

Uniform Interstate Emergency Healthcare Services Act Drafting Committee Meeting – April 28-29, 2006, Washington, D.C. Meeting Minutes

The Drafting Committee for the Uniform Interstate Emergency Healthcare Services Act (“UIEHSA”) of the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) met in Washington, D.C., on April 28 and 29, 2006.¹ The meeting was conducted to review a discussion draft of the Uniform Act prepared by the Committee’s Reporter, James Hodge, distributed on April 21, 2006. The April 21st Draft had been prepared based upon a “blueprint outline” for development of the Uniform Act distributed on April 3, 2006 and following a conference call conducted to discuss the blueprint outline on April 7, 2006. The agenda for the Drafting Committee Meeting was set forth in an “issues outline” distributed on April 24, 2006.²

The members of the Drafting Committee attending the meeting were:

Raymond Pepe (Chairman)
James Hodge (Reporter)
Kenneth Elliott
Thomas Grimshaw
Theodore Kramer
Amy Longo
John McAvoy
Donald Mielke
Priscilla Keith (ABA Health Law Section Advisor)
Bryan Liang (ABA Legal Education Section Advisor)

Also attending the meeting on behalf of NCCUSL was Lee Yeakel (the Style Committee Liaison) and William Henning, Executive Director of the Conference. All of the Committee members and other NCCUSL representatives attended both the Friday and Saturday meetings.

Observers attending and actively participating in the meeting were:

Jim Blumenstock and Patricia Elliott (American Association of State and Territorial Health Officials)
Julette Clifton and Asua Ofosu (National Association of Social Workers)
Debra Cohn (American Medical Association)

¹ The meeting was held at the offices of Kirkpatrick & Lockhart Nicholson Graham LLP which provided the meeting space and a luncheon for the committee attendees as an in-kind donation to the National Conference. On Friday, April 28th, the meeting was conducted from 8:30 a.m. to 5:15 p.m. on Friday, April 29th between 9:00 a.m. and 3:15 p.m.

² Copies of the blueprint outline, the discussion draft of the act and the issues outline are posted at www.nccusl.org.

Stephen DeMers (Association of State & Provincial Psychology Boards)
Kristin Hellquist (National Council of State Boards of Nursing)
Billie Hinnefeld and Alan Nessman (American Psychology Association)
David Kaplan (American Counseling Association)
Dan Luce (Walgreens, Inc.)
Wendy Mariner (Boston University Schools of Law and Public Health)
Martha McIntosh (American Counseling Association)
Kevin Nicholson (National Association of Chain Drug Stores)
Bill Paxton and Dale Austin (Federal of State Medical Boards of the United States)
Margaret Pepe (American Red Cross)
Cheryl Peterson (American Nurses Association)
Roger Smith (American Association for Marriage and Family Therapy)

Although they were unable to attend the meeting, comments and suggestions regarding the Uniform Act were also provided by:

James Bentley (American Hospital Association)
David Bergman (American Association for Marriage and Family Therapy)
Kurt Krumpferman (National Association of Emergency Management Technicians)
Angela Copple, Tammy Little and Leon Shaifer (National Emergency Management Association)³
John Fitch (National Funeral Directors Association)
Barbara Gislason (Animal Disaster Relief Network)
Cindy Lovern (American Veterinary Medical Association)

During the meeting, the April 21st Draft was read line-by-line and extended discussions occurred among committee members and observers. As a result of these discussions, decisions were made to make several modifications to the act (as described below) and to promptly prepare a revised draft for further review.

Section 1. Short Title.

A decision was made by the Committee to recommend that the National Conference change the title of the act to “Uniform Emergency Volunteer Healthcare Services Act” in order to better reflect the nature of the types of emergency healthcare services covered by the act, including the application of the act to be the interstate and intrastate deployment and use of volunteers. By the use of the term “volunteer,” however, the Committee did not intend to imply that healthcare practitioners covered by the law were disqualified from seeking compensation, but instead to reflect the voluntary nature of decisions made by practitioners and disaster relief organizations to respond to emergencies.

³ NEMA representatives were unable to attend the Drafting Committee Meeting because of conflicting meetings pertaining to the development of emergency plans for the upcoming hurricane season. NEMA representatives advised the Committee that written comments and recommendations will be submitted regarding the April 21st Draft.

Section 2. Definitions.

