

**REPORT OF THE STATE COUNCIL OF
HIGHER EDUCATION FOR VIRGINIA**

**Review of Eastern Virginia
Medical School as Required
by Chapter 879, 2008 Virginia
Acts of Assembly**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 22

**COMMONWEALTH OF VIRGINIA
RICHMOND 2008**

Review of Eastern Virginia Medical School

As Required by Chapter 879, 2008 Virginia Acts of Assembly

Introduction

The State Council of Higher Education (SCHEV) has broad authority to plan and coordinate post-secondary educational programs for all health professions and occupations in the Commonwealth. This mandate is set out in § 23-9.10:1 of the Code of Virginia:

“The State Council of Higher Education is hereby designated the planning and coordinating agency for all post-secondary educational programs for all health professions and occupations. The Council shall make recommendations, including those relating to financing, whereby adequate and coordinated educational programs may be provided to produce an appropriate supply of properly trained personnel. The Council is authorized to conduct such studies as it deems appropriate. All state departments and agencies shall cooperate with the Council in the execution of its responsibilities under this section.”

Pursuant to this legislative mandate SCHEV has been directed to “review the programmatic, personnel, financial, oversight, organizational and governance issues of Eastern Virginia Medical School (EVMS)” and to develop recommendations to insure EVMS’s continued “success in addressing the health workforce, patient care and biomedical research needs of the Commonwealth.”¹

The impetus for this special review stems largely from the unique nature of EVMS which shares characteristics of both private and public institutions of higher education. As will be discussed below, EVMS has traditionally been considered a private institution^{2,3} yet it receives some general fund support for its operating programs. Now, however, for the first time EVMS has received a significant appropriation from the Commonwealth for capital construction.⁴ Included in the 2008 Bond Bill is a \$59 million appropriation for the construction of a new medical education and research facility at EVMS. Its status as a “hybrid” institution, however, prompted the General Assembly to proceed with caution in the expansion of its support for this institution. In order to insure adequate representation of the Commonwealth’s interests, this appropriation was made

¹ Chapter 879, Item 149, 2008 Virginia Acts of Assembly.

² EVMS has historically reported itself as a “Private Institution” on the federal Integrated Postsecondary Educational Data System (IPEDS) administered by the Department of Education’s National Center for Education Statistics and to the Association of American Medical Colleges.

³ Virginians attending EVMS are eligible for State Tuition Assistance Grant (TAG) awards. By statute, these awards are available only to students attending private institutions.

⁴ Chapters 1 and 2, 2008 Virginia Acts of Assembly, Special Session I (the Bond Bill).

contingent on re-engineering the governance structure of EVMS such that the membership of its Board of Visitors will include legislative and gubernatorial appointees.⁵ By this action the General Assembly has created a new type of higher education institution in Virginia.

This new type of institution requires the development of a new framework which redefines the relationship between EVMS and the Commonwealth and that clearly sets out the mutual obligations and expectations of each. Despite the shift toward greater state oversight, EVMS will continue to have organizational characteristics that set it apart from the traditional “public institution” model. The objective of this review will be to provide a framework that will; 1) reinforce those of its unique characteristics that have contributed to its success as the Commonwealth’s first community-based medical school⁶ and 2) delineate the type and level of state support required to insure its “continued success in addressing the health workforce, patient care and biomedical research needs of the Commonwealth.”

Background

This has been a remarkable year for public support for medical education in the Commonwealth. Included in the appropriation totals for higher education capital construction are: 1) \$59 million for the establishment of a new School of Medicine and Research Institute to be created by Virginia Polytechnic Institute and State University, in partnership with the Carilion Clinic, 2) \$58 million for the construction of a new School of Medicine Building at Virginia Commonwealth University, and 3) \$59 million for a medical education and research facility at Eastern Virginia Medical School.

Approval of these projects by the General Assembly comes at a critical time. The American Association of Medical Colleges warns of an impending shortage of physicians in this country and recommends that “enrollment in LCME-accredited medical schools should be increased by 30% from the 2002 level over the next decade.”^{7,8} The Commonwealth is not immune to the projected physician shortage. A recent report prepared by the Governor’s Health Reform Commission states that, “It is estimated that

⁵ Under its current legislative charter, Board appointments are made by the Eastern Virginia Medical School Foundation and by the respective city councils of Chesapeake, Hampton, Portsmouth, Suffolk, Newport News, Virginia Beach and Norfolk.

⁶ “Community-based medical schools can be distinguished by their use of community physicians and hospitals to conduct their clinical teaching programs...” from *The Association of American Medical Colleges, The Financing of Medical Schools, A Report of the AAMC Task Force on Medical School Financing*, (1996).

⁷ Association of American Medical Colleges. *AAMC Statement on the Physician Workforce* (June 2006).

⁸ The Liaison Committee on Medical Education (LCME) is the nationally recognized accrediting authority for allopathic medical education programs leading to the M.D. degree in U.S. and Canadian medical schools. The LCME is sponsored by the Association of American Medical Colleges and the American Medical Association.

by 2020 there will be a shortage of approximately 1,500 physicians in the Commonwealth.”⁹ The projected physician shortage in the Commonwealth was also noted by SCHEV in its 2008-10 biennial capital outlay recommendations and in its 2008 briefing paper to the General Assembly on this topic.

Expanding the medical education program at EVMS by means of a state supported medical education and research facility constitutes a critical step in meeting the anticipated physician workforce shortfall. The capital outlay appropriation to EVMS and the related contingencies to which it is subject are set out in the Bond Bill¹⁰ approved during the first 2008 Special Session of the General Assembly. The language from the relevant sections appears below:

“8. That pursuant to § [23-30.28](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia College Building Authority to issue revenue bonds in a principal amount not to exceed \$59 million plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during construction and for one year after completion thereof, and other financing expenses, for the construction of a medical education and research facility at Eastern Virginia Medical School (EVMS). The Authority shall be authorized to exercise any and all powers granted to it by law in connection with such project. The General Assembly hereby appropriates the proceeds from any such bonds for the construction of a medical education and research facility at EVMS.

Upon the effective date of this act, the Director of the Department of Planning and Budget may distribute sufficient funds to EVMS for project planning, including detailed planning. The distribution of funds by the Director for construction is contingent upon the following conditions:

a. A bill is introduced for a Special Session of the General Assembly held prior to the 2009 Regular Session of the General Assembly or for the 2009 Regular Session of the General Assembly that provides for the following: an amendment to enabling legislation of EVMS that changes the appointments of the 17 members of the Board of Visitors of EVMS such that three members are to be appointed by the Speaker of the House of Delegates, two members are to be appointed by the Senate Committee on Rules, two members are to be appointed by the Governor, six members shall continue to be appointed by the Board of the Eastern Virginia Medical School Foundation, and four members shall continue to be appointed by local governments;

⁹ Health Reform Commission. (September 2007). Roadmap for Virginia’s Health: A Report of the Governor’s Health Reform Commission. Richmond, VA.

¹⁰ Chapters 1 and 2, 2008 Virginia Acts of Assembly (Special Session I)

b. The Board of Visitors of EVMS enters into a memorandum of understanding with the Commonwealth in which the Board promises to increase the current medical school class size; and

c. A determination by the Secretary of Finance that the Board of Visitors of EVMS has cooperated in a review of EVMS by the State Council of Higher Education for Virginia as such review may be provided for in the general appropriation act.”

As noted above, this is the first significant capital construction appropriation to EVMS and provisions in the legislation reflect the caution with which the General Assembly is proceeding in its expansion of state support for the health professions programs there. The three contingencies set out above include: 1) the modification of the composition of the governing board of Eastern Virginia Medical School to include gubernatorial and legislative appointments, 2) the execution of a memorandum of understanding requiring an increase in the size of the medical school class and 3) certification of EVMS’ cooperation with SCHEV in the conduct of this review.

A brief overview of medical education in the Commonwealth will be presented and a discussion of the evolution of that system will be used to guide the development of the recommendations in this report.

Overview of Medical Education in the Commonwealth

Virginia is currently home to five schools of medicine: 1) the University of Virginia’s School of Medicine, 2) The Medical College of Virginia, Health Sciences Division of Virginia Commonwealth University, 3) Eastern Virginia Medical School, 4) the Edward Via Virginia College of Osteopathic Medicine and 5) the recently established Virginia Tech Carilion School of Medicine and Research Institute.

