

Department of Planning and Budget
2014 Special Session I Fiscal Impact Statement

1. Bill Number: SB 5007

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: Stanley

3. Committee: Commerce and Labor

4. Title: Medicaid Accountable Care Organizations

5. Summary: The bill directs the Department of Medical Assistance Services (DMAS) to establish a health care delivery system under which a majority of the Commonwealth's Medicaid beneficiaries will receive benefits through accountable care organizations (ACOs). ACOs are corporations that provide health care services through their member health care providers and receive Medicaid payments through innovative payment methodologies, which may include capitated payments, gainsharing payment arrangements, pay-for-performance, quality-based payments, and other payment arrangements to generate savings from greater coordination and efficiency in service delivery. A portion of these cost savings are to be distributed among the health care providers participating in the ACO. Prior to contracting with the department, a proposed ACO shall obtain a certificate of authority issued by the State Corporation Commission (SCC), which can be issued if the ACO satisfies requirements regarding working capital and reserves, etc. The SCC and the Attorney General are further required to determine (i) whether a proposed ACO is likely to reduce competition in a market for health care services and (ii) that the ACO's pro-competitive benefits are likely to substantially outweigh the anticompetitive effects of any increase in market power. DMAS is directed to apply for federal waivers required for implementation of the program.

6. Budget Amendment Necessary: No. See Item 8.

7. Fiscal Impact Estimates: Indeterminate. See Item 8.

8. Fiscal Implications: This bill would impose significant change on the delivery of health care services through the Medicaid program in the Commonwealth. The key current Medicaid delivery model is managed and integrated care through private health plans. These health plans cover more than 70 percent of Medicaid recipients and are full risk for the costs of their care. While the remaining populations are in the fee for service delivery system, the department, as directed by the legislature, is aggressively moving them into managed care.

The bill would likely have a fiscal impact (whether or not as a savings or cost is indeterminate), however the bill's implications are fairly complex and there is not enough information to quantify the fiscal impact at this time. Based upon the timeline and need to seek federal approval it is unlikely that implementation of an ACO service delivery model would occur in the current biennium; therefore a budget amendment is not anticipated.

The bill requires that the Department of Medical Assistance Services (DMAS):

- after federal approval, establish an implementation schedule within 180 days that provides for full implantation of an ACO health care delivery system for a majority of Medicaid beneficiaries in the Commonwealth;
- contract with ACOs;
- develop innovative payment methodologies that encourage quality care and improved health outcomes;
- identify a benchmark of fee-for-service expenditures in order to calculate future savings that is shared by the Commonwealth and ACOs;
- encourage ACOs to utilize innovative payment methodologies within their networks;
- assist ACOs in identifying cost-cutting measures;
- charge and collect an application fee and annual assessment to pay for the expenses of administering an ACO delivery system;
- take enforcement action against ACOs; and
- seek (along with the Secretary of Health and Human Services) any waivers or other federal approval to implement the bill.

As the bill is implemented, DMAS would be shifting the current service delivery structure, which is a combination of managed care and fee-for-service, to an ACO model. The agency should be able to shift existing resources administering the current system over to the ACO system as it is implemented. However, there is no information available to indicate whether or not moving to the ACO model would require greater administrative resources or less than what currently exists in the agency. However, the bill does require the agency to charge assessments to ACOs and it is reasonable to assume that any additional revenue generated would be used to cover the administrative costs to administer an ACO system. To the degree that the assessment revenue is not sufficient to cover any additional administrative costs needed by the agency to administer the ACO system, then additional state funding would be required.

In addition, the other major fiscal impact centers on whether or not moving to an ACO system would result in lower or higher costs than the current service delivery system in Medicaid. Certainly the concept of an ACO model is to encourage quality and cost-effectiveness in health care. However, there is no information available to determine whether or not such a model is more cost-effective than the current Medicaid managed care delivery system. Therefore, any significant fiscal impact on the Commonwealth is dependent on whether the net costs of an ACO model are higher or lower than the costs of the existing system and would therefore require more or less state funding.

State Corporation Commission

The bill establishes a certification process for ACOs that would be administered by the State Corporation Commission (SCC). The SCC is required to have an application process and to

verify that applications meet all the requirements established by the bill and any regulations established for this purpose. The requirements relate to having sufficient providers, working capital and reserves, market competition, size, etc. A renewal process is also established along with a process of examinations to ensure the financial affairs of an ACO are compliant with the appropriate regulations. The SCC is required to assess fees and assessments on the ACOs and it is assumed that such fees would cover the administrative costs of the SCC to administer the entire certification process. There is no information currently available to indicate the number of ACOs that would exist in order to estimate the workload and any additional staffing need or other administrative costs the SCC would require to handle the certification process. However, based on the requirement to impose fees, it is reasonable to assume that there would be no impact on the general fund.

Office of the Attorney General

The bill also requires that once an ACO is deemed to meet all requirements by the SCC that the application and all accompanying information be forwarded for review to the Attorney General's office to ensure that the ACO does not violate the anti-trust laws of the Commonwealth or United States. The Attorney General's office would notify the SCC and DMAS whether or not they concur with the SCC's determination. Furthermore, the Attorney General is provided the authority to investigate ACOs for anti-competitive behavior and request that appropriate action be taken against an ACO. Since anti-trust enforcement is already a responsibility of the Attorney General's Office, a fiscal impact would occur if this bill results in a higher workload that exceeds the capability of existing staff. Without any information as to the number of applications the state would receive to establish ACOs, a fiscal impact cannot be reasonably estimated at this time.

9. **Specific Agency or Political Subdivisions Affected:** Department of Medical Assistance Services, State Corporation Commission and the Office of the Attorney General.
10. **Technical Amendment Necessary:** According to the SCC, this bill is unique in its regulatory oversight structure when compared to other licensing and regulatory processes applicable to entities operating in Virginia under Title 38.2 of the Code. For example, the Office of Attorney General (OAG) appears to be given authority to overturn a decision by the SCC on whether to issue a certificate of authority to an ACO. The OAG may also request the SCC and DMAS to take certain enforcement actions against an ACO. Article IX, Section 4 of the Virginia Constitution gives the Virginia Supreme Court exclusive jurisdiction over all challenges to actions of the SCC; the SCC would, therefore, recommend that the analysis and approval performed by the OAG in reference to ACO certification precede and be a part of any application filed with the SCC.
11. **Other Comments:** The bill establishes financial requirements for ACOs. However, there are no clear financial standards in the bill for determining an ACO's capital and reserve

sufficiency, nor are there references to appropriate accounting models and allowable investments. The SCC suggests further refinement of these aspects of the bill to address these aspects of solvency regulation.