

Department of Planning and Budget 2008 Fiscal Impact Statement

1. **Bill Number** SB17
- House of Origin** ☒ Introduced ☐ Substitute ☐ Engrossed
- Second House** ☐ In Committee ☐ Substitute ☐ Enrolled
2. **Patron** Edwards
3. **Committee** Courts of Justice
4. **Title** Reductions in Medicaid Lien Recoveries
5. **Summary/Purpose:** This bill amends *Code of Virginia* to require a reduction to the Medicaid lien proportionate to attorney fees and other expenses incurred when personal injury cases and malpractice claims are referred to the Office of the Attorney General (OAG) for compromise. This additional reduction would further reduce the State's share of general fund revenues received from tort and malpractice recoveries.
6. **Fiscal Impact Estimates are:** Final.

Expenditure Impact: (Item 306, Service Area 45609)

Fiscal Year	Dollars	Positions	Fund
2009	\$123,478	0.0	GF
2009	(\$2,015,141)	0.0	NGF
2010	\$127,183	0.0	GF
2010	(\$2,075,596)	0.0	NGF
2011	\$130,998	0.0	GF
2011	(\$2,137,864)	0.0	NGF
2012	\$134,928	0.0	GF
2012	(\$2,202,000)	0.0	NGF
2013	\$138,976	0.0	GF
2013	(\$2,268,060)	0.0	NGF
2014	\$143,145	0.0	GF
2014	(\$2,336,101)	0.0	NGF

7. **Budget amendment necessary:** Yes, Item 306, Service Area 45609 for the impact on the Department of Medical Assistance Services.
8. **Fiscal implications:**

Department of Medical Assistance Services:

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

SB17 Fiscal Impact Statement
Page Two

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. In addition, 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 DMAS 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 support for the ongoing expenditures of the Medicaid program. Any decrease in VHCF deposits will have to be replaced with additional state general fund appropriation.

Data from 2005 through 2007 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 three 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 that DMAS' deposits into the VHCF will decrease by \$123,478 in FY 2009. These funds will have to be replaced by an increased amount from the general fund. It is possible that the reductions in DMAS' recoveries could be even greater if attorneys seek to refer more cases to the OAG for compromise as a result of this bill.

Fiscal Year	Compromise Settlement Amount	Current Policy				
		Attorney Fees 33%	Recipient Recovery 33%	Medicaid Recovery 33%	Federal Share	State Share
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
2014	\$2,576,613	\$858,871	\$858,871	\$858,871	\$429,436	\$429,435

SB17 Fiscal Impact Statement
Page Three

Fiscal Year	Compromise Settlement Amount	Proposed Policy					Net Impact on VHCF
		Attorney Fees 33%	Recipient Recovery 33% + $\frac{1}{3}$	Medicaid Recovery 33% - $\frac{1}{3}$	<i>Federal Share</i>	<i>State Share</i>	
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)
2014	\$2,576,613	\$858,871	\$1,145,161	\$572,581	\$286,290	\$286,290	(\$143,145)

University of Virginia (UVA) Medical Center:

The UVA Medical Center estimates an impact of approximately \$700,000 in lost funding each year from this bill. The calculation is based on 33 percent attorneys' fees on their estimated recoveries from personal injury settlements of about \$2.1 million per year. The fiscal impact assumes a \$700,000 reduction in revenue in FY 2009 with three percent growth in liens per year.

Virginia Commonwealth University (VCU) Health System:

The VCU Health System estimate is about \$1,123,257 of lost revenue from this bill. The estimate is based upon the period July 1, 2006 through June 30, 2007, during which recoveries received by the VCU Health System which resulted from personal injury liens totaled \$3,403,810. If a 33 percent deduction is applied to those recoveries, the reduction for that year would have been \$1,123,257. The fiscal impact of this bill assumes that amount in each year adjusted by three percent each year.

9. **Specific agency or political subdivisions affected:** Department of Medical Assistance Services. Other agencies of the Commonwealth may be affected as well.
10. **Technical amendment necessary:** No.
11. **Other comments:** This fiscal impact statement (FIS) has been revised to include the impact on the two state teaching hospitals. The original FIS assumed that any impact on the two hospital systems would be minor. However, information they have provided indicates a much more substantial impact than previously assumed.

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cc: Secretary of Health and Human Resources