

Uniform Emergency Volunteer Healthcare Services Act
Agenda of Issues for Discussion
June 9-10, 2006 Drafting Committee Meeting

Section 1. Short Title.

Is the act given an appropriate name? Based upon discussions at April's Drafting Committee Meeting, the name of the Act was changed from the "Uniform Interstate Emergency Healthcare Services Act" to the "Uniform Emergency Volunteer Healthcare Services Act" in order to clarify that application of the Act to services voluntarily rendered and to apply the immunities provided by § 7 to volunteers deployed on both an intrastate and interstate basis. Does the revised title appropriately communicate the subject matter of the Act?

Section 2: Definitions

What types of "healthcare entities" should be authorized to establish registration systems? A new term "comprehensive healthcare facility" was added to the Act to limit the types of healthcare facilities authorized to establish registration systems by § 4(a)(2) to only entities offering comprehensive inpatient and outpatient services on a regional basis, such as tertiary and teaching hospitals. A restricted definition was added to the Act because of the concern that not all types of "healthcare entities" were suitable to establish and maintain registration systems, such as separately licensed ambulatory surgery facilities, individual pharmacies, clinical labs and radiation centers. Is a limitation on the type of healthcare facilities authorized to establish registration systems appropriate and, if so, does the proposed term provide a suitable limitation?

What types of organizations should enjoy the immunities provided to "coordinating entities"? The definitions of the terms "host entity" and "source entity" have been revised to more clearly delineate their meaning, but the definition of the term "coordinating entity" has not been revised pending more guidance from Committee members and observers regarding the types of entities that should qualify for the immunities provided to coordinating entities by § 7(c). What types of "coordinating entities" should qualify the immunities provided by § 7(c)? Should the definition of the term "coordinating entity" be revised to more clearly indicate that types of entities that fall within the scope of the definition? Are the revised definitions of the terms "host entity" and "source entity" satisfactory?

Is the term "disaster relief organization" properly defined? A definition of the term "disaster relief organization" was added to the text to clarify the types of such organizations authorized to (A) establish registration systems by § 4(a)(2); (B) limit, restrict or modify the types of services may be provided pursuant to § 6(c); and (C) determine the types of such organizations provided with immunities pursuant to § 7(c); and which may compensate volunteers without the loss of "host entity" status as provided by § 9(b)(1). As explained in the Research Memo circulated by the Committee's Reporter, it was concluded that such organizations could not be reasonably defined solely based upon their membership in National VOAD. Does the recommended definition appropriately identify entities acting as non-governmental disaster relief organizations?

Should the Act apply to veterinary services? Following April's Drafting Committee Meeting, comments were received from several observers unable to attend the meeting strongly recommending inclusion within the act's coverage veterinary services. Should the term "healthcare services" be expanded to apply to the "health or death of an individual *or animal*" in order to expand the types of individuals classified as "volunteer healthcare practitioners" by the Act?

Should the Act apply to foreign healthcare practitioners? Advice has been provided to the Drafting Committee that significant problems arose during the response to Hurricane Katrina regarding whether foreign healthcare practitioners should be afforded practice privileges during emergencies. While the committee was originally concerned that dealing with the recognition of foreign practitioners may pose constitutional issues and that the matter should be left to federal authorities to address, advice was received that DHHS regards the issue as appropriate for resolution by the states. Consistent with this advice, should the definition of the term "state" be expanded in the manner provided by the May 31st Draft to allow states to grant recognition to foreign healthcare practitioners?

Section 3. Authorization for Volunteer Healthcare Practitioners to Provide Services

Are host states given an appropriate level of discretion to limit, regulate or restrict the use of volunteer healthcare practitioners? Based on discussions at the April Drafting Committee Meeting, § 3(c) was drafted in a manner to authorize, but not require, host states to issue orders limiting, restricting or regulating the duration of practice by volunteer healthcare practitioners, the geographical areas in which services may be provided, the class or practitioners authorized to provide services and "other matters necessary to coordinate effectively the provision of healthcare services." Is the standby grant of such authority an appropriate measure to limit the inappropriate application of the Act without creating additional non-uniform restrictions and limitations upon the deployment of volunteer healthcare practitioners that could impede attainment of the objectives of the Act?

