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HOUSE JOINT RESOLUTION NO. 14

Offered January 13, 2010

Prefiled December 18, 2009

Establishing a joint subcommittee to study alternatives to the existing medical liability system that will reduce the costs of defensive medicine. Report.

Patron—Marshall, R.G.

Referred to Committee on Rules

WHEREAS, defensive medicine is the provision of medical services that are not expected to benefit the patient but that are undertaken to minimize the risk of a subsequent lawsuit; and

WHEREAS, diagnostic defensive medicine practices ordered by physicians fearful of lawsuits have a much greater impact on costs than do therapeutic defensive practices; and

WHEREAS, a study by the Massachusetts Medical Society and UConn Health Center researcher Robert Aseltine, Jr. titled "Investigation of Defensive Medicine in Massachusetts," found that 83 percent of more than 900 physicians surveyed in Massachusetts reported practicing defensive medicine; that an average of between 18 percent and 28 percent of tests, procedures, referrals, and consultations, and 13 percent of hospitalizations, were ordered for defensive reasons; and that such practices cost an estimated minimum of \$1.4 billion per year in Massachusetts; and

WHEREAS, an analysis in 1996 by Daniel P. Kessler and Mark B. McClellan in the Quarterly Journal of Economics, based on data on Medicare beneficiaries who were treated for serious heart disease, found that liability reforms could reduce defensive medicine practices, leading to a five percent to nine percent reduction in medical expenditures without any effect on mortality or medical complications; and

WHEREAS, other studies of defensive medicine, including a 1990 study by the Harvard University School of Public Health and a 1999 study in the Journal of Health Economics failed to find that the costs of defensive medicine were as large as indicated by the Kessler-McClellan study; and

WHEREAS, a study published in the New England Journal of Medicine in 2006 analyzed more than 1,400 malpractice claims and found that in almost 40 percent of cases, no medical error was involved; and

WHEREAS, concerns over the costs of defensive medicine that results from the existing medical liability system has led to interest in far-reaching liability reform proposals, including administrative compensation systems for medical injury; and

WHEREAS, administrative compensation systems, modeled on workers' compensation systems or the Virginia Birth-Related Neurological Injury Compensation program, would require the establishment of a specialized tribunal with specialized judges who would award compensation based on a standard that does not require proof of a provider's negligence; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study alternatives to the existing medical liability system that will reduce the costs of defensive medicine. The joint subcommittee shall have a total membership of 10 members appointed as follows: six 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 four members of the Senate to be appointed by the Senate Committee on Rules. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required. The joint subcommittee shall elect a chairman and vice-chairman from among its membership.

In conducting its study, the joint subcommittee shall (i) determine the extent to which defensive medicine is practiced by health care providers in the Commonwealth; (ii) quantify the cost of defensive medicine and the effect of such costs on the health care system; (iii) determine the extent to which aspects of Virginia's medical malpractice system, including the cap on liability, contribute to the amount of defensive medicine practiced in Virginia; (iv) determine the extent to which the implementation of an administrative compensation system or other alternatives to the existing system would reduce defensive medicine practices; and (v) address potential challenges to the implementation of an administrative compensation system, such as its abrogation of the traditional role of juries and the judiciary.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

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59 The joint subcommittee shall be limited to four meetings for the 2010 interim, and the direct costs of
60 this study shall not exceed \$10,000 without approval as set out in this resolution. Approval for
61 unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the
62 joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is
63 agreed to, written authorization of both Clerks shall be required.

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

68 The joint subcommittee shall complete its meetings by November 30, 2010, and the chairman shall
69 submit to the Division of Legislative Automated Systems an executive summary of its findings and
70 recommendations no later than the first day of the 2011 Regular Session of the General Assembly. The
71 executive summary shall state whether the joint subcommittee intends to submit to the General
72 Assembly and the Governor a report of its findings and recommendations for publication as a House or
73 Senate document. The executive summary and the report shall be submitted as provided in the
74 procedures of the Division of Legislative Automated Systems for the processing of legislative documents
75 and reports and shall be posted on the General Assembly's website.

76 Implementation of this resolution is subject to subsequent approval and certification by the Joint
77 Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or
78 delay the period for the conduct of the study, or authorize additional meetings during the 2010 interim.