” or “reckless” standard).³ Under this higher standard of care, an injured person must often show that the volunteer had a conscious indifference to the consequences of his or her actions. In theory, this is not an easy standard to prove.

When states enact such standard of care changes, they can do so through a law that applies to all volunteers—not strictly limited to the medical care context—or pass specific laws that are targeted towards physicians and other health care providers providing charitable health care services. The recent trend has been to pass laws specific to health care providers as a way to encourage more charitable health care delivery. In those states that have statutes both for volunteers generally and health care providers specifically, the operative statute for determining the volunteer clinician liability is the one focused on health care providers.

³ While it is beyond the scope of this manual to provide legal advice, please note that depending on the specific wording of each state law, whether or not and to what extent a state has successfully changed its standard of care may be subject to legal debate. For example, while most states require the volunteer to ‘act in good faith,’ and ‘within the scope of the “practitioner’s license” or “volunteer program,” the specific facts of a case could lead to an argument that either one or both of these provisions were violated in a particular instance. Also, what is often left unclear is whether a gross negligence standard includes liability protection against intentional torts (tort is a legal term for a wrong or injury for which one can seek redress). In the medical context, performing a procedure without adequate consent would be an intentional tort, as would violating a patient’s right to privacy.

An example of a typical statute that focuses on volunteer providers in general and changes the standard of care (not all states use identical language in their statutes) is Rhode Island's legislation:

§ 7-6-9Exemption from liability—Notwithstanding any other provisions of this chapter:

(a) No person serving without compensation as a volunteer, director, officer, or trustee of a nonprofit corporation, including a corporation qualified as a tax exempt corporation under § 501(c) of the United States Internal Revenue Code, 26 U.S.C. §501(c), or of an unincorporated nonprofit organization or an unincorporated public charitable institution qualified as a tax exempt organization under § 501(c) of the United States Internal Revenue Code, is liable to any person based solely on his or her conduct in the execution of the office or duty unless the conduct of the director, officer, trustee, or volunteer regarding the person asserting the liability constituted malicious, willful, or wanton misconduct.

An example of a typical statute that focuses on health care providers and changes the standard of care is Arizona's legislation:

§ 12-571 Qualified Immunity for Health Professionals

A health professional ...who provides medical or dental treatment within the scope of the health professional's certificate or license at a nonprofit clinic where neither the professional nor the clinic receives compensation for any treatment provided at the clinic is not liable in a medical malpractice action, unless such health professional was grossly negligent.

V. State Approaches

INDEMNIFYING THE VOLUNTEER AS A PUBLIC EMPLOYEE

Usual elements

- *Volunteer clinician treated as though a governmental employee while providing free care*
 - *State creates fund to cover defense costs and monetary damages*
 - *Formal agreement exists between volunteer and specified state entity*
 - *Amount that can be paid in claims is limited*
-

The next most common approach is for states to indemnify volunteer clinicians by providing liability protection through governmental/sovereign immunity. (The legal term for this protection is “state tort claims act.”) Such immunity historically has been available for most public employees, including publicly employed physicians working within their scope of employment. Some states have chosen to create charitable immunity statutes that extend such coverage to clinicians who are not public employees, but are providing volunteer health care services.

Florida, Iowa, Kansas, Louisiana, Missouri, Nevada, Oregon, Tennessee, Virginia, and Wisconsin—have adopted some aspect of this approach for their clinician volunteers. Of those states—Iowa, Louisiana, Missouri, Nevada, Oregon, Virginia, and Wisconsin—also raise the standard of care as well as indemnifying clinician volunteers.⁴

Usually there are certain conditions specified in the legislation—such as the setting in which the care is delivered or a formal agreement between the clinician provider and the state—that must be met for coverage to be extended to the volunteer clinician. As long as these conditions are met, the state tort claims act affords protection for the volunteer clinician by indemnifying that individual as if s/he were a state employee. In most of these “indemnity” states, a legal defense fund has been created to cover monetary damages as well as legal defense costs. Often statutes of this type will cap the total compensation that can be paid for claims; the range for the above noted seven states varies from \$100,000 to \$1,000,000. These statutes also exempt the state from punitive damages (that is, damages awarded in excess of normal compensation to punish a defendant for a serious wrong).

