

Resources for Unserved and Underserved Populations

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Study Mandate

- During the 2015 General Assembly Session, House Joint Resolution 596 (Delegate Marshall) directed the Joint Commission on Health Care to conduct a study to:
 - Identify unserved or underserved regions and populations in the Commonwealth
 - Examine existing health care services for unserved and underserved individuals provided by free or charitable clinics
 - In considering new models of health care provision, address concerns regarding civil liability protection for health care professional volunteers in free or charitable clinics

THE UNSERVED AND UNDERSERVED IN THE COMMONWEALTH

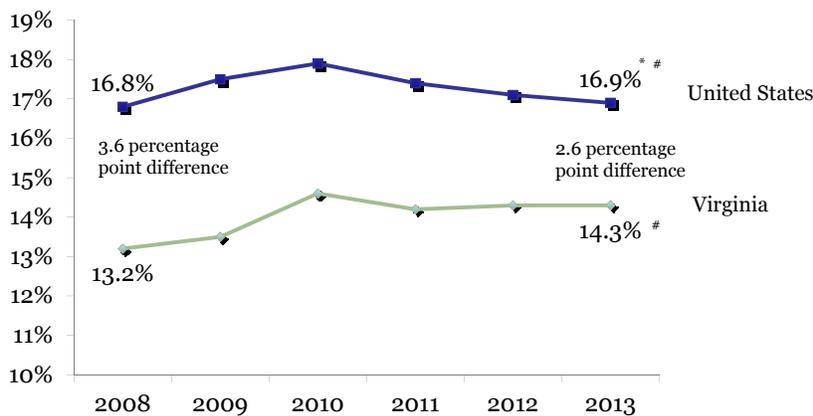
Information on the uninsured in Virginia, as collected by the Urban Institute for the Virginia Health Care Foundation and completed in August 2015, is the basis for most of the information presented in this section of the presentation.

The Uninsured in Virginia

- Approximately one million individuals are uninsured in Virginia
- Uninsured rates in the Commonwealth are typically lower than the rates in the nation as a whole
 - The difference in the rates of uninsured between the U.S. and Virginia narrowed slightly between 2008-2013
- The number of uninsured in Virginia increased among adults and decreased among children between 2008 and 2013

Source: The Virginia Health Care Foundation's 2015 *Profile of the Uninsured in Virginia* Report

Uninsurance Rates Among the Nonelderly in Virginia and the U.S., 2008-2013

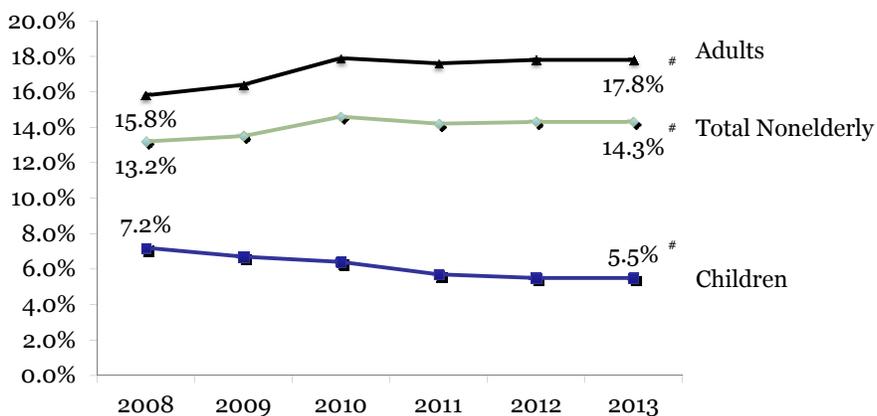


Note: * indicates the 2012 uninsured rate is statistically different from 2013 at the .10 level. # indicates the 2008 uninsured rate is statistically different from 2013 at the .10 level.

The estimates reflect Urban Institute adjustments for potential misreporting of coverage, based on a simulation model developed by Victoria Lynch under a grant from the Robert Wood Johnson Foundation.