Although medical education may intuitively seem to be a rather well-defined, narrowly focused activity, these institutions represent a broad spectrum of institutional types exhibiting very different organizational characteristics. Among these institutions are represented a variety of governance structures, degrees of operational autonomy and levels of state support.

Not only do these organizational characteristics vary across institutions, it can also be shown that some of them vary at the same institution over time. As will be discussed below, state policies and institutional practices related to higher education in general and to medical education and affiliated medical centers in particular are continually evolving in order to adapt to changing environmental conditions and to the changing needs of the Commonwealth.

A brief description of each school will be presented below in chronological order of their creation, beginning with the oldest.

University of Virginia

The School of Anatomy and Medicine at the University of Virginia (UVa) was one of the original eight schools authorized by the University's Board of Visitors and by the Virginia General Assembly in 1819.¹¹

“The School of Medicine, the tenth medical school to be established in the United States, was authorized by the University of Virginia Board of Visitors at its first meeting in 1819. The school was established as one of the University's original eight in 1824, and opened in March 1825. The first degree offered at the University was that of the Doctor of Medicine in 1828. Doctor of Medicine degrees have been awarded annually since that time, except for the Civil War year 1862.”¹²

The enabling language for the University of Virginia begins simply enough:

“§ 23.62. The University of Virginia shall be continued. (Code 1919, § 806.)”

Subsequent sections of the Code define the institution's corporate structure, mode of governance, etc.

“§ 23-69. Board a corporation.

The board of visitors of the University of Virginia shall be and remain a corporation, under the style of "the Rector and Visitors of the University of Virginia," and shall have, in addition to its other powers, all the corporate powers given to corporations by the provisions of Title 13.1; except in those cases where, by the express terms of the provisions thereof, it is confined to corporations created under such title; and shall also have the power to accept, execute and administer any trust in which it may have an interest under the terms of the instrument creating the trust. The rector and visitors of the University of Virginia **shall be at all times subject to the control of the General Assembly.** (Code 1919, § 806.)” (Emphasis added).

The Code also provides the following description of the scope of the University's academic programs, which explicitly include “anatomy, surgery and medicine.”

“§ 23-63. Branches of learning to be taught.

¹¹ Report of the Joint Subcommittee Studying Flexibility in Personnel and Purchasing Practices for Teaching Hospitals, House Document No. 53 (1991).

¹² <http://www.healthsystem.virginia.edu/internet/about/factbook/ch1.cfm>

The following branches of learning shall be taught at the University: the Latin, Greek, Hebrew, French, Spanish, Italian, German, and Anglo-Saxon languages; the different branches of mathematics, pure and physical; natural philosophy, chemistry, mineralogy, including geology; the principles of agriculture; botany, anatomy, surgery, and medicine; zoology, history, ideology, general grammar, ethics, rhetoric, and belles lettres; civil government, political economy, the law of nature and of nations and municipal law.
(Code 1919, § 817.)”

The Code also includes UVa among the institutions that are declared to be “public bodies... constituted as governmental instrumentalities for the dissemination of education.”¹³

The University of Virginia School of Medicine is part of the UVa Health System which also includes the Medical Center, the School of Nursing, the Claude Moore Health Sciences Library and an affiliated physician clinical practice organization. The School of Medicine offers the Doctor of Medicine (M.D.). Teaching for the Ph.D. in Biomedical Sciences, the Master’s Degree in Health Evaluation Sciences, the Master’s Degree in Public Health and several joint programs combining the M.D. and the Master’s of Science is provided through the School of Medicine. These degrees, other than the M.D., are administered through the College and Graduate School of Arts and Sciences.¹⁴ The medical school is fully accredited by the Liaison Committee on Medical Education.¹⁵

Virginia Commonwealth University

The Medical College of Virginia was originally chartered as the Medical College of Richmond in 1854. However, its origin can be traced to 1837 when it was established as the Department of Medicine of Hampden Sydney College. In 1860 it came under the full ownership of the Commonwealth with legislative appropriations.^{16,17} In 1968 the Medical College of Virginia was merged with the Richmond Professional Institute to form Virginia Commonwealth University (VCU).

¹³ § 23-14. Code of Virginia. Certain educational institutions declared governmental instrumentalities; powers vested in majority of members of board. [LIS Code of Virginia 23-14](#)

¹⁴ This information was provided by the University of Virginia.

¹⁵ The Liaison Committee on Medical Education (LCME) is the nationally recognized accrediting authority for allopathic medical education programs leading to the M.D. degree in U.S. and Canadian medical schools. The LCME is sponsored by the Association of American Medical Colleges and the American Medical Association.

¹⁶ Report of the Joint Subcommittee Studying Flexibility in Personnel and Purchasing Practices for Teaching Hospitals, [House Document No. 53](#) (1991).

¹⁷ W. Sanger, [Medical College of Virginia Before 1925/University College of Medicine 1893-1913](#) at 21, 24 (1973).

The enabling language from the Code of Virginia for Virginia Commonwealth University states:

“§ 23-50.4. Corporation established.

There is hereby established a corporation consisting of the board of visitors of the Virginia Commonwealth University under the style of "Virginia Commonwealth University," and **shall at all times be under the control of the General Assembly.** (1968, c. 93.)” (Emphasis added).

Subsequent language in the Code describes the actual combination of the two heretofore separate corporate entities into Virginia Commonwealth University.

“§ 23-50.5. Transfer of property, rights, duties, etc., of Medical College of Virginia and Richmond Professional Institute.

All real estate and personal property existing and standing in the name of the corporate bodies designated "Medical College of Virginia" and "Richmond Professional Institute" as of July 1, 1968, shall be transferred automatically to and, by virtue of this chapter, shall be known and taken as standing in the name and to be under the control of the corporate body designated "Virginia Commonwealth University." Such real estate and personal property shall be the property of the Commonwealth. All rights, duties, contracts and agreements of the Medical College of Virginia and Richmond Professional Institute as of July 1, 1968, are hereby vested in such corporate body designated "Virginia Commonwealth University," which shall thenceforth be responsible and liable for all the liabilities and obligations of each of the predecessor institutions. (1968, c. 93.)”

Then, in a subsequent paragraph, the name of the medical school is officially set out:

“§ 23-50.7. Purpose of corporation; redesignation of Medical College of Virginia.

The corporation is formed for the purpose of establishing and maintaining a university consisting of colleges, schools and divisions offering undergraduate and graduate programs in the liberal arts and sciences and programs of education for the professions and such other branches of learning as may be appropriate, and in connection therewith, it is empowered to maintain and conduct hospitals, infirmaries, dispensaries, laboratories, research centers, power plants and such other necessary related facilities as in the opinion of the board of visitors are deemed proper. The colleges, schools, and divisions heretofore existing as The

Medical College of Virginia shall, as of July 1, 1968, be designated **The Medical College of Virginia, Health Sciences Division of Virginia Commonwealth University.** (1968, c. 93.)” (Emphasis added).

The Code also includes VCU among the institutions that are declared to be “public bodies... constituted as governmental instrumentalities for the dissemination of education.”¹⁸

VCU’s academic health center is the largest of Virginia’s academic health centers. It includes the VCU Hospital and the schools of medicine, nursing, dentistry, allied health and pharmacy. It also includes an affiliated physician practice. Degrees offered through the school of medicine include the Doctor of Medicine (M.D.), the Ph.D. in Biomedical Sciences, the Master’s Degree in Biomedical Sciences, and the Master’s Degree in Public Health. Several joint programs combining the M.D. and the Master’s of Science are also offered. The medical school is fully accredited by the Liaison Committee on Medical Education.

As noted above, VCU was among the three medical schools in Virginia to receive funding for a significant capital construction project. The proposal for the project also provided for an expansion of the medical school enrollment by over 30%.

Please note for later reference the nearly identical highlighted passages in both UVa’s and VCU’s enabling legislation regarding their respective relationships to the Commonwealth. Both passages emphasize the notion that these institutions are at all times subject to the control of the General Assembly.