⁴ *In Oregon, state university physician employees who volunteer their medical services at sites outside of their normal scope of employment are extended state tort claims act protection as are retired physicians who care for patients that are referred to them by county health officers. Oregon legislation also raises the standard of care to gross negligence for other clinician volunteers.*

Wisconsin is an example of an indemnity approach. Under state law §146.89 volunteer clinicians working under the auspices of a nonprofit agency are designated “state agents of the department of health and family services” and as such are covered under the state tort claims act. This requires the state government (or other appropriate political subdivision) to pay damages for any valid malpractice claim against a volunteer clinician that arose in the volunteer practice context and was a service covered under the act (see Section VII.b) as well as legal defense costs.

Each of the relevant statutes for these states provides a specific procedure for filing a claim against the state. In some states, specified limits on payment of claims may be waived by legislative or judicial action in particular cases to help compensate injured patients.

VI. State Approaches

OTHER OPTIONS

A few states, rather than enacting legislation that extends some degree of immunity to volunteer clinicians, provide a mechanism for purchasing malpractice insurance. In Minnesota, the state licensing boards must purchase malpractice insurance for uncovered volunteer clinicians and pass-on liability costs through increases in licensing fees. In Connecticut, legislation authorizes its Department of Public Health to purchase liability insurance for free clinics if it chooses to do so. Kentucky legislation makes monies available to its free clinics so that they may purchase insurance for providers who work at their facilities. In both cases providers must not receive compensation for any of the health care services. In addition, Kentucky requires insurers writing medical malpractice insurance to make such insurance available, with the same limits of coverage as for private practice, to charitable health care facilities in their state; the state covers the cost of the premium within certain dollar limits

Tennessee mandates that malpractice insurance sold in the state cannot exclude coverage to any provider who engages in the voluntary provision of health care services. Under this legislation, local governments also have the option to indemnify volunteers providing care under their auspices. In Washington, state legislation grants the Department of Health the right to establish a program to purchase malpractice insurance for retired primary care clinicians who volunteer at community clinics, although there is no legislation pertaining to non-retired physician volunteers.

VII. *Qualifying the Granting of Immunity*

Whether states use an approach that changes the operative standard of care, offers state tort claim act coverage to clinician volunteers, or provides payment for liability insurance, they usually do not do so without creating some limitations or qualifications to their efforts. As detailed below, among the most common are constraints on the setting in which care is delivered or the services that are covered, and there may be specific requirements regarding notice to patients on liability limitations.⁵ These limitations are discussed below.

(A) RESTRICTION TO CERTAIN SETTINGS

Thirty-two states and the District of Columbia reference the settings where volunteer care is delivered in order to qualify for charitable immunity protection. While states differ in the settings they specify, some of the more common are: (1) free clinics; (2) community health centers or other nonprofit clinics; or (3) other special care sites designated or established by “sponsoring organizations” to help facilitate the provision of volunteer care to persons who cannot afford to pay. It appears that such limitations are added so that physicians in private practice as well as entities such as hospitals or ambulatory surgical centers are excluded from protection—even when care is provided without any expectation of payment. The reasoning here is either an assumption that providers in these settings or their employers purchase malpractice insurance or a desire to exclude from protection providers who designate patients whom they injure through their care as “charitable cases” after the fact. (Georgia and Florida are exceptions: in Georgia, protection extends to hospitals as well to care provided in other nonprofit organizational sites; in Florida, hospitals can be included as practice sites if there is a formal agreement with providers in such settings to participate in designated volunteer care programs.)

(B) RESTRICTION TO SPECIFIC MEDICAL CARE SERVICES

A few states limit the scope of services that are covered under volunteer medical care practice. Often there appears to be a clear intent that the sort of services considered for charitable immunity are preventive and primary care. Some states, such as Connecticut, limit the scope of practice to primary care. In the District of Columbia, the limitation on liability applies only to the activities of physicians and nurses working in obstetrics and gynecology in free clinic settings. A few other states specifically enumerate what health services are (or are not) covered under their reduced liability scheme. For example, in Wisconsin, the non-profit agency using clinician volunteers may only provide diagnostic tests, health education, and information about available health care resources, office visits, patient advocacy, prescriptions, dental services and referrals to health care specialists. In Missouri, abortion services are specifically excluded from coverage under their charitable immunity legislation.

⁵ *There may be additional limitations as well, for example, by specifying income limits of patients receiving care.*

Services that states often exclude are surgical treatment, general anesthesia or other more complex or invasive kinds of medical care. The concern is that this sort of medical care often has greater risks to the patient, and if injury results from negligent care, patients need to be compensated. In a few states, however, although services such as hospital or ambulatory surgery are excluded from charitable immunity legislation, protection is afforded to providers who deliver follow-up care to a patient (including in a hospital) upon referral from the free clinic. This is the case, for example, in Illinois.