Source: Urban Institute, May 2015. Based on the 2008, 2009, 2010, 2011, 2012, and 2013 American Community Survey (ACS) data from the Integrated Public Use Microdata Series (IPUMS) via the Virginia Health Care Foundation's 2015 Profile of the Uninsured in Virginia Report

Percent Uninsured in Virginia; Adults, Children and Total Nonelderly, 2008-2013



Note: * indicates the 2012 uninsured rate is statistically different from 2013 at the .10 level. # indicates the 2008 uninsured rate is statistically different from 2013 at the .10 level.

The estimates reflect Urban Institute adjustments for potential misreporting of coverage, based on a simulation model developed by Victoria Lynch under a grant from the Robert Wood Johnson Foundation.

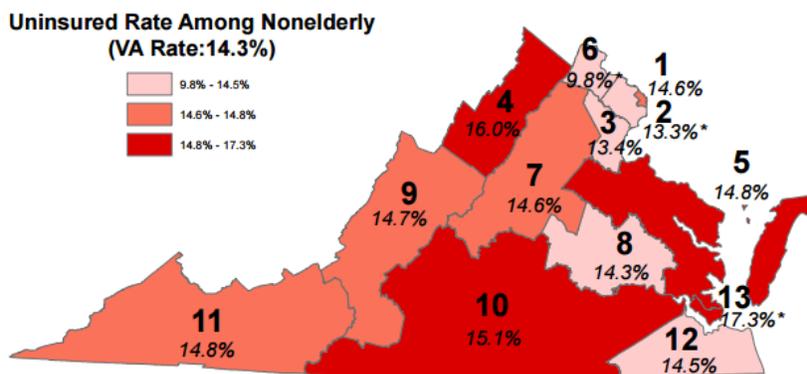
Source: Urban Institute, May 2015. Based on the 2008, 2009, 2010, 2011, 2012, and 2013 American Community Survey (ACS) data from the Integrated Public Use Microdata Series (IPUMS) via the Virginia Health Care Foundation's 2015 Profile of the Uninsured in Virginia Report

The Uninsured in Virginia

- 69.5 percent of uninsured Virginians (684,000) live in families with income at or below 200 percent of the federal poverty level (FPL)
- The number of uninsured is higher in Southern and Western parts of the Commonwealth
- Uninsured adults in Virginia are much more likely than insured adults to have unmet needs and less likely to receive preventive services