Disaster Relief Organizations. A decision was made to add to the text of the Uniform Act a definition for the term “disaster relief organization” as utilized in § 4(a) of the April 21st Draft. The definition will be used for a variety of purposes, including to clarify that paid employees of disaster relief organizations may qualify as “volunteer health personnel” as the term was used in the April 21st Draft. The Reporter was asked to explore whether the term can be defined by reference to membership in National VOAD, a nationwide network of “volunteer organizations active in disasters” established at the recommendation of federal homeland security and public health officials to facilitate cooperation between state, Federal and private disaster relief operations.

Volunteer Health Personnel. The Committee decided that the term should not make reference to any particular types or classes of licensed health care practitioners and should be drafted broadly enough to encompass mortuary services. By a split vote, a majority of the Committee decided that the term should be limited to human health care services and that the Act should not apply to veterinary services.⁴ The Committee recommended that the term “volunteer health personnel” will be replaced in the next draft of the Uniform Act with the term “volunteer healthcare practitioner” to clarify that the act only applies to licensed personnel and to facilitate the use of the term in both singular and plural forms.

International Cooperation. A discussion did not occur about whether to modify the Uniform Act to authorize the use of healthcare practitioners from Canada or other jurisdictions outside the United States. The issue will be addressed at future meetings.

Section 3. Activation of Volunteer Health Personnel.

Restricting Use of Volunteers. The Committee decided that the Uniform Act should be revised to clarify that the intent of the law is not to (1) supersede other provisions of state licensing laws, volunteer protection acts or emergency management statutes or (2) prohibit the use of volunteer health practitioners except as authorized by the Uniform Act. Similarly, the Committee decided that the Uniform Act should not provide the exclusive mechanism pursuant to which out-of-state healthcare licenses will be recognized or civil immunity protections will be recognized. Instead, the purpose of the Uniform Act is to establish streamlined, simplified and expedited procedures and requirements pursuant to which out-of-state healthcare licenses can be recognized and limited civil immunities extended that supplement other provisions of state law. Other options and alternatives for the recognition of healthcare practitioner licenses and for the extension of civil immunities will be preserved, including provisions of the Emergency Management Assistance Compact, other Federal and State volunteer protection acts, emergency response laws allowing the waiver or modification of laws during emergencies, and other provisions of individual licensing laws providing for temporary practice privileges, reciprocity or limited exceptions from licensing requirements.

⁴ Contrary recommendations from the American Veterinary Medicine Association and the Animal Disaster Relief Network were received too late to be distributed to and considered, but will be discussed at a future meeting of the Drafting Committee.

Recognition of Local Emergency Declarations. A majority of the members of the Committee agreed to defer to other state laws the question of whether local government officials may issue emergency declarations that will trigger implementation of the Uniform Act. Although some committee members had significant reservations about local disaster declarations, the Reporter was asked to prepare optional language to be included in the Uniform Act by jurisdictions providing for local emergency declarations.

Termination of Activation. The Committee decided that the act should more clearly provide that officials authorized to declare emergencies or invoke the provisions of the Uniform Act should also be authorized to regulate the periods of time, areas and facilities within which volunteer healthcare practitioners may be used pursuant to the act. A discussion did not occur regarding whether these powers should be expressly delegated to emergency management or public healthcare officials rather than being preserved at the same level of authority as provided by other state law for emergency declarations.

Section 4. Volunteer Health Personnel.

Entities Authorized to Establish Registration Systems. A majority of the Committee members decided that in addition to ESAR-VHP systems, MRCs, associations of licensing boards and professional associations and disaster relief organizations, governmental entities and healthcare facilities should also be authorized to establish registration systems. Some concerns were expressed, however, regarding the wisdom of allowing a potentially very large number of separate registration systems to be established by individual healthcare facilities. These fears were counter-balanced, however, by the belief that individual healthcare facilities were best suited to determine if healthcare practitioners are properly licensed, trained and suited for emergency response activities.

Authorizing States to Approve Registration Systems. A lively debate occurred regarding the need to provide for state control over registration systems versus the potential difficulties resulting from allowing states to establish unique and non-uniform provisions for the approval of registration systems, including the possibility that some states could prohibit or restrict operations by recognized disaster relief organizations. To address this concern, a decision was made to authorize, but not require, the state-by-state approval and regulation of registration systems.

Advance Registration. The Committee decided that the act should be revised to clarify that registration in advance of emergencies is encouraged, but is not mandated by the law. The intent is to encourage advance registration that facilitates organized deployment of volunteers, and similarly to discourage spontaneous deployment by individuals during emergencies. The privileges and immunities provided by the act will apply only to practitioners properly registered and practicing pursuant to the requirements of the act.