Eastern Virginia Medical School

As are the University of Virginia and Virginia Commonwealth University, Eastern Virginia Medical School is included among the institutions which, in the Code of Virginia, are declared to be “public bodies... constituted as governmental instrumentalities for the dissemination of education.”¹⁹ Nevertheless, as will be discussed below, there are significant differences in its corporate structure which render EVMS qualitatively different with respect to its governance, operations, funding and overall level of state control. But as will also be discussed below, these differences are becoming increasingly less pronounced.

Eastern Virginia Medical School was originally authorized by Chapter 471, 1964 Virginia Acts of Assembly as the Medical College of Hampton Roads with the following language:

¹⁸ § 23-14. Code of Virginia. Certain educational institutions declared governmental instrumentalities; powers vested in majority of members of board. [LIS Code of Virginia 23-14](#)

¹⁹ Ibid.

“§ 1. There is hereby created a public body politic and corporate to be known as the "Medical College of Hampton Roads" hereinafter referred to as "the Medical College," with such public and corporate powers as are hereinafter set forth.”

Although legally established in 1964, the school did not admit its first class until 1973 after several years of fundraising.²⁰

In 2002 with the enactment of Chapters 87 and 478, the charter under which EVMS was established underwent significant revision. The original charter was amended as follows:

“§ 1. There is hereby created a public body politic and corporate *and a political subdivision of the Commonwealth* to be known as the "~~Medical College of Hampton Roads~~ *Eastern Virginia Medical School*" hereinafter referred to as "~~the Medical College~~ *School*", with such public and corporate powers as are hereinafter set forth...²¹

3. The ~~Medical College~~ *School* shall be deemed to be a public instrumentality, *having its primary offices and facilities located in the Hampton Roads area of the Commonwealth of Virginia. The Medical School shall have the power to exercise and the purpose of exercising public and essential governmental functions to provide for the public health, welfare, convenience, knowledge, benefit, and prosperity of the residents of the Commonwealth of Virginia and such other persons who might as may be served by the Medical College School, and to provide medical education and improved. In the exercise of such power and purpose, the Medical School shall deliver and support the delivery of high quality medical and health care and related services to such residents and persons regardless of their ability to pay, by providing educational opportunities and conducting and facilitating research and. Further, the Medical School is hereby authorized to exercise the powers conferred by the following sections, consistent with the approval authority of the State Council of Higher Education pursuant to the Code of Virginia this chapter.*”

Among the major provisions of the legislation are:²²

- revises the legal name of the Medical College of Hampton Roads to be consistent with the commonly accepted popular name, i.e., “Eastern

²⁰ <http://www.evms.edu/about/history.html>

²¹ Chapters 87 and 478, 2002 Virginia Acts of Assembly.

²² Extracted from Legislative Information Services legislative summary at <http://leg1.state.va.us/cgi-bin/legp504.exe?021+sum+SB35>

Virginia Medical School” and strengthens and modernizes the school’s authorities and status,

- designates the institution as a *political subdivision*²³ of the Commonwealth,
- provides that the school may operate and own medical and health care, education, research and associated programs and establish satellite offices and facilities for such programs within or without the Commonwealth or the United States;
- gives the board of visitors the authority to contract with domestic and foreign entities for its activities,
- gives the board of visitors the authority to obtain patents, copyrights, and trademarks for intellectual properties and to administer, manage, market, transfer, and convey any interest in such intellectual properties.
- provides exceptions, parallel to those exceptions provided for publicly supported institutions of higher education or the publicly supported medical schools, from the prohibited contracts provisions of the conflicts of interest law, and the records disclosure and closed meeting provisions of the Freedom of Information Act.
- reinforces the fact that the Administrative Process Act and the Public Procurement Act do not apply to Eastern Virginia Medical School, which, although established in law, is not a state-owned institution of higher education.
- includes numerous technical amendments to change the institution's legal name in the enabling chapter and the Code and to update the language of the enabling chapter.” (Emphasis added).

In the context of this review, it is interesting to note two specific elements of this legislation. The first is the designation of EVMS as a “political subdivision” and the second is the explicit exemption of EVMS from the Administrative Process Act and the Public Procurement Act. The designation of EVMS as a “political subdivision” and the other exemptions noted above parallel in many respects the proposed provisions that would have applied to certain Virginia public institutions of higher education under the Chartered Universities and Colleges Act of 2004 (SB638/HB1359).

²³ U.S. Treasury Regulations Subchapter A, §1.103-1(b) provides that the term “political subdivision” denotes any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

Provisions of that act would have declared certain public universities to be “political subdivisions.” And, although the measure provided that chartered institutions continue to be "public institutions of higher education" and "educational institutions," it also provided that these institutions are not "subject to local law or regulation except as the General Assembly may explicitly authorize."

Although this bill was never enacted its introduction did provide the impetus for the establishment in 2004 of a joint subcommittee to study the administrative and financial relationships between the Commonwealth and its institutions of higher education.²⁴ The recommendations of the Joint Subcommittee²⁵ ultimately led to the introduction and subsequent passage of the Restructured Higher Education Administrative and Financial Operations Act of 2005.²⁶ A further discussion of this legislation and its impact on the organizational characteristics of certain institutions, especially those classified as Level 3 institutions under the Act, will be presented later in this review.

In its 2000 report to the General Assembly regarding academic health centers, the Joint Commission on Health Care noted the following,²⁷

“While there are different ways of defining an Academic Health Center (AHC), it would appear that under most any definition, EVMS, VCU and UVA would be considered an AHC. Of these three institutions, EVMS is unique in that it does not own or operate a hospital. In addition to its teaching mission, EVMS provides physician services through its faculty practice plan to a number of hospitals in the Tidewater area.”

The Joint Commission on Health Care’s designation of EVMS as a component of an academic health center is significant because of its implication for the development of a new operating framework for EVMS. The interrelationships among the school, its clinical practice and its affiliated hospitals will need to be considered when defining the mutual obligations and expectations between EVMS and the Commonwealth.

Degrees offered by EVMS include the Doctor of Medicine (M.D.), the Ph.D. in Biomedical Sciences, the Master’s Degree in Biomedical Sciences, and the Master’s Degree in Public Health. Several joint programs combining the M.D. and the Master’s of

²⁴ Senate Joint Resolution 90, Virginia General Assembly, 2004.

²⁵ Report of the Joint Subcommittee to Study the Administrative and Financial Relationships Between the Commonwealth and its Institutions of Higher Education, Senate Document 17, (2005).

²⁶ Chapters 933 and 945, 2005 Virginia Acts of Assembly.

²⁷ Report of the Joint Commission on Health Care: Academic Health Centers’ Study Pursuant to SJR 464, Senate Document No. 47 (2000).

Science are also offered in conjunction with Old Dominion University. The medical school is fully accredited by the Liaison Committee on Medical Education.

Edward Via Virginia College of Osteopathic Medicine

Founded in 2002, the Edward Via Virginia College of Osteopathic Medicine²⁸ (VCOM) is a private non-for-profit post-baccalaureate professional medical college in Blacksburg, Virginia. It was initially funded through several foundations that were established by the late Marion Bradley Via. “The vision for the College was to provide healthcare for Southwest Virginia and the Appalachian region, and to promote biomedical research with Virginia Tech.”²⁹

VCOM, unlike the three previously discussed institutions, does not appear among the list of institutions designated as “public bodies and constituted as governmental instrumentalities for the dissemination of education.” Further, VCOM classifies itself as a “private institution” for reporting purposes to the AAMC and to the NCES.³⁰ Finally, VCOM has sought, and received, eligibility to participate in the Commonwealth’s Tuition Assistance Grant (TAG) financial aid program. Established in the Code of Virginia, TAG is:

“a program of tuition assistance in the form of grants, as hereinafter provided, to or on behalf of bona fide residents of Virginia who attend private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education.”³¹

Among the Commonwealth’s medical colleges, VCOM most nearly resembles the traditional “private” school model. Even so, it has a close relationship with Virginia Tech. It is located in Virginia Tech’s corporate research center and operates under a collaborative agreement with Virginia Tech for research and for student activities. “This collaboration offers the student an opportunity to participate in the campus activities with students from Virginia Tech, including use of the library, recreational facilities, student center, arts and theatre programs, intramural programs, and access to Virginia Tech football and other athletic event tickets.”³²

²⁸ The training of osteopathic (D.O.) physicians is virtually identical to that of allopathic (M.D.) physicians. Osteopathic physicians use all conventional methods of diagnosis and treatment but are trained to place additional emphasis on the achievement of normal body mechanics as central to maintaining good health.