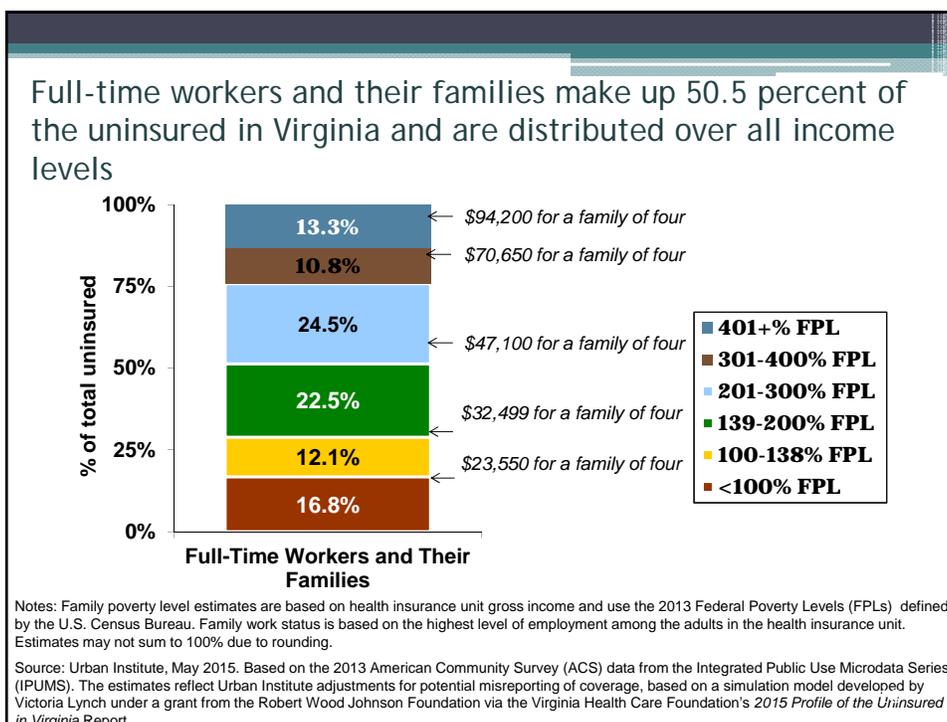
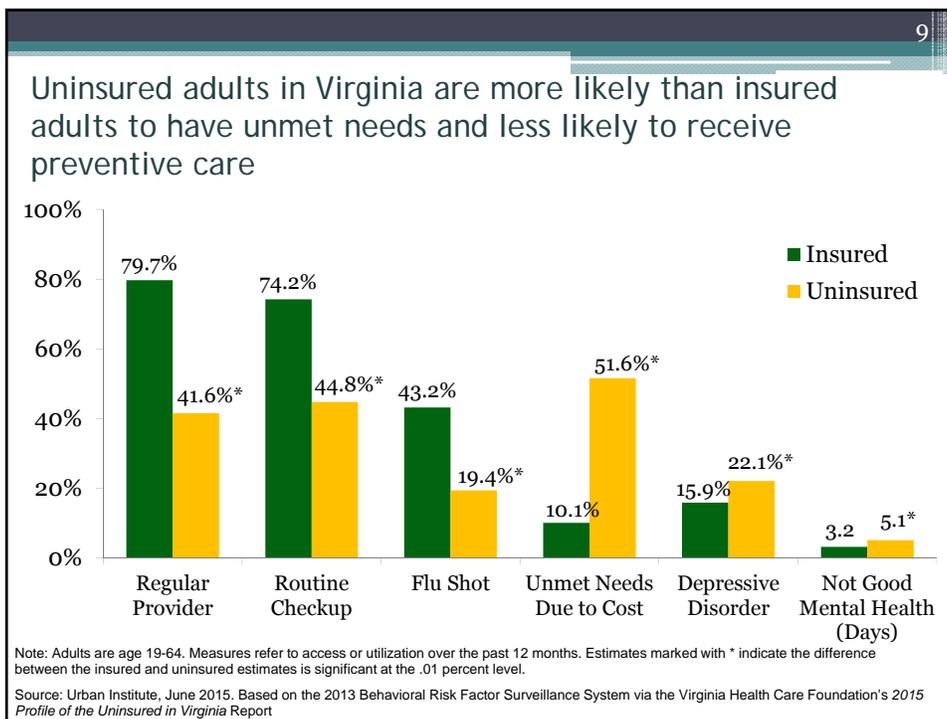
Source: The Virginia Health Care Foundation's 2015 Profile of the Uninsured in Virginia Report

