

Department of Planning and Budget 2007 Fiscal Impact Statement

1. **Bill Number** SB 1198

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron** Edwards

3. **Committee** Courts of Justice

4. **Title** Commonwealth's lien for payment of medical services

5. **Summary/Purpose:** This bill allows attorney fees and other expenses to be deducted from the Commonwealth's lien amounts for personal injury cases and malpractice claims referred to the Office of the Attorney General (OAG) for compromise.

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

Expenditure Impact:

| Fiscal Year | Dollars | Positions | Fund |
|-------------|-------------|-----------|------|
| 2008 | \$119,881 | 0 | GF |
| 2008 | (\$119,881) | 0 | NGF |
| 2009 | \$123,478 | 0 | GF |
| 2009 | (\$123,478) | 0 | NGF |
| 2010 | \$127,183 | 0 | GF |
| 2010 | (\$127,183) | 0 | NGF |
| 2011 | \$130,998 | 0 | GF |
| 2011 | (\$130,998) | 0 | NGF |
| 2012 | \$134,928 | 0 | GF |
| 2012 | (\$134,928) | 0 | NGF |
| 2013 | \$138,976 | 0 | GF |
| 2013 | (\$138,976) | 0 | NGF |

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

8. **Fiscal implications:** The proposed bill would reduce the amount of recoveries received by Department of Medical Assistance Services (DMAS) from casualty and malpractice medical liens. When settlement funds received aren't sufficient to cover attorney fees and the Medicaid lien, the case is referred to the OAG for compromise. DMAS is frequently in the position of having a lien of the type addressed in this bill. This bill would require that any lien held by DMAS that had been referred to the OAG would be reduced. Under current law, after legal fees are paid, if the remaining award is sufficient, DMAS' lien is usually recovered in full. 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 would not increase expenditures, but would reduce the revenue received by DMAS from casualty and malpractice liens.

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 must be replaced with additional general fund appropriation.

Data from 2004 through 2006 shows that total recoveries for liens that were referred to the OAG for compromise averaged \$678,000 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 33 percent of the settlement amount. An additional 33 percent reduction will also apply to the DMAS lien amount. It is assumed that DMAS would return 50 percent of the compromised lien to the federal government and DMAS would retain an equal amount. This figure would be roughly one-third below the revenue amount which DMAS would currently realize. The table below estimates DMAS' deposits into the VHCF will decrease by \$119,881 in FY 2008. These funds will have to be replaced with general fund appropriation. It is possible that the reductions in DMAS' recoveries could be even greater if more cases start to be referred to the OAG for compromise.

| Fiscal Year | Compromise Settlement Amount | Current Law | | | | |
|-------------|------------------------------|-------------------|------------------------|-----------------------|---------------|-------------|
| | | Attorney Fees 33% | Recipient Recovery 33% | Medicaid Recovery 33% | Federal Share | State Share |
| 2008 | \$2,157,870 | \$719,290 | \$719,290 | \$719,290 | \$359,645 | \$359,645 |
| 2009 | \$2,222,607 | \$740,869 | \$740,869 | \$740,869 | \$370,435 | \$370,434 |
| 2010 | \$2,289,285 | \$763,095 | \$763,095 | \$763,095 | \$381,548 | \$381,547 |
| 2011 | \$2,357,964 | \$785,988 | \$785,988 | \$785,988 | \$392,994 | \$392,994 |
| 2012 | \$2,428,704 | \$809,568 | \$809,568 | \$809,568 | \$404,784 | \$404,784 |
| 2013 | \$2,501,565 | \$833,855 | \$833,855 | \$833,855 | \$416,928 | \$416,927 |

| Fiscal Year | Compromise Settlement Amount | Proposed Bill | | | | | |
|-------------|------------------------------|-------------------|------------------------------|-----------------------------|---------------|-------------|--------------------|
| | | Attorney Fees 33% | Recipient Recovery 33% + 1/3 | Medicaid Recovery 33% - 1/3 | Federal Share | State Share | Net Impact on VHCF |
| 2008 | \$2,157,870 | \$719,290 | \$959,053 | \$479,527 | \$239,763 | \$239,763 | (\$119,881) |
| 2009 | \$2,222,607 | \$740,869 | \$987,825 | \$493,913 | \$246,956 | \$246,956 | (\$123,478) |
| 2010 | \$2,289,285 | \$763,095 | \$1,017,460 | \$508,730 | \$254,365 | \$254,365 | (\$127,183) |
| 2011 | \$2,357,964 | \$785,988 | \$1,047,984 | \$523,992 | \$261,996 | \$261,996 | (\$130,998) |
| 2012 | \$2,428,704 | \$809,568 | \$1,079,424 | \$539,712 | \$269,856 | \$269,856 | (\$134,928) |
| 2013 | \$2,501,565 | \$833,855 | \$1,111,807 | \$555,903 | \$277,952 | \$277,952 | (\$138,976) |

The Department of Health, Department of Rehabilitative Services and the state teaching hospitals may be impacted by this bill, but any impact is expected to be minimal.

- 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