

**The Joint Subcommittee Studying
the Feasibility of Offering Liability
Protections to Health Care Providers
Rendering Aid During a State or
Local Emergency
HJR701/SJR390 (2007)
Richmond, Virginia**

The Joint Subcommittee to Study the Feasibility of Offering Liability Protections to Health Care Providers Rendering Aid During a State or Local Emergency held its third and final meeting of the 2007 interim in Richmond, Virginia, on October 16, 2007.

The joint subcommittee's final meeting focused primarily on a review of draft legislation prepared by staff in accordance with the legislative principles endorsed by the subcommittee at its previous meeting. The chairman, Delegate Phillip A. Hamilton, called the meeting to order and proceeded to enumerate these legislative principles as follows: (1) liability protections should extend to all health care providers; (2) liability protections should cover both natural and man-made disasters, the definitions of these types of disasters should be condensed into one single definition of "disaster," and it should be clarified that certain disease outbreaks would be considered to be disasters; (3) liability protections should apply both before and after the declaration of a state of emergency; (4) liability protections should apply to all care provided during a disaster or emergency, regardless of the possible scarcity of resources; (5) volunteer health care providers should be allowed to recover their actual expenses incurred during the rendition of care; (6) the Good Samaritan statute should include care rendered in response to an accident or emergency but not necessarily rendered at the scene of the accident or emergency; and (7) a reference to the liability provision of the Emergency Services and Disaster Law, Va. Code § 44-146.23, should be added to the exceptions to the definition of a patient in Va. Code § 8.01-581.1.

Staff then reviewed the draft legislation they had prepared, noting for the members how the provisions of the draft correspond to the legislative principles endorsed by the joint subcommittee. Additionally, in response to the question posed at the previous meeting, staff informed the Joint Subcommittee that certain emergency medical technicians, i.e., those who receive a fee for services, would be covered by the liability protections contained in the draft legislation, while those who work without compensation are already covered by the Good Samaritan statute. The members of the joint subcommittee then discussed the draft legislation. Steve Pearson, representing the Virginia Trial Lawyers Association, Scott Johnson, representing the Medical Society of Virginia, and Susan Ward, Vice-President and General Counsel of the Virginia Hospital and Healthcare Association, also spoke to the draft legislation. Mr. Pearson also distributed two alternate versions of draft legislation that he prepared.

The joint subcommittee unanimously adopted several changes to the draft legislation. The majority of these changes were aimed at refining the language in the legislative draft concerning when the liability protections would apply and what conduct

would be covered by the protections. However, there was one substantial change made to the legislative draft, which resulted from the chairman's observance of the precise language of the study resolutions. The chairman noted that the study resolutions dealt with the issue of liability protections for health care providers during a declared disaster or emergency. The members discussed whether the portions of the legislative draft involving the Good Samaritan statute and other statutes related to the Good Samaritan statute were beyond the scope of the study resolutions. The joint subcommittee unanimously agreed that they were and directed that they be removed from the draft legislation. With these changes, the draft legislation was unanimously adopted by the members of the joint subcommittee as suggested legislation for the 2008 of the General Assembly.