



Uniform Law Commission

National Conference of Commissioners on Uniform State Laws

Uniform Emergency Volunteer Healthcare Providers Act

A Project of the Uniform Law Commission

Raymond P. Pepe

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Overview

- What is the Uniform Law Commission?
- Why and how was the UEVHPA developed?
- What does the UEVHPA accomplish?
- What actions are planned to seek adoption of the UEVHPA in the states?



Uniform Law Commission

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The Uniform Law Commission

- A state government organization that has recommended uniform and model laws since 1892
- Composed of appointees from all 50 states, D.C., the U.S. Virgin Islands and Puerto Rico
- Operates in cooperation with the Canadian and Mexican Uniform Law Commissions



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Uniform Law Commission

- Has promulgated more than 100 uniform and model laws that have been widely adopted by the states
- Conducts its work in formal cooperation with the American Bar Association and the American Law Institute
- Utilizes a public and open drafting process in which other organizations are invited to participate



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Uniform Law Commission

- Establishes Drafting Committees from among members of the Conference
- Designates an academic reporter for each project
- Appoints advisors from standing ABA Committees and Sections
- Invites participation in drafting by other observers representing groups and organizations affected by proposals



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Uniform Law Commission

- Develops proposed laws using multiple two to three day Drafting Committee Meetings
- Publicly distributes all drafts for review and comment
- Strictly non-partisan and independent
- Strives to achieve consensus and avoid polarizing recommendations



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Uniform Law Commission

- Presents proposed uniform laws at Annual Meetings attended by delegates from all states
- Reads and debates proposed uniform laws section-by-section
- Except in extraordinary circumstances, presents all proposed uniform acts at two or more Annual Meetings



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- Presents each proposed uniform laws for a vote by the states at an Annual Meeting
- Reporter and Chair of Drafting Committees prepare detailed notes and comments to accompany each act
- Each act is presented for approval to the House of Delegates of the American Bar Assn. before being “targeted” for adoption by the states



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- Commissioners seek to promote enactment of proposed uniform acts in as many jurisdictions as possible
- The ULC tracks introductions and enactments nationwide and provides resources to legislatures, including publications, testimony and consultations
- Except with model acts, attempts to minimize non-uniform variations in acts



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Why Was UEVHPA Proposed?

- Following Hurricanes Katrina and Rita there were widespread reports of problems encountered by VHPs in verifying their eligibility to practice outside their licensing jurisdiction
- While all states have the authority to allow out-of-state VHPs to provide emergency services, there is no uniform approach to recognizing out-of-state licensure



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Why Was UEVHPA Proposed?

- While all states have enacted the EMAC which provides for interstate licensing recognition, civil liability protection and workers' compensation coverage, the Compact only applies to state employees and local employees incorporated into state forces by mutual aid agreements
- No mechanism exists to generally authorize the deployment of private sector volunteers pursuant to EMAC
- Disaster relief in the U.S. relies extensively on the work of NGOs not formally incorporated into "state forces" under the EMAC
- Future disasters may require additional surge capacity



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Article V of EMAC

- *Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.*



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Article VI of EMAC

- *Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.*



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Article VIII of EMAC

- *Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.*



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Why Was UEVHPA Proposed?

- Rather than relying on EMAC, all states may currently rely on emergency powers vested in Governor's and emergency management agencies to waive or modify health practitioner licensing requirements
- Ad hoc reliance on emergency powers to authorize the use of out-of-state VHPs has not proven to be effective or practical in many instances



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Why Was UEVHPA Proposed?

- Following emergencies, the need to issue executive or licensing board orders to authorize VHPs is often not a high priority
- Disruptions in communications can make it difficult to determine whether, how and to what extent the use of out-of-state VHPs has been authorized
- Executive and licensing board orders generally fail to clarify scope of practice



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Why Was UEVHPA Proposed?

- Disciplinary Board jurisdiction over VHPs in source and host states is uncertain
- No clear authority exists for emergency management agencies to limit restrict use of VHPs
- No clear authority exists for emergency management agencies to authorize expanded emergency health care practice



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Why Was UEVHPA Proposed?

- A lack of coordination often occurs regarding the use of VHPs, especially spontaneous volunteers
- There is a lack of clear authority for relief organizations to control activities of VHPs
- Robust and redundant systems are required to expeditiously authorize to use out-of-state VHPs



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Why Was UEVHPA Proposed?

- Risk of civil liability for alleged negligent actions greatly concerns most private-sector VHPs
- Civil liability exposure is widely believed to limit the availability of services, especially special needs shelters and may play a greater role in future disasters
- VHPs deserve the same protection provided to paid state and local employees whose efforts they supplement



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Why Was UEVHPA Proposed?