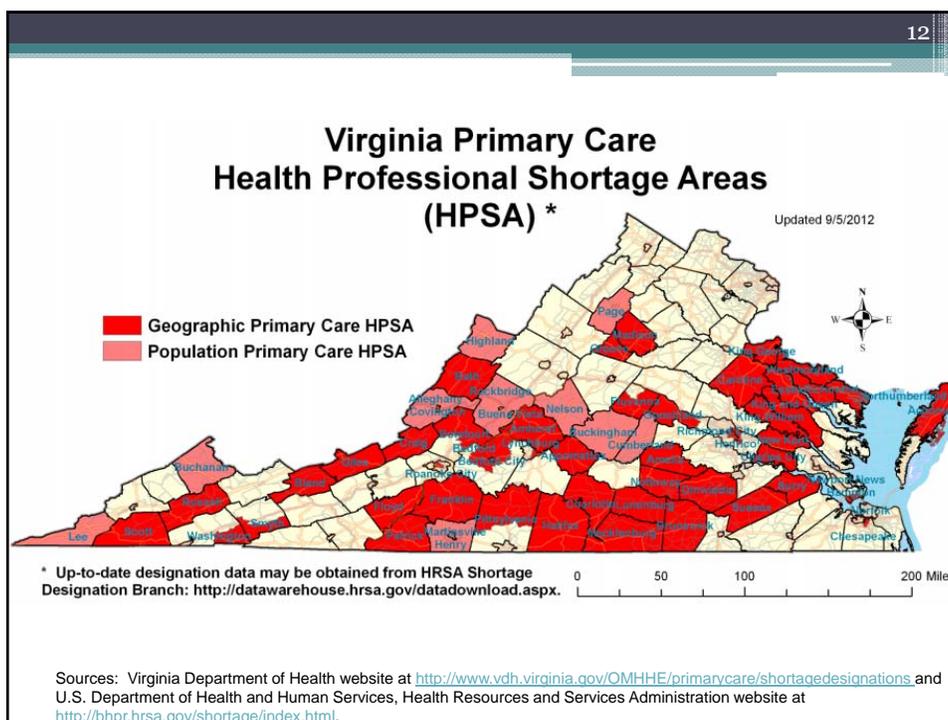
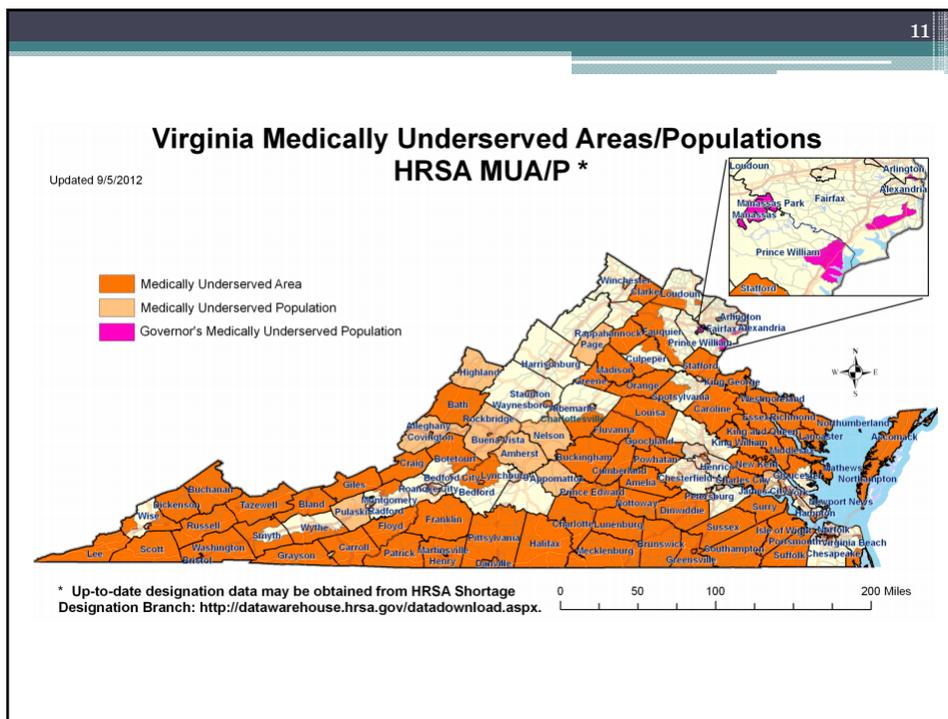
Uninsured Rate Among Nonelderly (0-64) in Virginia by Area, 2013



Source: Urban Institute, July 2015. Based on the 2013 American Community Survey (ACS) data from the Integrated Public Use Microdata Series (IPUMS) of the Minnesota Population Center.
 1 Shaded areas represent regions of Virginia which are defined in terms of counties or a combination of counties (see "Guide to Regions in Virginia").
 Notes: The estimates reflect Urban Institute adjustments for potential misreporting of coverage, based on a simulation model developed by Victoria Lynch under a grant from the Robert Wood Johnson Foundation.
 * Indicates that the uninsured rate for the region is statistically different from the uninsured rate for the areas in the rest of the state at the 0.1 level.