(C) REQUIREMENT TO NOTIFY PATIENTS OF LIABILITY LIMITATION

Sixteen states and the District of Columbia require that the non-profit agency or clinic using clinician volunteers give notice to patients that there is a limit on the liability for health care services provided. In many states this requires written notice. In Florida, for example, each patient or his/her legal representative is given written notice concerning the terms of the treatment and the limits on liability. Some states require that all clinics post such a notice, often in a "conspicuous place." Arkansas and Texas require that patients sign a written statement acknowledging their understanding of the health care provider's limit on liability. The District of Columbia requires that the written statement be signed and "witnessed by two or more persons" where the "parties agree to the rendering of the health care or treatment." In other states the requirement about notice is less clear. For example, in Montana, patients must be given notice that "under state law the medical practitioner.... cannot be held legally liable for ordinary negligence if the medical practitioner does not have malpractice insurance." It would appear that oral notice would suffice.

VIII. Limiting Remuneration

In practically every state that relies upon state tort claims acts to protect volunteer clinicians, efforts are made to impose specific limitations on recovery of damages by plaintiffs. The amount of the limits varies from state to state. Limits to recovery also occur in a few states in which the change of standard to "gross negligence" has been legislated. (A number of states, in passing general tort reform, have already placed certain limits on recovery, including in the medical malpractice context. Accordingly, those limits would apply.)

Sometimes the limits are different in the context of the kinds of services provided. For example, Missouri has different limits of recovery for volunteer obstetrical services than for volunteer primary care services. As mentioned previously, under state tort claim acts, punitive damages usually are not recoverable. Some states, like South Carolina, also specifically preclude any recovery of interest that would ordinarily accrue from the time of injury to the date of the award.

IX. Retired Physicians

Thirteen states have passed legislation which effects in some way the liability exposure of retired volunteer physicians.⁶ In some of these states, the legislatures have enacted slightly different laws affecting retired physicians as compared to active physician volunteers. For example, Mississippi requires a written or oral agreement between the retired physician and the sponsoring clinic that services are being provided for free; for volunteers still active in practice the law stipulates that they and their patients must each sign a written agreement that details not only that the service is free, but that certain limits to liability for malpractice are operative. In Maine, both retired and active volunteers can provide care under a gross negligence standard, but for retirees, protection is extended only if the volunteer possessed an unrestricted license and had not been disciplined in the previous five years.

Finally, a few states have reduced liability statutes that have special provisions for retired physicians. As noted previously, Washington provides for a state program that pays for malpractice insurance for retired physician volunteers who practice primary care at community clinics; it has no liability reduction program for non-retired volunteers. In Oregon, a retired physician caring for patients referred from a county health officer has liability limits of recovery equal to those of persons who work for a "public body." In New Hampshire, immunity for retired physicians extends only to health education in public forums or to individual educational consultations so long as they are not considered diagnostic or treatment advice. And in Pennsylvania, its Volunteer Health Services Act specifically targets for protection from liability retired physicians, dentists and other health care providers who volunteer in "approved clinics." However, such reduced liability protections are only applicable if the approved clinic posts this exemption from civil liability in a "conspicuous place."

6 *Some states, as an additional incentive to promote volunteerism, have statutes that reduce the licensing fee for retired physicians who, at no charge, only care for the poor and medically needy.*

X. Federal Legislation

(See Appendix II for full text)

While malpractice and tort law have been used by states to extend charitable immunity to volunteers, it is not an area that Congress has completely ignored. In 1996, as part of the Health Insurance Portability and Accountability Act, Congress amended the Public Health Service Act to make certain qualified clinician volunteers working at free clinics employees of the US Public Health Service and hence covered for malpractice liability by the Federal Government. However, the law has never gone into effect, because Congress has not appropriated funds to cover the costs of providing Federal coverage to these clinician volunteers.