- Federal Volunteer Protection Act may not provide coverage to VHPs outside their “home states”
- Federal Volunteer Protection Act may only protect VHPs to providing services in setting directly controlled by the non-profit organizations through which they are deployed
- Federal Volunteer Protection Act limits coverage to “nominally compensated volunteers” and poorly defines what constitutes permissible compensation



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Why Was UEVHPA Proposed?

- Currently at least 29 states under current law recognize the need to provide some workers' compensation protection to volunteers during disasters
- It is uncertain whether these state laws will apply to VHPs practicing under the UEVHPA
- Administrative requirements limit the applicability of current disaster volunteer coverage
- Current laws are not well-adapted to dealing with the unique problems of the interstate processing of claims for VHPs



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Why Is Uniformity Needed?

- Because VHPs are deployed by source agencies in multiple states to a host state in which a disaster occurs, it is neither feasible nor practical to expect source agencies in every state to be aware of and familiar with specialized licensing and certification requirements of each host jurisdiction.
- Rapid and efficient response efforts demand a simple, well-understood and automatically implemented system for the recognition of VHPs



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How was the UEVHPA developed?

- In Fall of 2005 ULC appointed a Study Committee to consider the need for remedial legislation
- After a February Study Committee Meeting hosted by the American Red Cross and attended by a wide array of stakeholders, a consensus emerged that a new uniform law should be developed
- ULC appointed a Drafting Committee that developed a draft of the UEVHPA in the Spring of 2006



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How was the UEVHPA developed?

- Basic provisions of the UEVHPA were approved by the ULC at its July 2006 Annual Meeting, but issues relating to civil liability and workers' compensation reserved for future consideration
- The House of Delegates of the American Bar Association formally approved the 2006 UEVHPA provisions in August 2006
- The Drafting Committee met in the Fall of 2006 and Spring of 2007 to further develop the UEVHPA



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How was the UEVHPA developed?

- The ULC in its Annual Meeting in July 2007 approved amendments to the UEVHPA to add civil liability and workers' compensation provisions
- The Official 2007 version of the UEVHPA, which contains detailed section-by-section comments was published in November 2007
- An "annotated" version of the 2007 Act with detailed references to the impact of UEVHPA on existing law on a state-by-state basis is available at www.uevhp.org



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Who Participated In Development of UEVHPA?

- Drafting Committee Members appointed by from among its members by the ULC
- James Hodge of the Johns Hopkins/Georgetown Center for Law and the Public Health Served as Reporter
- ABA Advisors representing the Health Law Section, Torts and Insurance Practice Section and Bioethics Committee
- A broad group of other observers assisted the Drafting Committee



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Who were the observers that participated in drafting the UEVHPA?

- American Red Cross
- American Medical Assn.
- College of Emergency Physicians
- American Nurses Assn.
- American Psychological Assn.
- Nat'l Assn. of Social Workers
- American Counseling Assn.
- American Assn. of Marriage and Family Therapists
- American Veterinary Medicine Assn.
- Nat'l Assn. of Funeral Directors
- Nat'l Assn. of Chain Drug Stores
- Walgreen's



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Who were the observers that participated in drafting the UEVHPA?

- Federal of State Medical Boards
- Nat'l Council of Boards of Nursing
- Assn. of State & Provincial Boards of Psychology
- Assn. of State Social Work Boards
- Assn. of Counseling Boards
- Assn. of State & Territorial Health Officials
- Nat'l Governors Assn.
- American Justice Association (formerly known as the American Trial Lawyers Assn)
- Nat'l Assn. of Social Insurance



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Key Provisions of UEVHPA

- Recognizes out-of-state licenses of registered VHPs during declared emergencies
- Authorizes host states to rely on systems of VHP registration in source states during declared emergencies
- Recognizes multiple types of VHP registration systems to ensure flexibility and redundancy
- Creates minimum statutory requirements for recognition and use of registration systems



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Key Provisions of UEVHPA

- Requires VHPs to work through host entities in coordination with emergency management agencies
- Authorizes host states and host entities to regulate, control and limit activities of VHPs
- Defines permissible scope-of-practice for VHPs



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Key Provisions of UEVHPA

- Vests disciplinary jurisdiction in both host and source state licensing boards
- Requires host state boards to report disciplinary actions to source state boards
- Authorizes modifications and expansion of scope of practice as needed in emergencies
- Recognizes exigent circumstances defense in disciplinary proceedings



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Key Provisions of UEVHPA

- Provides two alternative provisions clarifying the scope of civil liability of volunteers and entities using volunteers
- Provides immunity from civil liability for the good faith operation and use of registration systems
- Requires host states to provide workers' compensation for VHPs without access to other sources of coverage



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Section 6(a) of UEVHPA

- *While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with Section 5 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this Act as if the practitioner were licensed in this state.*



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Definition of Health Care Practitioners

- *An individual licensed under the laws of this or another state to provide health or veterinary services. § 2(7)*
- *Health services” are “the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency.” § 2(8)*
- Includes Sale & Dispensing of Drugs and Devices and Funeral and Mortuary Services.