Verification of Licensing. A majority of the Committee and observers agreed that in circumstances in which advance registration occurs, the act should also require at the time practitioners are used in the state, their continuing qualification to practice in the state pursuant to the act should be verified. To reduce the possibility that verification could result in a bottleneck restricting the emergency deployment of practitioners, however, a decision was made

that unless a state establishes other requirements, verification may be provided by the registration systems established pursuant to subsections (a) and (b) of the April 21st Draft, including systems established in other states. In addition, to the extent state officials or their delegates elect to assume responsibility for verification, a decision was made that the act should allow verification to be provided by registration systems for all personnel registered with the systems, rather than authorizing the individual review and approval of individual practitioners. Some observers noted that the term “verification” may not be well-suited to explain this requirements (because of its meaning in other medical care and disaster relief settings) and suggested that the Reporter consider the use of alternative terminology.

Suitability of Volunteers. After discussions with the Reporter, it was determined that the caption to subsection (d) referring to “procedures to determine the suitability of volunteers” did not properly convey the intent of the subsection. Instead, it was decided that the draft should be revised to clarify that states are authorized, but not required, to establish systems to identify and collect information regarding all volunteer healthcare practitioners used in the state during an emergency or registered in the state for use in future emergencies for the purpose of better enabling states to effectively coordinate the use of resources during emergencies. To avoid similar problems in other portions of the act, consistent with standard National Conference drafting protocols, the use of all titles for subsections will be removed from the act prior to its finalization.

Acknowledgments. A majority of the members of the committee and observers decided not to require the use a written acknowledgment form or other notice to advise volunteer healthcare practitioners regarding the limitations of their practice authorized by the act or potential sanctions or consequences arising from practices outside the scope authorized by the act. Such a notice or form was felt to create unnecessary paperwork in emergency situations which merely duplicated the fairly straightforward provisions of the act.

Section 5. Interstate Licensure Recognition for Volunteer Health Personnel

Scope of Practice. The members of the committee and observers were equally split on the question of whether the scope of practice for volunteer healthcare practitioners should be determined based on the laws of the state in which the practitioners are utilized, the laws of the states licensing the practitioners, or pursuant to the most restrictive of either set of requirements. As a result, the Reporter was asked to further review existing state laws regarding the issue and to offer further recommendations at an upcoming Drafting Committee Meeting. A consensus was achieved among the committee and observers, however, that the host state may to respond to emergency circumstances by limiting or modifying the permissible scope of practice for various classes of professionals. In particular, it was agreed that the act should allow actions similar to those which occurred following the evacuation of residents from New Orleans to Texas after Hurricane Katrina in which the State of Texas authorized pharmacists to write prescriptions for replacement medications.

Facility Licensing. A decision was made not to address in the Uniform Act issues pertaining to facility licensure, including requirements relating to the operation of emergency clinics and pharmacies. Instead, observers noted that individual state Health Departments and licensing boards have generally demonstrated the ability to promptly authorize emergency facility

licensure and that issues raised are sufficient different from those pertaining to the use of individual practitioners as to be impractical to include within the Uniform Act.

Prescriptions. It was agreed that provisions need not be included in the act expressly allowing pharmacies to dispense prescriptions for controlled substances written by out-of-state physicians practicing pursuant to the act, because the general authority provided to restrict or modify the scope of practice for pharmacies is sufficient to address the issue.

Applicability of Professional Disciplinary Laws. Rather than providing for the “waiver of disciplinary sanctions,” it was agreed that subsection (d) should clarify that the standards for acceptable professional practice may be modified during disasters and emergencies. It was also agreed that subsection (d) should clarify that the provision of healthcare services by practitioners not licensed in the state does not constitute unlicensed professional practice if conducted in accordance with the requirements of the act

Host Entity Restrictions on Specific Activities of Volunteers. Members of the Drafting Committee and observers agreed that a subsection should be added to the Uniform Act authorizing disaster relief organizations or host entities to also impose restrictions on the activities of volunteer health practitioners and clarify that the act applies to practitioners only if they conform their scope of practice that any such limitations.

Section 6. Civil Immunity.

