

Department of Planning and Budget 2006 Fiscal Impact Statement

1. **Bill Number** HB 950

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron** Joannou

3. **Committee** Courts of Justice

4. **Title** Commonwealth medical liens

5. **Summary/Purpose:** This bill provides that reasonable legal fees and costs would be deducted from the total lien amount recovered, provided that those fees and costs would be distributed to the injured person. Current law gives the Commonwealth a lien on claims for personal injuries when the Commonwealth has incurred a cost in providing medical services to the injured person. Under existing law, the Commonwealth shall have a lien if an injured person received services under the Virginia Medicaid program, the State/Local Hospitalization program, any other program of the Department of Medical Assistance Services, the Maternal and Child Health program, the Children's Specialty Services program or any state-operated hospital or rehabilitation center.

6. **Fiscal Impact Estimates are:** Preliminary.

6a. Expenditure Impact: (Item 302, Service Area 45609)

Fiscal Year	Dollars	Positions	Fund
2006-07	\$1,246,941	0	GF
2006-07	(\$1,246,941)	0	VHCF
2007-08	\$1,284,350	0	GF
2007-08	(\$1,284,350)	0	NGF
2008-09	\$1,322,880	0	GF
2008-09	(\$1,322,880)	0	NGF
2009-10	\$1,362,566	0	GF
2009-10	(\$1,362,566)	0	NGF
2010-11	\$1,403,443	0	GF
2010-11	(\$1,403,443)	0	NGF
2011-12	\$1,445,547	0	GF
2011-12	(\$1,445,547)	0	NGF

7. **Budget amendment necessary:** Yes, Item 302, Service Area 45609.

8. **Fiscal implications:** The Department of Medical Assistance Services (DMAS) is frequently in the position of having a medical lien of the type addressed in this bill. DMAS believes the language in this bill is somewhat unclear, and believes the bill would require that, in any personal injury case, any lien held by DMAS would be reduced. If the legal fee is set at a fixed percentage of the amount awarded to the injured party, then DMAS' lien would be reduced by that percentage, and the amount of the lien reduction would be paid to the injured party.

Under current law, after legal fees are paid, if the remaining award is sufficient, DMAS' lien is usually recovered in full. Therefore, under current law legal fees are paid from the funds of the injured party. This bill would require DMAS to share in the cost of legal fees along with the injured party. This bill reduces the revenue received by DMAS from casualty and malpractice liens. Therefore, additional funding would be needed to offset the anticipated loss of revenue.

The federal government requires DMAS to return the full federal share of payments once the recoveries are identified, regardless of the amount the state actually collects. Therefore, the difference between the total lien and the lien as reduced by this bill will be borne solely by the Commonwealth.

The state share of lien recoveries is deposited by DMAS into the Virginia Health Care Fund (VHCF) to be used in lieu of state general fund dollars to support the ongoing expenditures for the Medicaid program. Any decrease in VHCF deposits will have to be replaced with a state general fund appropriation.

Data from FY 2003 through FY 2005 shows that total recoveries for these liens averages around \$3,917,872 a year. The estimate below assumes the lien amount will grow at 3 percent per year. It is assumed that the attorney fees will equal 30 percent of the settlement amount and will now also apply as a reduction to the DMAS lien amount. DMAS will still have to return to the federal government all of the federal share (50 percent of the lien amount) and DMAS' revenue will be reduced to the DMAS lien amount minus the attorney fees minus the federal share. This is significantly below the current revenue amount which is 50 percent of the total lien. The table below estimates that DMAS' deposits into the VHCF will decrease by \$1.2 million in FY 2007. These funds will have to be replaced by a state general fund appropriation.

Fiscal Year	DMAS Lien	30% Attorney Fees	Federal Share	New Maximum Amount VHCF	Amount Under Current Policy	Impact on Revenues to VHCF
2007	\$4,156,471	\$1,246,941	\$2,078,236	\$831,294	\$2,078,236	(\$1,246,941)
2008	\$4,281,165	\$1,284,350	\$2,140,583	\$856,233	\$2,140,583	(\$1,284,350)
2009	\$4,409,600	\$1,322,880	\$2,204,800	\$881,920	\$2,204,800	(\$1,322,880)
2010	\$4,541,888	\$1,362,566	\$2,270,944	\$908,378	\$2,270,944	(\$1,362,566)
2011	\$4,678,145	\$1,403,443	\$2,339,072	\$935,629	\$2,339,072	(\$1,403,443)
2012	\$4,818,489	\$1,445,547	\$2,409,245	\$963,698	\$2,409,245	(\$1,445,547)

The Departments of Health and Rehabilitative Services and the two state teaching hospitals may also be impacted by this bill. However, any fiscal impact is expected to be minor.

9. **Specific agency or political subdivisions affected:** Department of Medical Assistance Services, Department of Health, Department of Rehabilitative Services, and the state teaching hospitals.

10. **Technical amendment necessary:** No.

11. **Other comments:** None.

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cc: Secretary of Health and Human Resources