²⁹ <http://www.vcom.vt.edu/general/history.html>

³⁰ Please see note #2.

³¹ § 23-38.12 Code of Virginia. Also, please see note #3.

³² <http://www.vcom.vt.edu/general/collaboration.html>

VCOM offers the Doctor of Osteopathic Medicine Degree (D.O.). It also offers joint programs with Virginia Tech leading to the D.O./Master of Science and D.O./Ph.D. The College is fully accredited by the Commission on Osteopathic College Accreditation (COCA) of the American Osteopathic Association, which is the only accrediting agency for predoctoral osteopathic medical education, and is recognized by the United States Department of Education.

VCOM is a registered 501(c)(3) corporation.³³ Its Board of Directors is determined as set forth in its articles of incorporation under the Virginia Nonstock Corporation Act (§13.1-801).

Virginia Tech Carilion School of Medicine and Research Institute

The Virginia Tech Carilion School of Medicine was authorized in Chapters 1 and 2, 2008 Acts of Assembly (Special Session I) with the following language:

“That the General Assembly hereby approves the proposal for establishing a new School of Medicine and Research Institute to be created by Virginia Polytechnic Institute and State University (Virginia Tech), in partnership with the Carilion Clinic (Carilion), in downtown Roanoke, Virginia. Virginia Tech is hereby granted approval, pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) of the Code of Virginia (PPEA), to enter into an interim and/or comprehensive agreement with a private entity for the design and construction of the School of Medicine and Research Institute.”

This institution was established to provide for high quality, advanced medical care in Southwest Virginia with an emphasis on research and education.

The private medical school will be formed as a nonstock, nonprofit corporation availing itself of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The new corporation shall be controlled jointly by Virginia Tech and Carilion. The composition of its governing board will be determined as follows:

“Four members shall be appointed by the Board of Visitors of Virginia Tech, Four members shall be appointed by the Board of Directors of Carilion, three outside Board members shall be approved by each of the Board of Directors of Carilion and the Board of Visitors of Virginia Tech.”³⁴

The Virginia Tech Carilion School of Medicine will offer the Doctor of Medicine degree. The current plan calls for the submission of accreditation materials to the LCME

³³United States Internal Revenue Code (26 U.S.C. § 501(c)).

³⁴ Memorandum of Understanding among Virginia Tech, Carilion and the Virginia Tech Foundation.

in August 2008 with preliminary accreditation coming in February 2009. The LCME prohibits the recruitment of students until the school receives preliminary accreditation. Also under the current plan, the charter class would enter in August 2010.

The brief descriptions of the Commonwealth's medical schools provided above serve to illustrate the wide variety of organizational characteristics exhibited by each. Among these institutions are represented several distinct governance structures, degrees of operational autonomy and levels of state support. Each of these institutions can be said to lie along a "continuum of state control" extending from limited or no state control to full state control. Similarly, each can be said to lie along a "continuum of state support," its position on that continuum determined by its funding structure *vis a vis* the state.

Governance

The form of the governing boards of UVa and VCU are set out in their respective enabling legislation as is the form of the governing board of Eastern Virginia Medical School. With respect to the fundamental rights, powers and duties of their respective boards, there exists a great deal of similarity. Each has the power to enact and amend bylaws, select a president or chief executive officer, enact rules and regulations, confer degrees and to generally direct the affairs and business of the institution.

Where the significant differences occur between UVa and VCU on the one hand and EVMS on the other are: 1) the power of appointment to the boards of visitors and 2) the explicit level of control over the institution exercised by the General Assembly. This second point was alluded to above.

At UVa and VCU, the boards of visitors consist of sixteen members appointed by the Governor subject to confirmation by the General Assembly. Also, as noted above explicit language in their respective Code sections clearly defines them as state agencies.

- "the University of Virginia shall be at all times subject to the control of the General Assembly..."
- "Virginia Commonwealth University... shall at all times be under the control of the General Assembly."

The board of visitors of EVMS, on the other hand, consists of seventeen members, six of whom are appointed by the Eastern Virginia Medical School Foundation and eleven of whom are appointed by the respective city councils of Chesapeake, Hampton, Portsmouth, Suffolk, Newport News, Virginia Beach and Norfolk. These appointments are not subject to confirmation by the General Assembly, nor is there any language which explicitly authorizes control over the institution by the General Assembly.

From a public policy perspective, two qualitative differences have historically distinguished the paradigms under which these institutions operated. The first is the degree of state control, reflected in the power of appointment and in other explicit language. The second is the level of state funding.

The Educational and General programs at the “state” schools, UVa and VCU, were supported with significant contributions from the general fund but these institutions were also subject to extensive operational control and detailed reporting requirements as determined by central government. The “nonstate” school received significantly less state funding but had significantly more institutional autonomy, especially with respect to procurement, personnel administration and contracting authority.

Looking forward, however, as a result of the requirements of the 2008 Budget Bill, a profound change in the power of appointment to the EVMS Board of Visitors is imminent. As noted above, the Governor and General Assembly will have appointive powers to the EVMS Board of Visitors. By establishing this contingency, the General Assembly has significantly enhanced the State’s influence over the affairs of EVMS and has significantly enhanced the state’s oversight of the institution, assuming passage of the legislation. This change in the composition of its Board will move EVMS closer to the traditional “public” institutional model, represented by UVa and VCU.

The composition of the governing boards of VCOM and the Virginia Tech Carilion Medical School are set out in their respective articles of incorporation and, in the case of Virginia Tech Carilion, in its memorandum of understanding with Carilion Clinic and the Virginia Tech Foundation, Inc. Appointments to the governing boards of these two institutions are made by corporate foundation officers and/or by the existing board of visitors, in the case of Virginia Tech Carilion.

The Federal higher education nomenclature provides the following definition of a private higher educational institution:

“An educational institution controlled by a private individual(s) or by a nongovernmental agency, usually supported primarily by other than public funds, and operated by other than publicly elected or appointed officials. These institutions may be either for-profit or not-for-profit.”³⁵

Then, the definition of a “not-for-profit” private institution is provided:

“A private institution in which the individual(s) or agency in control receives no compensation, other than wages, rent, or other expenses for the assumption of risk. These include both independent not-for-profit schools and those affiliated with a religious organization.”³⁶

³⁵ Extracted from the National Center for Education Statistic’s [Integrated Postsecondary Education Data System Glossary](http://nces.ed.gov/ipeds/glossary/index.asp?id=511); (<http://nces.ed.gov/ipeds/glossary/index.asp?id=511>)

³⁶ Ibid.

This federal definition of a “private” institution is clearly consistent with the use of that term to describe VCOM and Virginia Tech Carilion in the preceding section.

Also, the federal definition of a “private” institution reinforces the notion that the two most important qualitative factors that determine the operative paradigm for an institution of higher education are: 1) the presence or absence of extensive state control of the institution and 2) the presence or absence of significant public funding to support the institution.

For purposes of this review, VCOM and Virginia Tech Carilion represent examples of institutions that appear at the opposite end of the “continuum of state control” and the “continuum of state funding” from UVa, VCU and, to a certain extent, EVMS. The paradigm under which they operate, or will operate in the case of Virginia Tech Carilion, includes virtually no operational oversight from central government³⁷ and includes no state financial support for operations. In fact, Article VIII, Section 9 of the Constitution of Virginia prohibits the appropriation of public funds, with certain limited exceptions, to private educational institutions.^{38,39}

One additional note regarding governance and appointive powers is relevant here. The cognizant regional accrediting agency for public and private institutions in Virginia, the Commission on Colleges of the Southern Association of Colleges and Schools, includes standards regarding the composition and duties of governing boards among its accreditation criteria which would, therefore, be applicable to all degree-granting institutions in Virginia. An excerpt from those criteria is shown below.

“The institution has a governing board of at least five members that is the legal body with specific authority over the institution. The board is an active policy-making body for the institution and is ultimately responsible for ensuring that the financial resources of the institution are adequate to provide a sound educational program. The board is not controlled by a minority of board members or by organizations or interests separate from it. Neither the presiding officer of the board nor the majority of other voting members of the board have contractual, employment, or personal

³⁷ SCHEV approval to award degrees and/or certificates would still be required.

