

HOUSE JOINT RESOLUTION NO. 704

Continuing the Joint Subcommittee to Study Risk Management Plans for Physicians and Hospitals. Report.

Agreed to by the House of Delegates, February 25, 2005

Agreed to by the Senate, February 24, 2005

WHEREAS, Senate Bill No. 601 (2004) established the Joint Subcommittee to Study Risk Management Plans for Physicians and Hospitals; and

WHEREAS, the Subcommittee found that the complexity and scope of its work made it impossible to finish its work within one year and identified a number of issues that merit further and more in-depth study; and

WHEREAS, a variety of factors impact access to health care including medical malpractice insurance rates, and there is uncertainty as to whether the increase in the rates may abate in accordance with normal economic cycles, along with general concerns over medical malpractice insurance rates; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee to Study Risk Management Plans for Physicians and Hospitals be continued. The joint subcommittee shall have a total membership of eight members that shall consist of eight legislative members. Members shall be appointed as follows: five members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates and three members of the Senate to be appointed by the Senate Committee on Rules. The current members appointed by the Speaker of the House of Delegates shall be subject to reappointment. The current members appointed by the Senate Committee on Rules shall continue to serve until replaced. The joint subcommittee shall elect a chairman and vice chairman from among its membership.

In conducting its study, the joint subcommittee shall study the general medical malpractice situation in the Commonwealth and focus on the issues it deems most urgent, which may include: (i) the effectiveness of the current statutory framework of medical malpractice panels and whether the current framework should be amended to enhance efficiency or eliminated and replaced with other procedural vehicles such as pre-trial certification of expert witnesses to reduce nonmeritorious claims or effectively evaluate claims; (ii) whether nonstate funding is available for Virginia to launch a pilot project for medical courts whereby medical claims are tried by a jury in the venue where the case is filed and presided over by a judge with specialized training; (iii) the breadth and impact of the risk management program established by SB No. 601; (iv) receiving reports from the State Corporation Commission on medical malpractice insurance rates and the implications of possible changes in the system of regulation on insurance premiums and related issues; (v) whether establishing a limit on the amount of medical malpractice insurance that a medical facility may require an affiliated health care provider to hold is an effective method of reducing medical malpractice premiums; (vi) effective peer review processes; and (vii) an examination of the implications of requiring that medical malpractice insurance rates for certain high risk specialties be based only upon Virginia loss experience and be subject to prior approval.

In addition, the State Corporation Commission shall be requested to (i) determine the average medical malpractice rates for neurosurgery, obstetrics and gynecology, orthopedics, emergency medicine, and anesthesiology in Virginia under the current regulatory structure; (ii) compare such rates to the Commission's estimates for medical malpractice insurance rates for these specialties based upon prior approval and data that excludes loss experience and other data from other states; and (iii) assess the probable effects of the availability and affordability of medical malpractice insurance for these specialties if Virginia requires prior approval of the rates rather than continuing to regulate these rates under existing file and use provisions.

Administrative staff support shall continue to be provided by the Office of the Clerk of the Senate. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall continue to be provided by the Division of Legislative Services. Technical assistance shall be provided by the State Corporation Commission, the Secretary of Health and Human Resources, the Department of the Treasury, and the Office of the Executive Secretary of the Supreme Court. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request. The joint subcommittee shall provide opportunities for the participation of the Medical Society of Virginia, the Virginia Trial Lawyers Association, the Virginia Association of Defense Attorneys, representatives of medical malpractice liability insurance carriers, the Virginia Hospital and Healthcare Association, the Virginia Health Care Association, and other interested parties or entities affected by the study. The joint

subcommittee may request that the above-named groups and organizations meet and determine whether the solutions to the issues herein can be achieved through collaborative problem solving and report to the joint subcommittee on or before September 30, 2005.

The joint subcommittee shall be limited to four meetings for the 2005 interim, and the direct costs of this study shall not exceed \$8,000. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members of the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings by November 30, 2005, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2006 Regular Session of the General Assembly. The executive summary shall state whether the joint committee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2005 interim.