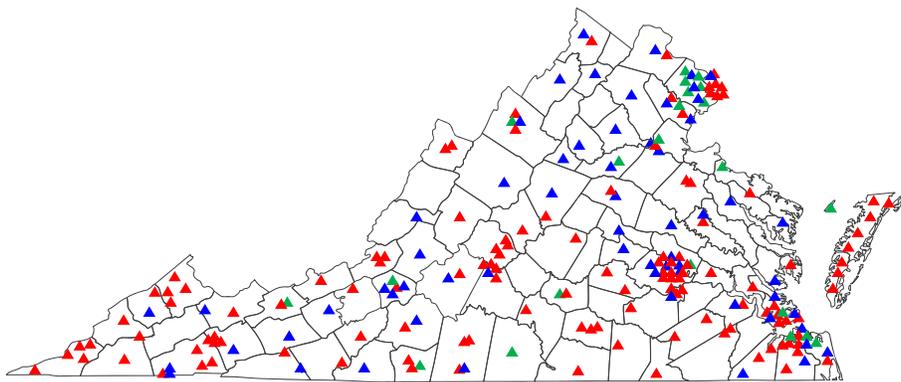
Source: The Virginia Health Care Foundation's 2015 Profile of the Uninsured in Virginia Report





HEALTH CARE SERVICES FOR UNSERVED AND UNDERSERVED INDIVIDUALS PROVIDED BY FREE AND CHARITABLE CLINICS

Virginia's Free and Charitable Clinics, Community Health Centers, and Other Health Safety Net Sites, 2015



- ▲ Free and Charitable Clinics
- ▲ Community Health Centers
- ▲ Other Health Safety Net Organizations

Source: The Virginia Health Care Foundation

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Free and Charitable Clinics in Virginia

- The Virginia Association of Free and Charitable Clinics has 60 member clinics
 - Patients are at or below 200 percent of the federal poverty level (FPL)
 - In 2014:
 - A total of 12,288 individuals volunteered their services
 - 7,316 health care professional volunteers
 - 4,972 lay volunteers
 - 71,916 patients were served by member clinics
 - 699,071 unduplicated prescriptions were dispensed
 - All member clinics combined had total annual operating expenses of \$34,906,586 in CY 2014
 - There is wide variation in the operating expenses of individual clinics
 - Ranging from \$52,500 to \$2, 726,856 per year

Source: The Virginia Association of Free and Charitable Clinics

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Health Care Visits to Free and Charitable Clinics in Virginia, CY 2014

	Medical Visits	Dental Visits	Mental Health Visits	Specialty Visits	Grand Totals
Total # Visits	224,840	37,567	22,946	5,596	290,949
Value per Visit	\$126	\$207	\$161	\$192	
Total Value	\$28,329,840	\$7,786,136	\$3,690,405	\$1,074,208	\$40,880,590

Source: The Virginia Association of Free and Charitable Clinics

Example of Free and Charitable Clinics in Virginia, CY 2014 Data

Clinic	# Health Care Volunteers	# Physician Volunteers	# Unduplicated Patients	# Patient Visits	Annual Operating Budget
Cross Over Health Care	291	70	6,609	26,589	\$2,629,969
Fan Free Clinic	50	7	3,970	9,750	\$2,305,976
Health Wagon	40	5	3,575	8,789	\$1,615,769
Charlottesville Free Clinic	380	149	3,089	9,555	\$1,677,289
Reddy TriCounty Health	47	21	219	533	\$99,543
Free Clinic of Powhatan	24	6	217	1141	\$201,536
Roanoke Valley Mental Health Care	43	0	209	1254	\$73,452
Surry Area Free Clinic	3	1	100	340	\$72,810