In 1997, Congress passed the Volunteer Protection Act (VPA). The law provides all volunteers (including clinician volunteers) of nonprofit organizations and government entities with protection from liability for certain harms caused by his/her acts or omissions while serving as a volunteer. As with practically all such state laws, volunteers who qualify for the VPA's protection are shielded from harm caused by simple negligence so long as it is within the scope of the volunteer's duties. As with most state laws attempting to reduce volunteer liability, the law does not prevent people from bringing lawsuits nor does it provide for defense cost reimbursement to volunteers.⁷

Under the VPA, a properly licensed, volunteer clinician acting within his/her scope of duties in the nonprofit or governmental organization is protected from liability for simple negligence so long as the alleged misconduct does not fall into certain categories of exclusion (e.g., a crime of violence or hate; a sexual offense or civil rights violation; or an act committed under the influence of alcohol). Even in situations in which the volunteer can be held liable (e.g., was grossly negligent), the VPA greatly limits the circumstances in which punitive damages can be awarded to those cases with clear and convincing evidence of willful or criminal conduct. It also restricts the amount of non-economic damages (pain and suffering) to the proportion of the volunteer's contributory responsibility for the resultant harm. (That is, if the volunteer is determined to be responsible for 20% of the harm done, then non-economic damages can equal no more than 20% of the awarded damages.) However, the VPA does not place any limits on the amount of economic damages (e.g., medical expenses, lost wages) awarded to an injured person from a volunteer's gross negligence.

The statute allows states, if they so choose, to impose further conditions on the limitations of liability. Accordingly, state laws could: (1) require volunteer programs to adhere to risk management procedures; (2) create vicarious liability on the part of the sponsoring volunteer program (that is, makes the volunteer program to be deemed liable for a volunteer's negligent acts); (3) make the liability

⁷ *Again, as in the state context, whether there is protection from intentional torts remains unclear from the statute and a reading of Congressional intent—that is, from a reading of the written record accompanying the debate on the legislation.*

limitation inapplicable if a suit is brought by state or local government; or (4) make the liability limitation apply only if the sponsoring organization provides a financially secure source of recovery for harms caused by volunteers.

While the VPA preempts any state law that offers fewer protections, states can go beyond the protections afforded here through passage of state laws. Interestingly, there is a provision of the Volunteer Protection Act that permits individual states to pass specific legislation that would make the VPA provisions inapplicable in the specific circumstance where all parties to a lawsuit are residents of that state. If a state passes such a provision, then only its laws and not the VPA would govern. At this time, no state has chosen to opt out of the VPA protections.

XI. Conclusion

More than 42 million people in this country lack health insurance, with no prospect of federal legislation extending coverage to this population on the horizon. As such, providing medical and dental care for the uninsured remains a key policy issue. One component of the safety net for the uninsured includes primary and specialty care provided by volunteer clinicians. In order to support this spirit of volunteerism and increase the amount of volunteer services, the federal government and most states have enacted legislation to reduce liability risks (or in a few instances help to provide malpractice insurance) for clinicians.

Legislators drafting charitable immunity legislation face several challenges: creating a climate that encourages volunteerism, addressing the concerns of volunteer clinicians regarding malpractice litigation, ensuring that patients seen by volunteer clinicians retain rights to compensation for acts of negligence and avoiding the perception that charitable immunity legislation permits a lesser standard of health care for the uninsured. The pivotal issue becomes how to balance the need to allay the fears of clinicians willing to provide free services with the rights of individuals receiving those services to be compensated for their injuries.

From a policy perspective efforts to reduce the liability risk of volunteers comes at a potential price to persons injured by their negligent acts. In situations where the sponsoring organization is protected from litigation or has no financial means for providing settlement to a patient injured by the negligent acts of a volunteer clinician, the patient may have no source of compensation. State legislation that makes the volunteer's sponsoring organization responsible for providing a financially secure source of recovery-such as an insurance policy or shared risk pool-although protecting individual volunteers, may be doing so in a way that is unaffordable for those organizations. One way of reducing this financial burden is the route taken by those states that set aside government funds to subsidize malpractice insurance costs or fund a risk pool to reimburse injured parties (i.e., those "indemnity" states).

Any legislator looking to introduce or amend current charitable immunity legislation should make a careful assessment of all these factors in order to create laws that best meet the needs of his or her constituents. As noted previously, the federal Volunteer Protection Act specifically allows states to pass laws that condition their grant of volunteer immunity on the existence of a financially secure source of recovery available to persons injured by the negligent acts of volunteers. In the interest of fairness for all involved parties, states might be wise to follow-up on this legislative suggestion in a manner that incorporates the concerns of both clinician and patient.