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Registrations System Sponsors: § 5(a)(4)

- *ESAR-VHP or MRCs*
- *Disaster Relief Organizations*
- *Licensing Boards*
- *Nat'l or Regional Assn's of Licensing Boards or Health Practitioners*
- *Comprehensive Health Care Facilities*
- *Government Entities*
- *Other Sponsors Designated by States*



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Registration Systems Standards: § 5(a)(1)-(3)

- *Must accept applications for the registration of VHPs before or during an emergency.*
- *Must be able to provide information about the licensure and good standing of VHPs which is accessible by authorized persons, i.e., any "host entity" using VHPs or state agencies.*
- *Must be capable of confirming the accuracy of information concerning whether a VHP is licensed and in good standing before health services or veterinary services are provided.*



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Confirmation of Qualifications of VHPs: § 5(b)

- *While an emergency declaration is in effect [a designated state agency or a person authorized to act its behalf], or a host entity, may confirm whether VHPs are registered with a registration system.*
- *Confirmation allows a host state to confirm identities of registered practitioners and that a registration system has verified that the practitioners are licensed and in good standing.*



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Reliance on Host Entities

- *Act applies to VHPs registered with a registration system that complies with required standards and who provide services for a host entity while an emergency declaration is in effect. § 3*
- *Host entities must consult and coordinate with state emergency management agencies "to the extent practicable to provide for the efficient and effective use" of VHPs and comply with state emergency management and healthcare laws. § 4(c)*



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Definition of Host Entity

- *“Host entity” means an entity operating in this state which uses volunteer health practitioners to respond to an emergency. § 2(9)*
- *“Entity” means a person other than an individual. § 2(5)*
- *“Person” means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. § 2(11)*



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Regulation of VHPs

- *A state may limit, restrict, or otherwise regulate the duration of practice by VHPs, the geographical areas in which VHPs serve, the types of VHPs permissible, and "other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency. § 4(a)*
- *A host entity may restrict the health or veterinary services that a VHP may provide. § 8(d)*



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Scope of Practice

- *A VHP "shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of [the host] state." § 8(a)*
- *A VHP may not "provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services." § 8(b)*
- *A state may modify the scope of practice. § 8(c)*



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Jurisdiction of State Licensing Boards

- *"a licensing board or other disciplinary authority in this state ... may impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency" § 8(f)(1)*
- *"a licensing board or other disciplinary authority in this state ... may impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency" § 8(f)(2)*
- *a licensing board or other disciplinary authority in this state ... shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is ... licensed." § 8(f)(e)*



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Civil Liability – Alternative A

- *"a [VHP] who provides health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services." § 11(a)*
- *"No person is vicariously liable for damages for an act or omission of a [VHP] if the practitioner is not liable for the damages" § 11(b)*



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Civil Liability – Alternative B

- *"a [VHP] who does not receive compensation that exceeds [\$500] per year for providing health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services." § 11(a)*
- *"Reimbursement of, or allowance for, reasonable expenses, or continuation of salary while on leave, is not compensation." Id.*
- *Vicarious liability left to other state law.*



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Civil Liability – Common Provisions

- *"This section does not limit the liability of a volunteer health practitioner for... willful misconduct or wanton, grossly negligent, reckless, or criminal conduct; an intentional tort; breach of contract; a claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle. § 11(b) or (c)*



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Civil Liability – Common Provisions

- *"A person that ... operates, uses, or relies upon information provided by a [VHP] registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct." § 11(c) or (d)*
- *"a [VHP] providing health or veterinary services pursuant to this [act] is entitled to all the rights, privileges, or immunities provided by [other state law]." § 11(d) or (e)*



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Workers' Compensation

- *A [VHP] ... who is not otherwise eligible for benefits for injury or death under the workers' compensation laws of this or another state may elect to be deemed to be an employee of this state ... by making a claim in accordance with the workers' compensation law of this state." § 12(b)*
- *"[the state] shall adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits ... by [VHPs] who reside in other states, and may waive or modify requirements for filing, processing, and paying claims that unreasonably burden the practitioners." § 12(c)*



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Legislative Activity

- Act approved by the ABA House of Delegates in August 2006
- 2006 Version of the law enacted in Colorado, Kentucky and Colorado
- Final text and official comments incorporating 2007 amendments published November 2007
- Between 10 to 15 introductions anticipated in Spring 2008



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Further Information

- www.nccusl.org provides information about the Uniform Law Commission and all of its work
- www.uevhpa.org provides detailed information regarding the UEVHPA and its consideration in various states
- Contact ULC Legislative Counsel, Michael Kerr, at (312) 915-0195 or michael.kerr@nccusl.org
- Contact Drafting Committee Chair, Raymond Pepe, at 717 231-5988 or raymond.pepe@klgates.com