³⁸ “No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city or town;”

³⁹ Several interesting books and articles on this topic are available. A notable example is, Breneman, David W. and Chester Finn, Jr., Public Policy and Private Higher Education, Washington D.C.: The Brookings Institute, 1978.

or familial financial interest in the institution... The board has broad and significant influence upon the institution's programs and operations, plays an active role in policy-making, and ensures that the financial resources of the institution are used to provide a sound educational program. The board is not controlled by a minority of board members or by organizations or interests separate from the board except as specified by the authorizing legislation. Neither the presiding officer of the board nor the majority of other voting board members have contractual, employment, or personal or familial financial interest in the institution."⁴⁰

Furthermore, the accrediting bodies for allopathic and osteopathic medical schools, the LCME and COCA, respectively, also include standards regarding the composition and duties of governing boards among their accreditation criteria. Excerpts from the LCME⁴¹ and COCA⁴² accreditation standards are shown below:

LCME

“A medical school should be, or be part of, a not-for-profit institution legally authorized under applicable law to provide medical education leading to the M.D. degree. If not a component of a regionally accredited institution, a U.S. medical school must achieve institutional accreditation from the appropriate regional accrediting body. The manner in which the medical school is organized, including the responsibilities and privileges of administrative officers, faculty, students and committees must be promulgated in medical school or university bylaws.

The governing board responsible for oversight of the medical school must have and follow formal policies and procedures to avoid the impact of conflicts of interest of members in the operation of the school, its associated hospitals, or any related enterprises. Terms of governing board members should be overlapping and sufficiently long to permit them to gain an understanding of the programs of the medical school. Administrative officers and members of a medical school faculty must be appointed by, or on the authority of, the governing board of the medical school or its parent university...

⁴⁰ Commission on Colleges of the Southern Association of Colleges and Schools, Principles of Accreditation: Foundations for Quality Enhancement, (Revised 2008)

⁴¹ Liaison Committee on Medical Education, Standards for Accreditation of Medical Education Programs Leading to the M.D. Degree, (2008).

⁴² American Osteopathic Association, Commission on Osteopathic College Accreditation (COCA). Accreditation of Colleges of Osteopathic Medicine: College of Medicine Accreditation Standards and Procedures, (2008).

... The present and anticipated financial resources of a medical school must be adequate to sustain a sound program of medical education and to accomplish other institutional goals.”

COCA

“Standards 2.1 The College of Medicine (COM), and/or its parent institution, must develop and implement bylaws, or equivalent documents, that clearly define the governance and organizational structure that enables the COM to fulfill its mission and objectives.

2.1.1 Responsibilities of the COM administrative and academic officers and faculty must be clearly defined in the COM, and/or its parent institution’s, bylaws, or other equivalent documents.

Guideline: Clearly defining the COM’s, and/or its parent institution’s, governance and organizational structure enables others to clearly identify lines of authority and to understand how the COM will meet its mission and objectives.

2.1.2 The COM’s, and/or its parent institution’s, bylaws or equivalent documents must include, but not be limited to, conflict of interest, due process, disclosure, nondiscrimination, confidentiality of records, and fiscal accountability.

2.1.3 The COM, and/or its parent institution, must satisfy such provisions as may be required by applicable law and regulations.

2.2 The governing body will confer the degree Doctor of Osteopathy (D.O.) or Doctor of Osteopathic Medicine (D.O.) upon those students who have satisfactorily completed the requirements for graduation and have been recommended for graduation by faculty.

2.3 The COM must have financial resources and reserves to achieve and sustain its educational mission and objectives.

2.4 The Chief Academic Officer must have the responsibility and authority for fiscal management of the COM.”

These excerpts are important because they highlight the common priorities of the national and regional accrediting bodies: an orderly, well-regulated system of governance, avoidance of conflict of interest by and among members of the governing body, and adequacy of financial resources.

Operating Principles

Public higher education in the Commonwealth is evolving along a continuum of operational autonomy, moving from a state of less operational autonomy to a state of greater operational autonomy. Earlier in this review it was noted that the Commonwealth's medical schools represented a variety of governance structures, degrees of operational autonomy and levels of state support and that not only do these organizational characteristics vary across institutions, but they can also be shown to vary at the same institution over time. This is no more evident than in an analysis of the changing degree of operational autonomy afforded to the public institutions in Virginia.

The first program of planned, substantive increases in the level of autonomy under which the public institutions in the Commonwealth operated was referred to as "higher education decentralization." A 1993 report by the State Council of Higher Education captured the essence of the rationale for this program.

"Central state government should adopt a corporate management model of operation, at least in regard to higher education. It should set general policy, provide service to institutions in their decisions on how to implement those policies, and monitor results. Operational decisions should be made at the closest point to the delivery of services -- at the college or university. The term often used to describe this approach is **decentralization**... When the state simplifies its relationships with colleges and universities, they will have additional flexibility to restructure internally and concentrate resources -- on instruction in particular, but also on research and service. Central state government, which currently provides a high level of expertness and professionalism to the institutions, could strengthen the quality of its work as well as save money by adopting this management model.

This flexibility should permit those institutions that have the capacity and wish to do so to operate their own financial, personnel, purchasing, and capital outlay systems. The institutions, of course, would comply with both state law and state policy and generally accepted accounting principles and other standards. Other models should be established to accommodate colleges and universities that do not have the capacity to decentralize to this degree... The objective of these changes is to give institutions maximum flexibility to concentrate their resources on direct services to their clients."⁴³ (Emphasis added).

Among the earliest practical applications of this new "decentralized" approach to higher education management came in 1996.^{44,45} Included in the Appropriation Act that

⁴³ State Council of Higher Education for Virginia, *Change and Improvement in Virginia Higher Education: A preliminary Report to the Governor and General Assembly*, 1993

⁴⁴ Chapter 912, 1996 Virginia Acts of Assembly, §4-5.01

year were provisions that exempted a select group of institutions from post-appropriation review and approval procedures related to nongeneral fund capital outlay projects. Initially, this was considered an experimental two-year pilot project but its success ultimately led to its permanent adoption.

Although participation in the “decentralized” programs was limited to a select group of institution and although in reality the degree of additional autonomy granted to these institutions was quite modest, this program set a valuable precedent and provided the momentum for additional grants of autonomy.

The next major development in the evolution of the public institutions toward more operational autonomy came in 2004 with the introduction of the Chartered Universities and Colleges Act. (SB638/HB1359). As was discussed above, this ambitious legislation would have declared certain public universities to be “political subdivisions” and it would have exempted them from “local law or regulation except as the General Assembly may explicitly authorize.”

As was also discussed above, this bill was never enacted but it set in motion events that culminated in the passage of the Restructured Higher Education Administrative and Financial Operations Act of 2005 (the Restructuring Act) which profoundly reshaped several features of the public higher education landscape in Virginia. A brief description of the legislation appears below.

“Sets forth enabling legislation for the restructuring of public institutions of higher education (institutions) that will extend, upon the satisfaction of various conditions, autonomy, which includes but is not limited to, capital building projects, procurement and personnel, while providing oversight mechanisms and establishing certain expectations. Under the bill, three levels of autonomy will be available to all public institutions of higher education with the level of autonomy depending on each institution's financial strength and ability to manage day-to-day operations. The bill also requires such institutions to develop six-year academic, financial and enrollment plans that outline tuition and fee estimates as well as enrollment projections, to develop detailed plans for meeting statewide objectives, and to accept a number of accountability measures, including meeting benchmarks related to accessibility and affordability. The Governor is required to submit his recommendations for the third level of autonomy as part of the budget bill or amendments to the budget bill for review and approval by the General Assembly.”⁴⁶

⁴⁵ An earlier reference to the principles of decentralization was included in Chapter 966, 1994 Virginia Acts of Assembly, Item 330.E.1, with the following language, “(T)he Secretary of Finance, in consultation with the Secretaries of Administration and Education and the Director of the State Council of Higher Education, shall approve not less than five pilot programs... to grant relief from rules, regulations, and reporting requirements in such areas as finance and accounting, the purchase of goods and services and personnel.”