Appendix I

STATE BY STATE LEGISLATIVE GRID

STATE BY STATE LEGISLATIVE GRID
Current as of 11/01/03

STATE	STATE STATUTE	CHANGE OF STANDARD TO WILLFUL, WANTON OR RECKLESS	INDEMNITY APPROACH	LEGISLATION SPECIFICALLY REFERENCES HEALTH CARE PROVIDERS	LEGISLATION REFERENCES DENTISTS OR DENTAL CARE	LEGISLATION REFERENCES RETIRED VOLUNTEER PHYSICIANS	REFERENCES CERTAIN HEALTH CARE SETTINGS	LIMITED WITH RESPECT TO CERTAIN SERVICES	PRIOR NOTICE OF LIABILITY LIMITATION TO PATIENTS
Alabama	§§ 6-5-336; 6-5-339	•		•	•				•
Alaska	No Statute								
Arizona	§§ 12-982; 12-571	•		•	•		•		
Arkansas	§§ 16-6-201; 17-95-106	•		•		•			•
California	No Statute								
Colorado	13-21-115.5	•		•			•		•
Connecticut	§§ 19a-17m, n			•		•	•	•	•
Delaware	Title 10 §§ 8133 & 8135	•		•			•		
District of Columbia	29-599.15; 7-402	•		•			•	•	•
Florida	§§ 768.1355; 766-1115; 768.28; 768.13(1)-(2)		•	•			•		•
Georgia	§ 51-1-20; 51-1-20.1; 51-1-29.1; 43-11-52	•		•	•		•		•
Hawaii	§§ 662D-1,2,3; 328C-2	•							

STATE BY STATE LEGISLATIVE GRID

STATE	STATE STATUTE	CHANGE OF STANDARD TO WILLFUL, WANTON OR RECKLESS	INDEMNITY APPROACH	LEGISLATION SPECIFICALLY REFERENCES HEALTH CARE PROVIDERS	LEGISLATION REFERENCES DENTISTS OR DENTAL CARE	LEGISLATION REFERENCES RETIRED VOLUNTEER PHYSICIANS	REFERENCES CERTAIN HEALTH CARE SETTINGS	LIMITED WITH RESPECT TO CERTAIN SERVICES	PRIOR NOTICE OF LIABILITY LIMITATION TO PATIENTS
Idaho	§ 6-1605	•							
Illinois	745 ILCS 49/20; 49/30	•		•	•			•	•
Indiana	§§ 34-30-13-1 & 2; 36-1-14.2-3	•		•			•		
Iowa	§§ 613.19; 669.24; 135.24	•	•	•	•		•	•	
Kansas	§§ 75-6102; 6115; 6117; 6120		•	•			•		
Kentucky	§ 216.940-943, 945; 304.40-075			•			•	•	
Louisiana	§§ 9:2799.5; 40:1299.39	•	•	•	•		•		•
Maine	Title 24 § 2904	•		•	•	•	•		
Maryland	§§ 5-407; 5-606	•		•			•		
Massachusetts	No Statute								
Michigan	§ 450.2209; 333.16277	•		•			•	•	•
Minnesota	§ 214.40			•	•		•	•	

STATE BY STATE LEGISLATIVE GRID

STATE	STATE STATUTE	CHANGE OF STANDARD TO WILLFUL, WANTON OR RECKLESS	INDEMNITY APPROACH	LEGISLATION SPECIFICALLY REFERENCES HEALTH CARE PROVIDERS	LEGISLATION REFERENCES DENTISTS OR DENTAL CARE	LEGISLATION REFERENCES RETIRED VOLUNTEER PHYSICIANS	REFERENCES CERTAIN HEALTH CARE SETTINGS	LIMITED WITH RESPECT TO CERTAIN SERVICES	PRIOR NOTICE OF LIABILITY LIMITATION TO PATIENTS
Mississippi	§§ 95-9-1; 73-25-38; 73-25-18	•		•		•	•		•
Missouri	§§ 105.711; 537.118	•	•	•	•		•	•	
Montana	§§ 27-1-732; 27-1-736	•		•	•		•		•
Nebraska	No Statute								
Nevada	§§ 41.485; 428.095	•	•	•	•				
New Hampshire	§§ 329:25-a; 508-17	•		•		•	•		
New Jersey	§§ 2A:53A-7	•							
New Mexico	No Statute								
New York	No Statute								
North Carolina	§§ 1-539.10; 1-539.11; 90-21.16	•		•		•	•		
North Dakota	§ 32-03.1-02.3	•		•			•		
Ohio	§§ 2305.234; 4715.42; 4731.295	•		•	•	•	•	•	•

