

Department of Planning and Budget

2018 Fiscal Impact Statement

1. Bill Number: HB 1107

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

2. Patron: Yancey

3. Committee: Rules

4. Title: Medicaid Legacy Fund; created

5. Summary: The proposed legislation creates two Medicaid-related funds. The Medicaid Legacy Fund (the Fund) is established on the books of the Comptroller, and is to consist of all federal and state Medicaid funds, including any funds made available as enhanced match under 42 U.S.C. § 1396d(y). Moneys in the Fund must be used for paying the cost of medical assistance services. Moneys remaining in the Fund at the end of the fiscal year must be deposited in a second fund, the Medicaid Legacy Investment Fund, which is to be managed by the Board (the Board) of the Virginia Retirement System. The Board is required to invest all moneys deposited in the Medicaid Legacy Investment Fund, and proceeds must be disbursed to and deposited in the Fund at the beginning of the next fiscal year to be used to pay a portion of the cost of medical assistance services. The amount of revenue appropriated by the General Assembly in any year in which funds are disbursed from the Medicaid Legacy Investment Fund to the Fund must be reduced by the amount transferred from the Medicaid Legacy Investment Fund to the Fund. The bill also provides that upon adoption of any measure expanding eligibility for medical assistance services to include individuals described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII), the Secretary of Health and Human Resources must apply for a waiver to allow the Commonwealth to receive federal funds for medical assistance services as an annual payment at the beginning of each fiscal year.

6. Budget Amendment Necessary: See Item 8.

7. Fiscal Impact Estimates: See Item 8.

8. Fiscal Implications: The bill is expected to have significant policy and fiscal implications for the Medicaid program. However, there are a number of concerns and unknowns that prevent any specific fiscal impact from being determined at this time. The following discussion highlights some specific areas of concern that include: (1) dependence upon a federal waiver that is unlikely to be granted; (2) how to handle federal funding shortfalls and deficits; (3) unclear basis for determining which revenue should be deposited in the funds (4) impact of transferring year-end balances; (5) potential conflicts with VRS fiduciary duties.

Medicaid

The Department of Medical Assistance Services (DMAS) indicates that, if passed, it is unlikely that the bill's provisions could be implemented. The second enactment (section

two) of HB 1107 requires DMAS to apply for an 1115 waiver that would allow the Commonwealth to receive federal funds for Medicaid in a single annual payment at the beginning of the fiscal year. DMAS indicates that this type of waiver would likely not be permissible under federal law because an 1115 waiver can only waive sections of the Social Security Act (SSA). The Cash Management Improvement Act of 1990 (CMIA), not the SSA, requires that states and the federal government minimize the amount of time between the transfer of federal funds to the states and the payout of funds for federal purposes. It does not appear that an 1115 waiver could waive this requirement. Further, the bill's third enactment (section three) stipulates that section one of the bill (which creates a Medicaid Legacy Fund and Medicaid Legacy Investment Fund) will not become effective until the Centers for Medicare and Medicaid Services (CMS) approves the 1115 waiver described in section two of the bill. Again, since the approval of the require 1115 waiver is unlikely (due to the conflict with the CMIA) section one of the bill could not be enacted.

In addition to CMIA concerns, it is unclear as to how or if federal funding would be adjusted at the end of the fiscal year to reconcile the Medicaid budget with expenditures. The bill assumes that the federal government will provide Virginia with an annual Medicaid payment at the beginning of each fiscal year. The basis for this payment is unclear. Further, if the state's annual forecast is used, then it is uncertain how or if surpluses and shortages would be handled at year-end.

The bill's requirement to deposit all funds appropriated and received for the payment of the state share of Medicaid costs into the Medicaid Legacy Fund may conflict with Code (§32.1-366) and Appropriation Act language related to the Virginia Health Care Fund. For example, budget language in Item 303 paragraph C. stipulates that, notwithstanding any other provision of law, funding from the Master Settlement Agreement must be deposited into the Health Care Fund. Moreover, any revenues deposited to the Health Care Fund can be used as state match for Medicaid. Therefore, it is unclear which, if any, Health Care Fund revenue streams could be deposited into the Medicaid Legacy Fund or potentially transferred into the Legacy Fund.

While specific fiscal implications cannot be determined, it is likely that any year-end balance in the Medicaid program that is transferred to the Legacy Fund, as required by the bill, would have a general fund impact in the subsequent year. Currently, any general fund balance in the Medicaid program is reverted to the general fund and is available to cover growing costs in the program. Similarly, any Health Care Fund balance is accounted for in the budget process and ultimately is appropriated in the following year to offset general fund need.

Virginia Retirement System

This bill would require that the Virginia Retirement System (VRS) invest assets in the Medicaid Legacy Investment Fund, similar to several other non-pension funds that VRS invests alongside the trust fund. VRS maintains that since the bill contains a provision that allows VRS to assess a reasonable administrative fee, the legislation does not technically violate the exclusive benefit rule under §401 of the Internal Revenue Code, which prevents VRS from expending trust funds for any purpose not related to its members, retirees and beneficiaries. Without such authority, VRS would be prohibited from, for example, (i)

investing Commonwealth's Attorneys Training Fund (CATF), the Commonwealth Health Research Fund (CHRF), the Virginia Research Investment Fund (VRIF), and the Line of Duty Act (LODA) Fund, the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund (VOLSAP), and the Line of Duty Death and Health Benefits Trust Fund (LODA). VRS states that the legislation also clarifies that VRS would only be required to make annual distributions, which addresses prior concerns with similar funds that would have required VRS to essentially become a record keeper, with multiple deposits and distributions throughout the year.

VRS, however, is concerned with investment capacity, as it is possible that the amount in the Medicaid Legacy Investment Fund could become large enough to impact investment decisions. If there is limited capacity for a preferred manager or investment opportunity, it is possible that VRS investment staff would be forced to choose between investing VRS assets with that manager or investment vehicle to the potential detriment of the Medicaid Legacy Investment Fund. VRS maintains that its investment staff, under the exclusive benefit rule, and under its fiduciary responsibility, would have no choice but to reserve the best investment opportunities for the VRS trust fund. Given the liquidity expectations of an annual payout, it appears a portfolio of this potential size would not be well-suited for the broad long-term VRS Fund mandate, which has a time horizon of more than 30 years. A similar fund, the Health Care Fund, which includes Medicaid and other similar accounts, is currently held by the Department of Treasury. As investment responsibility for non-VRS funds increases, even if each of the funds remains relatively small, the aggregate amount of the non-VRS funds may begin to create capacity concerns. Capacity concerns are particularly likely in private asset categories, such as private equity and private real estate, where investment opportunities in the top quartile are more limited.

VRS reports that it is currently responsible for investing almost \$73 million for CATF, CHRF, VRIF, VOLSAP, and the LODA Fund. A review of the three-year history of DMAS general fund and Health Care Fund balances shows at least approximately \$10 million per year that VRS could be required to invest for the Medicaid Legacy Investment Fund. In addition, with each additional non-VRS fund that is added, staff attention to matters related purely to VRS members becomes more of an issue as even small administrative tasks related to each fund begin to take more and more VRS staff time and attention, which is diverted away from VRS-specific activities.

9. Specific Agency or Political Subdivisions Affected:

Department of Medical Assistance Services
Virginia Retirement System

10. Technical Amendment Necessary: See Item 8.

11. Other Comments: None