⁴⁶ From the Legislative Information System, <http://leg1.state.va.us/cgi-bin/legp504.exe?051+sum+HB2866>

The bill provides for three levels of autonomy “depending on each institution's financial strength and ability to manage day-to-day operations.” The highest level, Level 3, provides the greatest degree of operational autonomy. To become a Level 3 institution, it must negotiate and execute a “management agreement” with the Commonwealth detailing the mutual rights and obligations of each party. Currently, four institutions, the University of Virginia, Virginia Tech, the College of William and Mary and Virginia Commonwealth University have executed management agreements and are considered Level 3 institutions. Please note that the two parent institutions of the public medical schools are included in this list.

The New Framework

The key to understanding the basis of the recommended framework lies in perceiving the movement of EVMS toward the traditional public educational model in Virginia and the movement of the two public medical schools away from it. Thus, the organizational and operational models are converging. EVMS, as a result of the proposed change in the composition of its Board of Visitors and its memorandum of understanding with the Commonwealth will be drawn closer into the State’s orbit. By contrast, the public medical schools, as a result of greater operational autonomy awarded to their parent institutions under the Higher Education Restructuring Act are moving farther from the State’s orbit. Under mandate of the General Assembly, their organizational and operational models are converging in a middle ground that is most appropriate to their respective missions.

The cornerstone of the Restructuring Act was the satisfactory negotiation of mutually beneficial changes in the Commonwealth’s statewide higher education policies. For its part, the Commonwealth negotiated a more systematic means to improve coordination between institutional objectives and statewide goals, measure actual performance against established standards, and improve financial and academic planning. The institutions, on the other hand, received the operational autonomy required to make business decisions more rapidly and strategically, the benefits of performance-based financial incentives, and the right to continue to participate fully in state programs established to provide financial support for Virginia’s public institutions.

The practical implications for the development of the new framework for EVMS are clear. The proposed “hybrid” framework will preserve those organizational characteristics which have contributed to EVMS’ successful track record but will also incorporate the most important elements of the negotiated policy changes described above if, indeed, they are not already in place.

The logic of this approach is compelling: With respect to the policy changes negotiated by the Commonwealth:

- The memorandum of understanding already required by Chapters 1 and 2, can serve as the equivalent of the “management agreement” applicable to “covered” institutions under the Restructuring Act. This will provide a more systematic

means to improve coordination between institutional objectives and statewide goals;

- The memorandum of understanding will also provide the means to measure actual performance against established standards. In the case of EVMS the performance target will be, at a minimum, to increase the size of the medical class,
- Adding the requirement that EVMS submit a Six-Year Plan identical in form and function to that required of other institutions under the Restructuring Act will improve financial and academic planning.

With respect to the policy changes negotiated by the institutions:

- As a “political subdivision” EVMS already enjoys exemption from procurement, personnel, capital outlay, and other regulations that have been granted to Level 3 institutions, thus grants of additional operational autonomy required to make business decisions more rapidly and strategically would be unnecessary. It should be noted here that the level of operational autonomy granted under the Restructuring Act is predicated on an institution’s demonstrated ability to perform the delegated activities. In the case of EVMS, it has, throughout its thirty-five years of operation, demonstrated its ability to successfully conduct all aspects of the medical education enterprise,
- Insofar as EVMS does not participate in the programs with which these are associated, (*e.g.*, interest income on tuition deposited with the State Treasurer, small purchase charge card, eVa sole source procurement, *etc.*) the benefits of performance-based financial incentives would not be applicable to EVMS. However, the provision of the Restructuring Act which provides for the retention of unexpended appropriations should be included in the framework,
- And the right to continue to participate fully in state programs established to provide financial support for Virginia’s public institutions has an entirely different meaning when applied to EVMS. The successful development of the new framework depends on addressing the need to establish an agreed-upon calculus to determine the appropriate level of state support for EVMS. The balance of this report will focus on this issue.

Financial Structure of Medical Schools

“Medical schools are financed through a complex array of state, federal and private sources.”⁴⁷ The primary revenue sources that have traditionally supported medical education programs are state appropriated general funds, tuition, patient revenues from faculty clinical practice, hospital funds, research grants, and private gifts and endowment income. These sources constitute varying proportions of the total revenue depending on the nature of the institution.

Nevertheless, there is a surprising consistency across several institutional types regarding the proportion of support they derive from selected nongeneral fund sources. For example, public research-intensive, private research-intensive and community-based schools are all dependent on faculty practice plan revenue for about 29 percent of their total revenue, on average. Another example is revenue from hospitals which constitutes approximately 13% of the total revenue for these three categories of institution.⁴⁸

Challenges Facing Medical Schools

The decade of the 1990s was a turbulent period for the health care industry. Changes in the medical marketplace began to threaten the traditional revenue sources available to finance medical education. In its comprehensive review of the condition of higher education in Virginia, *The Case for Change*, the Virginia Commission on the University of the 21st Century stated,

“We are particularly concerned about the future of medical education. Changes in federal health care programs, in medical practice, and in the health needs of the population make future financial support for medical education and the teaching hospitals usually associated with medical schools a potentially critical issue.”⁴⁹ The Commission went on to state that, “Medical education ought to be the first professional program the Council studies.”⁵⁰

At the national level, a Task Force on Medical School Financing was appointed by the Association of American Medical Colleges in 1994 in response to concerns among its membership regarding these changes. The Task Force found that,

⁴⁷ *Financing Medical Education in the Commonwealth of Virginia*, (p.4), a report prepared by UVa, VCU and EVMS submitted to SCHEV pursuant to language in Chapter 912, 1996 Virginia Acts of Assembly - Items 169.I, 187.L, and 262.I

⁴⁸ *The Financing of Medical Schools, A Report of the AAMC Task Force on Medical School Financing*, Association of American Medical Colleges, (1996), p. 4.

⁴⁹ *The Case for Change*, Virginia Commission on the University of the 21st Century, Richmond, (1989). This passage was also quoted in #46, p.1.

⁵⁰ *Ibid.*, the reference here is to the State Council of Higher Education for Virginia.

“Medical schools are indeed vulnerable in the current economic environment. The growth of managed care, consolidation of providers, and price competition have the potential to unravel the traditional financial basis upon which academic programs have been constructed and long depended.”⁵¹

Other changes in the health care industry which threatened traditional sources of medical school revenue included reduced Medicare reimbursement rates, the rising cost of uncompensated care, and the leveling and targeting of research funding.^{52,53}

Perhaps the most important of these changes, though, was the increased penetration of managed care organizations into the marketplace.⁵⁴ It was anticipated that “aggressive cost containment” strategies employed by these organizations would significantly reduce the revenue of faculty practice plans affiliated with teaching hospitals and medical schools. The importance of faculty practice plan revenue to support medical education is universal. The AAMC Task Force described it this way,

“All medical schools share in common a major dependence on clinical support for academic programs. This support comes in various forms: direct transfers of faculty practice revenues to academic department and schools, the underwriting of clinical faculty time in teaching and research, contributed teaching services of voluntary clinical faculty, and hospital underwriting of educational and research expenses.”⁵⁵

An expanded explanation of this problem was provided by Virginia’s Joint Commission on Health Care in its Report on Academic Health Centers⁵⁶,

“(O)ne widely used technique by managed care organizations to control health care costs was to aggressively negotiate with providers on price,

⁵¹ *The Financing of Medical Schools, A Report of the AAMC Task Force on Medical School Financing*, Association of American Medical Colleges, (1996), vii.

⁵² Senate Joint Resolution 464, 1999, Virginia General Assembly.

⁵³ Although a thorough treatment of this topic is beyond the scope of this review, the environmental threats outlined here prompted major legislative responses on the part of the Virginia General Assembly to support the teaching hospitals affiliated with Virginia’s public medical schools. Among these were Chapter 933, 1996 granting the UVa Medical Center significant operational autonomy, Chapter 1046, 1966 creating the Medical College of Virginia Hospitals Authority as a political subdivision and Chapter 574, 2002 allowing the UVa Medical Center to retain the imputed interest earned on its nongeneral fund operating cash balances.

⁵⁴ Please see #46, p. 2.

⁵⁵ Please see #49, p. 42.

⁵⁶ Please see #26, p. 4.

promising a large volume of patients in return for more favorable payment rates... academic health centers are particularly challenged by the growth of managed care. The reimbursement levels offered by managed care organizations often does not meet the higher costs incurred by health centers.”