STATE	STATE STATUTE	CHANGE OF STANDARD TO WILLFUL, WANTON OR RECKLESS	INDEMNITY APPROACH	LEGISLATION SPECIFICALLY REFERENCES HEALTH CARE PROVIDERS	LEGISLATION REFERENCES DENTISTS OR DENTAL CARE	LEGISLATION REFERENCES RETIRED VOLUNTEER PHYSICIANS	REFERENCES CERTAIN HEALTH CARE SETTINGS	LIMITED WITH RESPECT TO CERTAIN SERVICES	PRIOR NOTICE OF LIABILITY ILLIMITATION TO PATIENTS
Oklahoma	§§ 51-152; 76-31	•							
Oregon	§§ 30.792; 30-302; 30-268	•	•	•		•	•		
Pennsylvania	Title 35 §§ 449.41-50 & 42 Pa. C.S.A. § 8332.4	•		•	•	•	•		•
Rhode Island	§ 7-6-9	•							
South Carolina	§ 38-79-30	•		•					
South Dakota	§§ 47-23-28 to 32	•		•			•		
Tennessee	§§ 29-20-310; 63-6-701 to 705; 63-6-707		•	•	•				
Texas	§§ 84.001 to 007; 109.004	•		•	•	•	•		•
Utah	§§ 58-13-3	•		•	•		•	•	•
Vermont	No statute								
Virginia	§§ 54.1-106; 32.1-127.3	•	•	•	•		•		
Washington	§§ 43.70.460 & 470			•	•	•	•	•	
West Virginia	§§ 30-14-12b; 30-3-10a	•		•		•	•		
Wisconsin	§ 146.89; 181.0670	•	•	•	•			•	
Wyoming	§ 1-1-125; 1-1-129; 33-15-131; 33-26-601	•		•	•	•	•	•	•

THE VOLUNTEER PROTECTION ACT

Public Law 105-19 (Corresponding Bills: S. 543; H.R. 911):

105th Congress

Approved June 18, 1997

AN ACT

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

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

SECTION 1. (42 USC 14501) SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1997".

SECTION 2. (42 USC 14501) FINDINGS AND PURPOSE.

(a) Findings.—The Congress finds and declares that—

- (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;
- (2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;
- (3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

THE VOLUNTEER PROTECTION ACT OF 1997 — CONTINUED

- (4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;
- (5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;
- (6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and
- (7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—
 - (A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;
 - (B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;
 - (C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and
 - (D) (i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and
 - (ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

THE VOLUNTEER PROTECTION ACT OF 1997 — CONTINUED

- (b) Purpose.—The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

SECTION 3. (42 USC 14502) PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

- (a) Preemption.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.
- (b) Election of State Regarding Nonapplicability.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—
 - (1) citing the authority of this subsection;
 - (2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and
 - (3) containing no other provisions.

SECTION 4. (42 USC 14503) LIMITATION ON LIABILITY FOR VOLUNTEERS.

- (a) Liability Protection for Volunteers.—Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—
 - (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
 - (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
 - (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

THE VOLUNTEER PROTECTION ACT OF 1997 — CONTINUED

- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to--
 - (A) possess an operator's license; or
 - (B) maintain insurance.
- (b) Concerning Responsibility of Volunteers to Organizations and Entities.--Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.
- (c) No Effect on Liability of Organization or Entity.--Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.
- (d) Exceptions to Volunteer Liability Protection.--If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:
 - (1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.
 - (2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.
 - (3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.
 - (4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

THE VOLUNTEER PROTECTION ACT OF 1997 — CONTINUED

- (e) Limitation on Punitive Damages Based on the Actions of Volunteers.--
 - (1) General rule.--Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.
 - (2) Construction.--Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.
- (f) Exceptions to Limitations on Liability.--
 - (1) In general.--The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that--
 - (A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;
 - (B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));
 - (C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;
 - (D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or
 - (E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.
 - (2) Rule of construction.--Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

THE VOLUNTEER PROTECTION ACT OF 1997 — CONTINUED

SECTION 5. (42 USC 14504) LIABILITY FOR NONECONOMIC LOSS.

- (a) General Rule.--In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b).
- (b) Amount of Liability.--
 - (1) In general.--Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.
 - (2) Percentage of responsibility.--For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

SECTION 6. (42 USC 14505) DEFINITIONS.

For purposes of this Act:

- (1) Economic loss.--The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.
- (2) Harm.--The term "harm" includes physical, nonphysical, economic, and noneconomic losses.
- (3) Noneconomic losses.--The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

THE VOLUNTEER PROTECTION ACT OF 1997 — CONTINUED

- (4) Nonprofit organization.--The term "nonprofit organization" means--
- (A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or
 - (B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).
- (5) State.--The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.
- (6) Volunteer.--The term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive--
- (A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or
 - (B) any other thing of value in lieu of compensation, in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

SECTION 7. EFFECTIVE DATE.

