

**Department of Planning and Budget
2012 Fiscal Impact Statement**

1. Bill Number: SB 426

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Ruff

3. Committee: Education and Health

4. Title: Department of Medical Assistance Services; appeals of agency determinations

5. Summary: Provides that all recommended or final case decisions in administrative hearings regarding Medicaid overpayments shall be made in accordance with the Administrative Process Act, shall be based on the whole evidentiary record, and shall be limited to a determination of whether the director's initial decision was within the scope of his statutory or legal authority. The bill also provides that no recommended or final case decision shall be based on principles of contract law or equity.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Not available. SEE ITEM 8.

8. Fiscal Implications: The intent of the bill is to ensure the appropriate application of the Administrative Process Act (APA) to provider appeals. In a 2009 case, the Virginia Court of Appeals applied general principles of contract law and did not limit its review to whether the department had acted in a way that was arbitrary and capricious in accordance with the APA. The impact of this ruling jeopardizes judicial deference to executive agency decisions, which have traditionally been recognized by Virginia courts as within each agency's unique expertise.

A continued application of contract law to provider appeals will very likely reduce the ability of the Department of Medical Assistance Services (DMAS) to recover overpayments made, thus increasing Medicaid expenditures and decreasing revenue (by reducing prior year recoveries). Therefore, this bill clarifies the application of the APA shall be used in appeals to ensure that providers cannot argue that a DMAS decision does not have sufficient justification under contract law and jeopardize the ability to collect legitimate overpayments.

No fiscal impact is estimated, because it is not known if the 2009 court ruling has had an impact on provider appeals and how prevalent the use of contract law is being applied in the courts to these appeals. However, passage of this bill will mitigate any potential lost revenue to the Commonwealth.

9. Specific Agency or Political Subdivisions Affected: Department of Medical Assistance Services.

10. Technical Amendment Necessary: No.

11. Other Comments: HB 918, introduced by Delegate Minchew, is a companion bill.

Date: 1/18/12

Document: G:\GA Sessions\2012 Session\SB426.DOC