The seriousness of this situation was amplified by the fact that, “Clinical income generated by the medical schools’ faculty practice groups is the largest single source of revenue for Virginia’s medical schools...”⁵⁷

In order to develop a strategic system-wide response to these threats to medical education funding, the General Assembly included the following language in the 1996 Appropriation Act (Chapter 912, Items 169.I, 187.L, and 262.I).

“It is the intent of the General Assembly to assist the three Virginia medical schools as they respond to changes in the need for delivery and financing of medical education, both undergraduate and graduate. The University of Virginia, Virginia Commonwealth University, and the Medical College of Hampton Roads shall present a report to the Council of Higher Education and the Secretary of Education by October 1, 1996, that describes the costs of medical education and current revenues from all sources to meet these costs, and that documents the actual and projected loss of revenues from sources other than the general fund. The Council and the Secretary shall recommend to the Governor and the General Assembly a funding methodology for medical education, including the Generalist Initiative, for the 1997-98 fiscal year.”

UVa, VCU and EVMS (formerly the Medical College of Hampton Roads) responded to this legislative mandate with an impressive report which provided an analysis of medical education financial activity based on a sophisticated costing methodology, projections of declining revenue across several primary sources, and a description of the steps these institutions had already taken to reduce costs and improve efficiency. The report also contained a unanimous recommendation from the three schools of medicine that,

“(T)he Commonwealth adopt a funding policy for undergraduate medical education that recognizes the State’s responsibility and obligation to support these programs. The medical schools believe that a strong case has been made for increased State support to undergraduate medical education. This increased support is vital to maintain the level of service and excellence so critical to the health care needs of the Commonwealth.”⁵⁸

⁵⁷ Please see #46, p. 2.

⁵⁸ Please see #46, p. 13.

Specifically, the recommendation called for the State to adopt an undergraduate medical education funding policy to shore up medical school resources in response to declining revenue, "... wherein general funds will provide at least fifty percent of the total cost."

Undergraduate Medical Education (UME) Funding Guidelines

In response to this recommendation, and acting in consultation with the institutions, the Secretary of Education, the Department of Planning and Budget, and the staffs of the House Appropriations and Senate Finance Committees, the State Council of Higher Education did develop funding guidelines for undergraduate medical education. The guidelines, formally adopted in January 1998, provided for the state general fund to pay 50 percent of the direct cost of undergraduate medical education for in-state students and 100 percent of the indirect cost of undergraduate medical education for all students. The remaining direct cost for in-state students and the total direct cost for out-of-state students must come from a combination of tuition and patient care revenue.

For the next several years, these guidelines formed the basis for SCHEV's funding recommendations to the Governor and General Assembly. **Although not formally part of the adopted guidelines, in practice only that part of the formula related to the direct cost of in-state students was applied to EVMS.** The language from the 1998 Appropriation Act related to funding undergraduate medical education at EVMS under the newly adopted guidelines is shown below. Though based on the formula, it was phrased in terms more consistent with a "capitation rate."

"Chapter 464 Item 274 - A. Out of this appropriation, state aid for educational and general activities of the Eastern Virginia Medical School of the Medical College of Hampton Roads is provided in the amount of \$4,087,194 the first year and \$4,087,194 the second year from the general fund. Funding is provided on the basis of an average enrollment of 270 in-state students. As long as the actual enrollment includes not less than 257 in-state students the full appropriation will be provided to the Medical College. Actual enrollment below 257 in-state students shall result in a per capita reduction in the appropriation for each in-state student or vacancy below 257 in-state students. Funding is provided based on support of \$15,138 per in-state student the first year and \$15,138 the second year. The College shall submit, to the Department of Planning and Budget on September 30 of each year, a report on in-state enrollment."

Thus, the state support provided to EVMS for UME during this period included approximately fifty percent of the direct cost of undergraduate medical education for in-state students. Not included was support for the indirect cost for in-state students nor for either the direct or indirect cost for out-of-state students.

It should be noted here that another important funding component for Virginia's medical schools at this time was the Generalist Initiative.

“In recognition of a downward trend nationwide in the production of generalist physicians, the General Assembly, in collaboration with the Robert Wood Johnson Foundation, began funding the Virginia Generalist Initiative program (VGI) in 1994. The purpose of the program is to enhance generalist physician education in the Commonwealth and to increase the number of medical school graduates entering generalist medical fields at the Eastern Virginia Medical School (EVMS), the University of Virginia (UVA), and the Virginia Commonwealth University (VCU). Since the program’s inception in 1994, the General Assembly has provided over \$33.3 million from the general fund for the VGI program, or approximately \$2.4 million per year on average.

When the program was established, the Commonwealth set two specific goals for VGI and funding was contingent upon school performance.

- a. At least 50 percent of Virginia medical school graduates shall enter generalist residency programs; and
- b. At least 50 percent of Virginia generalist residency graduates shall enter generalist practice upon completion of residency training and at least 50 percent of those graduates shall practice in Virginia.

Since 1996, the program has produced about 1,600 generalist physicians and over 900 of them practice generalist medicine in Virginia upon graduation. The VGI program has thus been successful, particularly in retention of graduates practicing generalist medicine in Virginia.”⁵⁹

Although not formally a component of SCHEV’s funding guidelines, all three of Virginia’s medical schools participated in the program.

Base Adequacy

In order to restore continuity and predictability to the Commonwealth’s higher education funding policies, and in order to develop a replacement for the previous funding model, which had fallen into disuse, the 1998 General Assembly created the Joint Subcommittee on Higher Education Funding Policies with the following language⁶⁰

“The Chairmen of the House Appropriations and Senate Finance Committees shall each appoint four members from their respective committees to a joint subcommittee to review public higher education

⁵⁹ 2007 Progress Report on the Virginia Generalist Initiative Program, State Council of Higher Education for Virginia, Report Document No. 256.

⁶⁰ Chapter 464, 1998 Virginia Acts of Assembly, Item 1.

funding policies and to make recommendations to their respective committees prior to the 1999 Session of the General Assembly. The objective of the review is to develop policies and formulas to provide the public institutions of higher education with an equitable funding methodology that: (a) recognizes differences in institutional mission; (b) provides incentives for achievement and productivity; (c) recognizes enrollment growth; and (d) establishes funding objectives in areas such as faculty salaries, financial aid, and the appropriate share of educational and general costs that should be borne by resident students...”

The policies and formulae required by the legislation took several years to develop. Led by a team of national consultants under contract to the Joint Subcommittee, a collaborative process was undertaken to achieve consensus among the Subcommittee members, institutional representatives and other stakeholders. Finally, in 2001 the Subcommittee formally endorsed what came to be known as the “Base Adequacy Model.” However, it was not until 2003 that the remaining unfinished components of the model were finalized. Among these last items were the guideline for undergraduate medical education.

Today, the funding guidelines developed and adopted by the Joint Subcommittee form the basis of SCHEV’s higher education operating budget recommendations to the Governor and General Assembly.

The Base Adequacy funding model is an enrollment driven model that estimates resource requirements associated with the direct cost of education based on institution-specific faculty salary averages and fringe benefit rates, student:faculty ratios by discipline and academic level, and a state-wide rate for other nonfaculty instructional costs. The model also estimates resource requirements for the indirect cost of education (e.g., academic support, student services, institutional support and operation and maintenance of plant) based on relationships derived from national finance and enrollment data.

The model not only estimates total resource requirements but also the “fund split” to be applied to them. The Joint Subcommittee adopted a policy that supports 67 percent of the cost of in-state students with general funds while the remaining 33 percent must come from nongeneral fund sources. The policy does not provide any general fund support for the cost of out-of-state students.

Finally, it is important to note that the UME enrollments are treated separately from other health professions enrollments in the Base Adequacy Model.

EVMS and Base Adequacy - UME

Heretofore, SCHEV has not included EVMS in its state-wide higher education operating budget recommendations using the Base Adequacy model, as adopted by the Joint Subcommittee. However, in 2005 SCHEV did include EVMS in its state-wide

operating budget recommendations for the 2006-08 Biennium using a technique derived from the Base Adequacy model. In consultation with DPB, legislative staff and EVMS, a funding recommendation for EVMS was developed that included general fund support for EVMS' in-state UME students at fifty percent of the average full UME direct and indirect costs calculated for UVa and VCU.⁶¹

The net effect, of course, of this calculation of EVMS' UME resource needs is that it provides the Commonwealth with a substantial discount from the resource requirements that would have otherwise resulted from a normal application of the funding policies. This was no accident. The decision to use a "modified guideline" that reflects EVMS unique status as a state-assisted independent community-based medical school represents a consensus that ultimately has been accepted by the Governor and General Assembly, as evidenced by their previous appropriation of general fund support at the level suggested by the "modified guideline." Within the new framework for EVMS, no change to this arrangement is anticipated. However, as will be discussed below, operating on such a narrow base of state support places EVMS at a higher risk of fiscal distress thus making full funding of this "modified guideline" a high priority for the Commonwealth.