Source: The Virginia Association of Free and Charitable Clinics

VOLUNTEER HEALTH CARE PROFESSIONALS AND CIVIL LIABILITY PROTECTIONS

Current **Federal** Legal Protections for Volunteer
Health Care Professionals:

- Volunteer Protection Act
- Federal Tort Claims Act

Volunteer Protection Act

- In 1997, Congress adopted the Volunteer Protection Act (VPA), which provides all volunteers of government entities and not-for-profit organizations protection from liability for harms caused by their acts or omissions while serving as volunteers
- Under the VPA, two types of organizations qualify as not-for-profit organizations:
 - A 501(c)(3) organization as defined by the Internal Revenue Code and exempt from tax under 501(a)
 - Any not-for-profit organized for the public benefit and operated primarily for charitable, civic, educational, religious, welfare or health purposes

Source: Nonprofit Risk Management Center. State Liability Laws for Charitable Organizations and Volunteers. 2009.

Volunteer Protection Act

- The statute defines a volunteer as an individual performing services for a not-for-profit organization or governmental entity who does not receive:
 - Compensation for his or her services, other than reasonable reimbursement for expenses actually incurred
 - Anything of value, in lieu of compensation, in excess of \$500 per year

Source: Nonprofit Risk Management Center. State Liability Laws for Charitable Organizations and Volunteers. 2009.

Volunteer Protection Act

- Four requirements must be met for the VPA law to apply:
 - The volunteer is acting within the scope of his or her responsibilities
 - The volunteer is properly licensed, certified or authorized by the state to practice
 - The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct or conscious indifference to the rights/safety of the person injured
 - The harm was not caused while the volunteer was operating a motor vehicle or other vehicle for which a license or insurance is required
- The VPA preempts any conflicting state law, although states may enact broader protections

Source: www.beneschlaw.com/Files/Publication/d544d012-9ab3-4f19-8e02-be8d627bb329/Presentation/PublicationAttachment/5c545918-dd81-4739-baaf-bf3bd16d11cf/Benesch_Perspectives_February2015.pdf; and Nonprofit Risk Management Center. State Liability Laws for Charitable Organizations and Volunteers. 2009

Federal Tort Claims Act (FTCA)

- Under the FTCA, enacted in 1946, the federal government acts as a self-insurer and recognizes liability for the negligent or wrongful acts or omissions of its employees acting within the scope of their official duties
 - The United States is liable to the same extent an individual would be in like circumstances
 - The statute substitutes the United States as the defendant in such a suit and the United States—not the individual employee—bears any resulting liability

Sources: www.house.gov/content/vendors/leases/tort.php; and bphc.hrsa.gov/ftca/freeclinics/ftcafags.html

Federal Tort Claims Act (FTCA)

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) extended the eligibility for FTCA protection to volunteer health professionals at qualifying free clinics, deeming them federal employees for such purposes
 - Funds to support the program were appropriated in 2004, and the first free clinic volunteers were deemed in 2005
- The FTCA enables free clinics to invest more in health care services and quality improvement activities by freeing funds that would have been used on medical malpractice insurance premiums

Source: [//bphc.hrsa.gov/ftca/freeclinics/ftcafags.html](http://bphc.hrsa.gov/ftca/freeclinics/ftcafags.html)

Federal Tort Claims Act (FTCA)

- To be eligible, the volunteer's sponsoring free clinic must be operated by a nonprofit private entity meeting the following requirements
 - Does not, in providing health services through the facility, accept reimbursement from any third-party payor--including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program--but may accept voluntary donations for the provision of services
 - In providing health services through the facility, either does not impose charges on the individuals to whom services are being provided, or imposes a charge according to the ability of the individual involved to pay the charge
 - Is licensed or certified in accordance with applicable law regarding the provision of health services

Source: [//bphe.hrsa.gov/fca/freeclinics/fcafcfaq.html](http://bphe.hrsa.gov/fca/freeclinics/fcafcfaq.html)