- (a) In General.--This Act shall take effect 90 days after the date of enactment of this Act.
- (b) Application.--This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.

Appendix III

EXAMPLES OF STATE LEGISLATION

CHANGING NEGLIGENCE STANDARD OF CARE - ARIZONA STATUTES

12-982. Qualified immunity; insurance coverage

- A. A volunteer is immune from civil liability in any action based on an act or omission of a volunteer resulting in damage or injury if:
 - 1. The volunteer acted in good faith and within the scope of the volunteer's official functions and duties for a nonprofit corporation or nonprofit organization, hospital or governmental entity.
 - 2. The damage or injury was not caused by wilful, wanton or grossly negligent misconduct by the volunteer.
- B. Notwithstanding subsection A of this section, in any suit against a nonprofit corporation or nonprofit organization, hospital or governmental entity for civil damages based on the negligent act or omission of a volunteer, proof that the act or omission was within the scope of the volunteer's official functions and duties is sufficient to establish the vicarious liability, if any, of the organization.
- C. A motor vehicle liability policy, as defined in section 28-4001, which provides coverage to the operator of a motor vehicle is subject to the following provisions which need not be contained in the policy. The liability of the insurance carrier with respect to the insured and any other person using the vehicle with the express or implied permission of the insured shall extend to provide excess coverage for a nonprofit corporation or nonprofit organization for the acts of the operator in operating a motor vehicle at all times when the operator is acting as a volunteer for that nonprofit corporation or nonprofit organization.

12-571. Qualified immunity; health professionals; nonprofit clinics; previously owned prescription eyeglasses

- A. A health professional, as defined in section 32-3201, who provides medical or dental treatment within the scope of the health professional's certificate or license at a nonprofit clinic where neither the professional nor the clinic receives compensation for any treatment provided at the clinic is not liable in a medical malpractice action, unless such health professional was grossly negligent.

ARIZONA STATUTE — CONTINUED

- B. A health professional who, within the professional's scope of practice, provides previously owned prescription eyeglasses free of charge through a charitable, nonprofit or fraternal organization is not liable for an injury to the recipient if the recipient or the recipient's parent or legal guardian has signed a medical malpractice release form and the injury is not a direct result of the health professional's intentional misconduct or gross negligence. For purposes of this subsection, "medical malpractice release form" means a document that the recipient or the recipient's parent or legal guardian signs before the recipient receives eyeglasses pursuant to this subsection to acknowledge that the eyeglasses were not made specifically for the recipient and to accept full responsibility for the recipient's eye safety.

INDEMNIFYING THE VOLUNTEER AS A PUBLIC EMPLOYEE - WISCONSIN STATUTE

Chapter 146, Section 89

146.89

Volunteer health care provider program

146.89(1)

- (1) In this section, "volunteer health care provider" means an individual who is licensed as a physician under ch. 448, dentist under ch. 447, registered nurse, practical nurse or nurse-midwife under ch. 441, optometrist under ch. 449 or physician assistant under ch. 448 and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub. (3).

146.89(2)

146.89(2)(a)

- (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency to the department of administration and that department approves the application. The department of administration shall provide application forms for use under this paragraph.

146.89(2)(b)

- (b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

146.89(2)(c)

- (c) The department of administration shall notify the volunteer health care provider and the nonprofit agency of the department's decision to approve or disapprove the application.

WISCONSIN STATUTE — CONTINUED

146.89(2)(d)

- (d) Approval of an application of a volunteer health care provider is valid for one year .If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

146.89(3)

- (3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub. (2) shall meet the following applicable conditions:

146.89(3)(a)

- (a) The volunteer health care provider shall provide services under par. (b) without charge at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub. (2) (a).

146.89(3)(b)

- (b) The nonprofit agency may provide the following health care services:

146.89(3)(b)1.

- 1. Diagnostic tests.

146.89(3)(b)2.

- 2. Health education.

146.89(3)(b)3.

- 3. Information about available health care resources.

146.89(3)(b)4.

WISCONSIN STATUTE — CONTINUED

4. Office visits.

146.89(3)(b)5.

5. Patient advocacy.

146.89(3)(b)6.

6. Prescriptions.

146.89(3)(b)7.

7. Referrals to health care specialists.

146.89(3)(b)8.

8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider.

146.89(3)(c)

(c) The nonprofit agency may not provide emergency medical services, hospitalization or surgery, except as provided in par. (b) 8.