This section would be incomplete without emphasizing the magnitude of the discount accruing to the Commonwealth by using a "modified guideline" to estimate EVMS' resource needs in lieu of Base Adequacy. It is estimated that EVMS' UME resource needs, if calculated through the normal Base Adequacy process, would be approximately \$21 million, about twice the current actual appropriated amount it receives for medical instruction.

Finally, this section would also be incomplete without a reiteration of the importance of providing a stable, predictable funding stream to support Virginia's existing medical education community. Earlier in this review reference was made to the AAMC's warning of an impending physician shortage in the U.S. The expanded text from its report is shown below.

"The AAMC believes that sufficient evidence is at hand to recommend that entry level positions in both U.S. medical schools and graduate medical education programs should be increased over the coming decade. This conclusion is bolstered by the realization that a shortage of physicians would undeniably make access to care more problematic for all citizens. Such shortages would increase the delays individuals encounter in scheduling appointments and the distances they will need to travel for various types of healthcare services. Shortages would be especially problematic for the disadvantaged who already encounter substantial barriers to healthcare services. It is further recognized that, given the extended time required to increase U.S. medical school capacity, and to educate and train additional physicians, the nation must begin to increase

⁶¹ October 2005 SCHEV Agenda Book.

medical school and GME (Graduate Medical Education) capacity now to meet the needs of the nation in 2015 and beyond.”

The Governor’s Health Reform Commission agrees with this prognosis as it relates to the Commonwealth. Therefore, the development of a new operating framework for EVMS provides a valuable avenue to help address the larger statewide issue of the need to train significantly more physicians to meet the growing demand generated, in large part, by the graying of Virginia’s population. In order to meet this need, the Commonwealth will be called upon to fully fund UME guidelines for the public institutions and the “modified guidelines” applicable to EVMS in order to maintain a sufficient number of new physicians in the educational pipeline.

Other Health Professions Programs

It was noted above that UME enrollments are treated separately from other health professions enrollments in the Base Adequacy Model. This is an important point to consider in the development of a new operating framework for EVMS. Historically, general fund support for instruction provided to EVMS has explicitly been for undergraduate medical education. Other programmatic activities have also been explicitly funded as stand-alone initiatives (e.g., Family Practice Residency, Eastern Virginia Area Health Education Center, the Generalist Initiative, etc.) but these did not include EVMS’ other academic health professions degree programs.

Recently, however, the General Assembly did provide general fund support for two such programs, the Clinical Psychology Ph.D. and the Master’s of Public Health programs, as stand-alone initiatives. The combined amount included in the budget for these programs is \$288,000. However, other important health professions programs continue to lack this type of support. For example, Physician Assistants, EVMS’ largest health professions degree program is projected to be among the fastest growing health profession occupation in the Commonwealth,⁶² yet it receives no general fund support.

In the framework being developed for EVMS, a stable, predictable general fund revenue source for the education of critical health professions practitioners should be adopted in lieu of ad hoc stand-alone initiative funding. This stable, predictable funding stream should be established through the use of a modified version of the Base Budget Adequacy recommendations that recognizes EVMS’ unique mission as a state-assisted independent community-based medical school. It would be entirely consistent with the UME guidelines applied to EVMS to establish the Health Professions guideline at fifty percent of the amount normally generated through use of the Base Adequacy guidelines for the public institutions and apply this to the programs currently receiving initiative funding, the Clinical Psychology Ph.D. and the Master of Public Health.

⁶² Bureau of Health Professions. *HRSAs State Health Workforce Profiles - Virginia (2000)*, p. 21, (published 2004). Health Resources and Services Administration, U.S. Department of Health and Human Services.

Recommendations

Chapters 1 and 2, 2008 Virginia Acts of Assembly (Special Session I) appropriates \$59 million to the Eastern Virginia Medical School for the construction of a new medical education and research facility. The legislation sets three conditions which must be met prior to the release of construction funding:

1. that legislation is submitted by the 2009 session of the General Assembly that will provide for gubernatorial and legislative appointments to the EVMS Board of Visitors,
2. that the Board of Visitors of EVMS enters into a memorandum of understanding with the Commonwealth in which the Board promises to increase the current medical school class size; and
3. that a determination is made by the Secretary of Finance that the Board of Visitors of EVMS has cooperated in a review of EVMS by the State Council of Higher Education for Virginia as such review may be provided for in the general appropriation act.

The State Council of Higher Education considers that, upon passage of the legislation called for in item 1 above, the General Assembly will have created a new type of higher education institution in the Commonwealth of Virginia. The distinguishing characteristics of this institutional type are: 1) its legal status as a political subdivision of the Commonwealth, and 2) the presence on its Board of Visitors of gubernatorial and legislative appointees. The creation of this new type of institution necessarily requires the creation of a new policy framework within which it will operate.

The new institutional type can best be described as a “state-assisted independent community-based medical school.” The new policy framework, described below, will have as its objective the continued success of EVMS in its mission of, “achieving excellence and fostering the highest ethical standards in medical and health professions education, research, and patient care.”

The Council recommends that the guiding principles of its operating framework be:

- enhanced coordination between institutional objectives and statewide educational goals,
- accountability through the establishment of measurable performance standards,
- improved academic and financial planning,
- operational autonomy sufficient to make business decisions rapidly and strategically and to preserve its character as a political subdivision, and

- a commitment on the part of the Commonwealth to provide a stable and predictable level of general fund support.

The Council recommends that the guiding principles of this new framework be operationalized by the following policies:

- Pursuant to provisions in Chapters 1 and 2, 2008 Virginia Acts of Assembly (Session I), EVMS will enter into a memorandum of understanding with the Commonwealth that commits to an increase in the medical class size. The magnitude and timing of this increase will be negotiated with SCHEV as part of its legislatively mandated enrollment projection process. It is anticipated that the long-term increase will approximate the 30% increase in medical school enrollment recommended by the AAMC, dependent on the sufficiency of educational plant at EVMS, such sufficiency to be evaluated by SCHEV,
- EVMS will submit to SCHEV a Six-Year Academic and Financial Plan similar in form and function to that required of Virginia's other public institutions under the Higher Education Restructuring Act,
- Henceforth, SCHEV will routinely include estimated resource requirements for EVMS' academic and support programs in its formal statewide higher education operating budget recommendations to the Governor and General Assembly,
 - SCHEV will estimate EVMS' Undergraduate Medical Education (UME) resource requirements employing a methodology identical to that used in its October 2005 recommendations which provides general fund support for EVMS in-state students equal to fifty percent of the average direct and indirect UME general fund support calculated for UVa and VCU,
 - SCHEV will estimate EVMS' Graduate Education resource requirements for the Master of Public Health and Doctor of Clinical Psychology programs employing a methodology that provides general fund support for EVMS' in-state graduate students at one half the rate normally generated through the use of the Base Adequacy Model.
 - SCHEV will include EVMS resource needs calculated as described above in its statewide funding recommendations as soon as practicable.
- Consistent with its status as a political subdivision of the Commonwealth, EVMS should retain administrative oversight of its business affairs consistent with applicable state and federal law

Finally, the Council recommends that a review be undertaken of the overall fiscal health of medical education in the Commonwealth, generally. In forwarding this

recommendation, the Council would like to note that several years have passed since the legislatively mandated study of medical education finance was conducted by Virginia's public medical schools (Chapter 912, 1996) and that several years have passed since the legislatively mandated study of Academic Health Centers (SJR 464, 1999). During that time significant changes have occurred in the health care industry which require a reexamination of the Commonwealth's medical education funding policies.

In presenting these recommendations, the Council would like to gratefully acknowledge the thorough cooperation of the President and staff of Eastern Virginia Medical School during the conduct of this review.