Section 4. Volunteer Healthcare Practitioner Registration Systems

Are host states given appropriate powers to confirm the qualifications of out-of-state healthcare practitioners without unduly restricting the deployment of volunteers? Based on discussions at the April Drafting Committee Meeting, § 4(c) was revised to authorize states to "confirm whether volunteer healthcare practitioners ... are entitled to protections of this act" by obtaining confirmation from a registration system regarding the identities of individuals registered and in good standing with a registration system. In addition, § 4(d) requires states to establish procedures in advance "for the efficient confirmation of volunteer healthcare practitioners." Do these provisions appropriate balance the need for states to confirm the proper registration of volunteer practitioners while avoiding the creation of non-uniform barriers to the use of volunteer healthcare practitioners? Is the additional mandate to establish procedures in advance for "efficient confirmation" necessary and desirable?

Section 5. Interstate Licensure Recognition for Volunteer Healthcare Practitioners

Is the relationship between the Act and licensure requirements properly described? Section 5(a) has been revised based on comments received at the April Drafting Committee Meeting to clarify that “if a volunteer healthcare practitioner authorized to provide healthcare services in this state by this act is licensed and in good standing in another state, the state shall recognize the out-of-state license as if the license had been issued by this state during the period of an emergency declaration or other invocation of the act.” As phrased, does this the language achieve the objectives of the Act? Is it clear that proof of the possession of a license in good standing issued by another state is merely a prerequisite for a defense against claims of unauthorized practice versus authorization for a state to establish additional “confirmation” requirements beyond those established by § 4(c)? Is it clear that during the duration of an emergency the privileges afforded to out-of-state practitioners may be limited as otherwise provided by the Act and that the protections and privileges provided by the Act are contingent upon conforming to the other requirements of the Act as otherwise provided by § 6?

Section 6. Provision of Volunteer Healthcare Services

Should the scope of practice be defined based on the laws of the host state? During the April Drafting Committee Meeting, three options to describe the authorized scope of practice were discussed, namely reliance upon the laws of host states, source states, or a combination of both standards. After further research, the Committee’s Reporter recommends all practitioners be subject to laws of the host state defining the permitted scope of practice so as to treat all volunteer healthcare practitioners in a given practice setting uniformly. Is this the correct policy choice?

Does the Act properly provide for modifications on the scope of practice and services provided by volunteers? As revised, § 6(b) authorizes the host state to “modify, restrict or enlarge the normal scope of practice or standard of care” applicable to volunteer practitioners and § 6(c) authorizes host entities, such as disaster relief organizations, to limit, restrict or modify the “types of services” volunteers may provide in a manner “consistent with the scope of practice or standard of care” otherwise applicable. Do these provisions properly allow the regulation of the scope of practice, standard of care and types of services that may be provided under the Act?

Are practitioners appropriately protected from liability for good faith mistakes regarding the authorized scope of practice, standard of care or services provided? Volunteers are provided protections from administrative sanctions for unauthorized practice by § 6(d), (e) and (f) based upon actions taken in “good faith,” in a manner “consistent with their normal scope of practice,” based upon actual knowledge regarding modifications to the scope of practice while taking into consideration “exigent circumstances.” Are these standards appropriate?

Section 7. Civil Immunity

Should civil immunities be provided in the manner provided by the Act? As drafted, § 7(a) and (b) provides volunteer healthcare practitioners authorized to practice in the manner provided by the act to immunity from civil liability for damages arising out of healthcare services provided pursuant to the act and “nonhealthcare-related acts performed within the scope of their activities as volunteer healthcare practitioners.” Immunity is extended by § 7(c) to source, coordinating and host entities for damages for which volunteer healthcare practitioners are not liable. These immunities do not apply, however, as provided by § 9(d) to acts that are willful, wanton, grossly negligent, reckless, criminal or to liability arising due to a breach of contract or pursuant to an action initiated by a source or host entity? Should immunities be provided and limited in the manner provided by § 7?