Inclusion of Civil Immunity in the Uniform Act. A very lively debate occurred in which a minority of the members of the Drafting Committee and some observers suggested that it was unnecessary to include civil immunity provisions in the Uniform Act because of their perception that the lack of such protections has not historically resulted in an inadequate volunteer workforce. These committee members and advisors also expressed a concern about the lack of any evidence or documentation demonstrating the existence of any significant problem with frivolous claims being filed against healthcare practitioners and disaster relief organizations responding to emergencies. Other members of the committee and observers, however, felt that concerns about civil liability are of vital interest to volunteer practitioners and that it is essential to address these concerns to ensure in the future that resources are available, especially to address the needs created in catastrophic events. At future meetings, it was agreed that efforts should be made to solicit the opinions of members of the trial bar and insurance companies regarding these issues. To facilitate effective discussion of these issues at future meetings, it was decided that the act should separately address issues pertaining to professional malpractice, other liability associated with activities directly related to the provision of healthcare and incidental claims. It was similarly agreed that immunity should not extend to contractual obligations.

Relationship with Federal Volunteer Protection Act. A decision was made that exclusions from any immunity provisions provided by the act should more closely conform to exceptions provided by the Federal Volunteer Protection Act, but unlike the Federal law, the Uniform Act should not apply only to uncompensated practitioners and should not exclude immunity protection for disaster relief organizations and other entities for vicarious liability.

Section 7. Workers' Compensation.

Source of Coverage. A decision was made in the next draft of the Uniform Act to present only two options for the source of workers' compensation coverage, that coverage should be provided either by the "source state," *i.e.*, the state in which volunteers are licensed, or the "host state," *i.e.*, the state in which volunteers are used. The Reporter was asked to evaluate how these alternatives are addressed in existing state laws. Efforts will also be made at future committee meetings to obtain advice and recommendations regarding these issues from workers' compensation insurers, including state workers' compensation funds.

Primacy of Sources of Insurance Coverage. A majority of the committee members and observers recommended that health insurance not be designated as primary to workers' compensation coverage, but that any coverage required to be provided pursuant to the act should be secondary to other workers' compensation or disability coverage otherwise available to volunteer practitioners.

Section 8. Reemployment Protections.

Although Federal Medical Reserve Corps volunteers and volunteers covered by the laws of some states, such as Wisconsin, enjoy reemployment protections, a decision was made to delete these provisions of the April 21st Draft because of the complexity of the topic and reservations about the wisdom of providing reemployment protections based upon a requirement that states adopt administrative regulations "consistent with ... the terms and conditions of the federal Uniformed Services Employment and Reemployment Rights Act." Concerns were also expressed about infringement upon employment relationships, especially for small businesses, and about whether reemployment protections are of significant importance in ensuring the availability of volunteer practitioners.

Section 9. Effect of Compensation on Volunteer Status.

The committee and observers agreed that the Uniform Act should apply to volunteers regardless of whether they are compensated for their services, provided the volunteers are not employees of the "host entity" engaged in providing healthcare services. The committee and observers, however, agreed that restrictions on employment by the host entity should not apply to employees of disaster relief organizations not residing within the host state and out-of-state employees of nationwide entities, such as chain pharmacies, volunteering to be transferred to jurisdictions affected by disasters to provide for emergency healthcare needs in facilities owned or operated by the same entity lacking adequate personnel because of an emergency, even if compensated by the same entity.

Section 10. Unauthorized Practice of Healthcare Services by Volunteer during Emergencies.

A decision was made to delete section 10 as unnecessary because its provisions are duplicated by other provisions of the act and by other state law. In particular, subsection (a) authorizing sanctions for willful and fraudulent practice was deleted because no immunity from civil liability or from penalties imposed under licensing laws is provided for such practices. Likewise, it was felt to be unnecessary to authorize specific sanctions for misrepresentation of volunteer status

because, to the extent healthcare services are delivered or offered pursuant to such misrepresentation, most state laws already provide adequate remedies. The Reporter will further evaluate this issue, however, to determine whether the adoption of a law applicable to a new class of professionals designated as “volunteer healthcare practitioners” necessitates the inclusion of specific sanctions in the Uniform Act.

Section 11. Conflicts of Laws.

A decision was made to delete section 11 because changes proposed for section 3 (as discussed above) will clarify the relationship between the Uniform Act and other state laws.

Future Meetings

Plans were discussed for a potential additional Drafting Committee Meeting in early June 2006 in advance of the Annual NCCUSL Meeting and for the circulation of a revised draft of the Uniform Act within the next two weeks.

Raymond Pepe, Committee Chair
James Hodge, Reporter
May 1, 2006