Federal Tort Claims Act (FTCA)

- An eligible free clinic health professional, in providing a health service to an individual, must:
 - Be sponsored by the free clinic
 - Provide services to patients at a free clinic or through offsite programs or events carried out by the free clinic
 - Not receive compensation for provided services from patients directly or from any third-party payor
 - He/she may receive repayment from a free clinic for reasonable expenses incurred in service provision to patients
 - Be licensed or certified to provide health care services at the time of service provision in accordance with applicable law

Source: [//bphe.hrsa.gov/fca/freeclinics/fcafcfaq.html](http://bphe.hrsa.gov/fca/freeclinics/fcafcfaq.html)

Federal Tort Claims Act (FTCA)

- Under the FTCA, a claimant may not file suit before presenting an administrative claim to the Department. The administrative claim must be presented to the Department of Health and Human Services (HHS) Office of the General Counsel (OGC)
 - If the claim is denied or an administrative settlement is not reached within six months of such presentment, the claimant can sue the United States in the appropriate Federal district court

Source: [//bphc.hrsa.gov/fica/freeclinics/ftcafcfags.html](http://bphc.hrsa.gov/fica/freeclinics/ftcafcfags.html)

State Volunteer Liability Protections:
Virginia Code § 54.1-106 Liability Exemption
VaRisk Liability Coverage Program

§ 54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability

- No person who is licensed or certified by the Boards of/for Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Opticians; Pharmacy; Hearing Aid Specialists; Psychology; or Social Work or who holds a multistate licensure privilege to practice nursing issued by the Board of Nursing who renders at any site any health care services within the limits of his license, certification or licensure privilege, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge or any clinic for the indigent and uninsured that is organized for the delivery of primary health care services as a federally qualified health center designated by the Centers for Medicare & Medicaid Services, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.
 - Any person rendering such health care services who (i) is registered with the Division of Risk Management and (ii) has no legal or financial interest in the clinic from which the patient is referred shall be deemed an agent of the Commonwealth and to be acting in an authorized governmental capacity with respect to delivery of such health care services...

Source: <http://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-106/>

VaRISK Liability Coverage Program

- The Division of Risk Management (DRM) administers risk management plans and programs to protect Virginia's state government, political subdivisions, some non-profit organizations, and certain individuals serving in the public interest from financial loss
 - Pursuant to § 54.1-106, *Code of Virginia*, DRM offers medical malpractice coverage for health care practitioners who volunteer their services at Virginia's free clinics and federally-qualified health centers.
 - This coverage is available regardless of whether the clinic itself is covered through DRM
 - The premium for coverage of volunteers under the plan is paid by the Department of Health
- Free clinics and volunteers report being very satisfied with the program
- In over ten years, only three claims have been brought against a free clinic, and all three were dismissed

Source: www.trsvirginia.gov/Drm/clinic_volunteers.aspx

Conclusion

- The VPA and Virginia Code Section 54.1-106 provide health care professional volunteers working in free and charitable clinics protection from civil liability
 - While these laws do not provide volunteers liability protection in all possible settings, due to regulation and licensure requirements, it is unlikely that a volunteer would be providing services in a setting not covered by the law

Source: Nonprofit Risk Management Center. State Liability Laws for Charitable Organizations and Volunteers. 2009.

Conclusion

- Although these federal and state laws make it more difficult for a plaintiff to win a liability suit (i.e. the volunteer health care provider would use the affirmative defense of the VPA or state law to request dismissal), they do not bar volunteers from being sued
 - The statutes seek to balance:
 - Protecting a volunteer from personal liability, thereby increasing volunteerism
 - Maintaining a tort system that provides incentives for volunteers to exercise appropriate and reasonable care
- If a suit is brought against a health care professional volunteer, both the FTCA and the VaRISK program provide liability coverage and protection from financial loss

Source: Nonprofit Risk Management Center. State Liability Laws for Charitable Organizations and Volunteers. 2009.