

Department of Planning and Budget 2001 Fiscal Impact Statement

1. **Bill Number** HB2614

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. **Patron** Johnson Jr., Joseph P.

3. **Committee** Labor and Commerce

4. **Title** Home health workers and personal aides

5. **Summary/Purpose:** This legislation would require the Secretary of Health and Human Resources to provide the Internal Revenue Service and the Social Security Administration all available and relevant wage and payment information on all “home health workers and personal health care aides” who worked for local health departments from 1976 to 1994. The bill also directs the central Department of Social Services to establish an education and outreach program with the 122 local social services departments to ensure the local offices provide all wage/payment information for “home based adult service workers” for the same period of time.

6. **Estimated fiscal impact is indeterminate:** See items 8 (fiscal implications) and 11 (other comments)

7. **Budget amendment necessary:** No

8. **Fiscal implications:**

Virginia Department of Health

The Virginia Department of Health maintains its records in accordance with state and federal records retention requirements and does not have the information from 1976 to 1994 that this legislation calls for providing to the Internal Revenue Service and the Social Security Administration. The state requires that employee W-2 records are retained for at least four years and the agency maintains five years of W-2 information. The state’s accounting policies direct agencies to maintain IRS Form 1099 records for five years or until audited. While the agency is audited annually by the Auditor of Public Accounts, the agency maintains the records for five years. The agency is not required to, nor does it, retain its accounts payable and payroll records from 1994 or before.

Department of Social Services

Although local departments of social services historically employed approximately 2,500 to 3,000 home based adult service providers annually since 1976, records are only required to be retained for five years. If any localities retain records from periods prior to 1995, DSS anticipates that labor to research and copy them would cost \$0.50 per record. This is an extremely modest cost considering many of these records would probably be stored off-site in hardcopy or microfiche form. In addition, the agency maintains that an outreach and education campaign would be necessary to contact an estimated 20,000 individuals at an estimated cost of \$10,000 (postage and copying).

Financial Risks to the Commonwealth and Former Workers

If workers are retroactively deemed wage employees, the Commonwealth and local governments could potentially incur a great liability for the employers' portion of Social Security tax (FICA) plus unemployment tax (FUTA) for 1976 through 1994. Equally as crucial is the fact that the affected employees could be liable for their share of back taxes and Social Security contributions, and those who did not file tax returns could be held liable for back taxes and FICA from 1976 to 1994 since the statute of limitation has not run out on such situations.

Although defenses exist should such a collection effort be made, if they failed, the state and the workers could be liable for an unpredictable amount of back payments. The Commonwealth cannot predict the size of the impact because of the length of time involved and the unknown numbers of workers who might file claims.

9. Specific agency or political subdivisions affected: Virginia Department of Health; Department of Social Services; local departments of social services; local governments

10. Technical amendment necessary: No

11. Other comments: In the event that such agency accounts payable and payroll records (not W-2 or 1099 forms, but secondary source documents such as payment vouchers or invoices) were available, approximately 130,000 payment records per calendar year (2,340,000 records for the 1976-1994 period) might have to be located in order to comply with the legislation. The cost of such a review would clearly be significant, but can not be estimated until the nature of source documents and necessary review was determined. It is highly unlikely that such a review would yield a definitive statement of applicable earnings by individual and calendar year since payment records would not necessarily include definitive information concerning the nature of services rendered.

Local governments maintain their records in accordance with local and federal records retention requirements and do not have the information from 1976 to 1994 that this legislation calls for providing to the Internal Revenue Service and the Social Security Administration. Because DSS is not aware of each individual locality's retention rules this discussion assumes locality retention rules mirror those of the state. The state requires that employee W-2 records are retained for at least four years and the agency maintains five years of W-2 information. The state's accounting policies direct agencies to maintain IRS Form 1099 records for five years or until audited. The agencies (localities) are not required to, nor does they, retain its accounts payable and payroll records from 1994 or before.

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cc: Secretary of Health and Human Resources

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