146.89(3)(d)

(d) The nonprofit agency shall provide health care services primarily to low-income persons who are uninsured and who are not recipients of any of the following:

146.89(3)(d)2.

2. Medical assistance under subch. IV of ch. 49.

146.89(3)(d)3.

3. Medicare under 42 USC 1395-1395ccc.

146.89(4)

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health and family services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

146.89 - ANNOT. History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67.

QUALIFIED IMMUNITY WITH LIABILITY INSURANCE WAIVER - THE NORTH CAROLINA STATUTES

North Carolina General Statutes

Chapter 1. Civil Procedure

Sub-chapter XIV. Actions in Particular Cases.

Article 43B. Defense of Charitable Immunity Abolished; and Qualified Immunity for Volunteers.

Section 1-539.10. Immunity from civil liability for volunteers.

Section 1-539.11. Definitions.

Section 1-539.10. Immunity from civil liability for volunteers.

- (a) A volunteer who performs services for a charitable organization is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:
 - (1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and
 - (2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.
 - (3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.
- (b) To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.
- (c) Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services.

§ 1-539.11. Definitions.

As used in this Article:

- (1) "Charitable Organization" means an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward and is exempt from taxation under either G.S. 105-130.11(a)(3) or G.S. 105-130.11(a)(5) or Section 501(c)(3) of the Internal Revenue Code of 1954.
- (2) "Volunteer" means an individual, serving as a direct service volunteer performing services for a charitable, nonprofit organization, who does not receive compensation, or anything of value in lieu of compensation, for the services, other than reimbursement for expenses actually incurred.

STATE MALPRACTICE INSURANCE SUBSIDY FOR CHARITABLE PROVIDERS-THE KENTUCKY REVISED STATUTES

Title XXV. Business and Financial Institutions

Chapter 304. Insurance Code

Subtitle 40. Health Care Malpractice Insurance Joint Underwriting Association

304.40-075. Medical malpractice insurance for charitable health care providers – Scope of coverage – Premiums – Registration of providers – Review – Availability of information.

304.40-075. Medical malpractice insurance for charitable health care providers – Scope of coverage – Premiums – Registration of providers – Review – Availability of information.

(1) As used in this section, unless the context requires otherwise:

- (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" only means those persons, agencies, clinics, or facilities engaging in general practice medicine and performing no invasive or surgical procedures;
- (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
- (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.

(2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.

KENTUCKY STATUTE — CONTINUED

- (3) (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund not to exceed the sum of twenty thousand dollars (\$20,000) and from the registration fees collected by the Cabinet for Health Services under KRS 216.941(3) upon written application for payment of the premium by the health care provider wishing to offer charitable services.
- (b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
1. Name and address of the charitable health care provider;
 2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;
 3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
 4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed; and
 5. A copy of the registration filed with the Cabinet for Health Services under KRS 216.941.
- (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance, and that meet the terms for eligibility established pursuant to this section.
- (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.

KENTUCKY STATUTE — CONTINUED

- (6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
- (7) The Cabinet for Health Services shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
- (8) The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health Services under KRS 216.941.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 505, sec. 6, effective July 15, 1998. — Created 1996 Ky. Acts ch. 348

RETIRED PHYSICIAN VOLUNTEERS - THE ARKANSAS STATUTE

17-95-108. Volunteer services by retired physicians and surgeons - immunity from liability.

- (a) Retired physicians and surgeons who are still licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas, and who render medical services voluntarily and without compensation to any person at any free or low-cost medical clinic located in the State of Arkansas and registered by the State Board of Health, which accepts no insurance payments and provides medical services for a nominal fee, shall not be liable for any civil damages for any act or omission resulting from the rendering of such medical services, unless such act or omission was the result of such licensee's gross negligence or willful misconduct.
- (b) The State Board of Health is empowered to adopt such rules and regulations as it may determine necessary to provide for the registration of free or low-cost medical clinics under this section; provided, such rules and regulations shall require that each person, patient, or client to whom medical services are provided has been fully informed before any treatment by the physician providing the services or by the staff of the medical clinic of the immunity from civil suit provisions of this section, and has acknowledged that fact in writing on a form approved or designated by the Department of Health.
- (c) The State Board of Health and its members, and the Department of Health and its agents and employees, are exempt and immune from liability for any claims or damages when performing their duties pursuant to this section.
- (d) the provisions of this section shall not effect the Arkansas <volunteer> <Immunity> <Act>. § 16 - 6 - 101 et seq.

History. Acts 1995, No. 844, §§ 1-4.



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