Section 8. Workers’ Compensation

Should workers’ compensation provisions be included in the Act? Currently, § 8 is bracketed to indicate that its inclusion in the act is not necessary to achieve the desired objectives of uniformity of law, but is nonetheless recommended for consideration by the states? Should § 8 be included in the Act and, if so, should it be treated as an optional provision?

Which volunteer healthcare practitioners should be treated as state employees for purposes of workers’ compensation protection? In states which elect to include § 8 in the Act, two options are provided regarding the treatment of volunteer healthcare practitioners as employees of their host state. Option A treats only residents of the state acting pursuant to the act in any jurisdiction who do not otherwise have workers’ compensation coverage available as state employees for workers’ compensation purposes, while Option B treats all volunteer healthcare practitioners working in the state who do not have coverage available from another source as state employees. Should states be provided two options from which to choose or should the Committee recommend only a single option and, if so, which alternative should be included in the Act?

Section 9. Effect of Compensation on Volunteer Status

When should a preexisting employment relationship with a host entity negate volunteer status? Generally, § 9 provides that the acceptance of compensation does not preclude a practitioner from being considered a volunteer, unless the compensation is received pursuant to a preexisting relationship with the host entity. Pursuant to decisions made at the April Drafting Committee Meeting, exceptions are provided to this limitation in § 9(b) for (A) nonresident employees of disaster relief organizations; and (B) for nonresident employees of healthcare facilities or organizations affiliated with the practitioners ordinary place of employment provided that the practitioners’ compensation does not exceed usual and customary levels. Are both exceptions necessary and appropriate?

Section 10. Relation to Other Laws

Should the Act supplement but not supplant other existing laws affecting volunteer healthcare practitioners providing services during emergencies? As drafted, § 10 provides that the Act is not intended to limit additional protections from liability or other benefits for volunteer healthcare practitioners provided by other laws or to establish requirements for the use of any

volunteer healthcare practitioners deployed pursuant to EMAC. Does this provision properly and adequately address the relationship between the Act and other existing state laws?

Section 11. Regulatory Authority

Should states be provided regulatory authority to interpret and implement the Act? Pursuant to § 10, states are given the power to promulgate regulations to implement the Act, but in adopting any such rules are required to consult with and consider the recommendations of EMAC administrators and “other similarly empowered agencies in other states to promote uniformity of application of this act and thereby make the emergency response systems in the various states reasonably compatible.” Is such supplemental regulatory authority necessary or should the act be self-implementing? To what extent may a broad grant of regulatory authority to implement the Act potentially result in the proliferation of a variety of non-uniform requirements for the deployment and use of volunteer healthcare practitioners that may frustrate achievement of the goals and objectives of the Act?

Further Consideration of the Act

Should the Act be presented for a final reading at the 2006 Annual Meeting of the Uniform Law Commission? Extensive discussions and consultations regarding the Act began in December 2005 and have included a Study Committee Meeting held at the American Red Cross Headquarters on February 14, 2006; an initial Drafting Committee Meeting held in Washington, D.C., on April 28-29, 2006; and several extended telephone conferences with groups and organizations affected by the Act. Based on the results of the June 9-10, 2006 Drafting Committee Meeting, a recommendation should be made to the Uniform Law Commission regarding whether the Act (with any revisions and modifications as discussed at the June Drafting Committee Meeting) should be presented at its July 2006 Annual Meeting as a “discussion draft” or whether the Act should be presented at the Annual Meeting for final approval by a vote of the states. In presenting this recommendation, the need to proceed expeditiously to promote changes to state laws necessary to facilitate effective emergency responses should be balanced against the need to ensure that advice and recommendations regarding the Act are obtained from as many stakeholders as possible.