

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: SB 159

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|------------------------|-------------------------------------|--------------|--------------------------|------------|--------------------------|-----------|
| 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: Edwards**3. Committee:** Finance**4. Title:** Medical Services; Commonwealth's lien for payment, limitations

5. Summary: The proposed legislation provides that a lien granted to the Commonwealth against any recovery from a third party obtained by an injured person, or the personal representative of a decedent, whose medical costs were paid pursuant to the Virginia Medical Assistance Program shall attach only to the portion of the claim representing compensation for medical expenses incurred by the injured person. The bill further provides that such lien shall be reduced by deducting from the portion of the recovery representing compensation for such medical costs the pro rata share of attorney fees, costs, and expenses incurred by the injured party or decedent.

6. Budget Amendment Necessary: Yes**7. Fiscal Impact Estimates:** Preliminary**Expenditure Impact:**

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Fund</i> |
|--------------------|----------------|-------------|
| 2019 | \$5,200,000 | General |
| 2020 | \$5,200,000 | General |
| 2021 | \$5,200,000 | General |
| 2022 | \$5,200,000 | General |
| 2023 | \$5,200,000 | General |
| 2024 | \$5,200,000 | General |

8. Fiscal Implications: This legislation is expected to reduce DMAS recoveries in two ways. First, recovery cases handled in-house by DMAS will likely be reduced because more of these cases will likely go to court. Second, DMAS expects to collect a smaller share of settlement amounts resulting from cases where the OAG negotiates a lien.

Since the proposal will allow attorney's fees to be recovered from the Commonwealth's lien, DMAS estimates that more cases that are currently handled in-house will go to court. These in-house cases generated \$6.5 million in collections in 2017, of which \$3.3 million was deposited in the Virginia Health Care Fund (VHCF); the other half of the recovery was

remitted to the federal government. As a result of more cases going to court, DMAS estimates that the recovered amount will be reduced by 40 percent to pay for attorney fees. This would reduce total recoveries to approximately \$3.9 million (\$6.5 million x 60 percent). Additionally, because these cases would go to court, DMAS would compensate the OAG for collections efforts, which are estimated at 30 percent of the net recoveries. This would further reduce total recoveries to approximately \$2.7 million (\$3.9 million x 70 percent).

The original FIS assumed that half of this amount (\$1.4 million) would be deposited to the VHCF, with the other half being returned to the federal government. However, DMAS has since determined that new federal rules¹, effective October 1, 2017, prohibit the federal government's portion of third party payments from being reduced to pay for attorney's fees. Therefore, based on this new information, DMAS would be expected to repay the federal government the \$2.7 million, which represents the half of the original collections minus the OAG recovery effort (((\$6.5 million – \$1.2 million) * 50 percent). Assuming no federal participation, the full cost of the attorney's fees along with the state share of the OAG recovery effort would be borne by the Commonwealth at a cost of \$3.2 million.

The bill also impacts lien cases currently referred to the Office of the Attorney General. In 2017, DMAS deposited over \$1.7 million into the VHCF as a result of such settlements. Again, based on the new federal rules, DMAS expects that HB 159 would reduce VHFC revenue by approximately \$2.0 million annually as the state would have to return the federal share of attorney's fees to the federal government. This revenue loss will increase the general fund need by the same amount.

9. Specific Agency or Political Subdivisions Affected:

Department of Medical Assistance Services

10. Technical Amendment Necessary: No

11. Other Comments: None

¹ In 2006, the United States Supreme Court issued a decision, *Arkansas Department of Human Services v. Ahlborn*, 547 U.S. 268 (2006), finding that only the portion of a settlement designated as payment for past medical expenses could be claimed by a state Medicaid program. However, the Bipartisan Budget Act of 2013, which took effect on October 1, 2017 allows state Medicaid agencies recover from the entire settlement proceeds, not just funds designated as payment for medical care. Further, this Act does not allow attorney's fees to be covered with recoveries owed to the federal government.