

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: HB2015

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: Ayala

3. Committee: Labor and Commerce

4. Title: Essential workers; hazard pay; personal protective equipment; civil penalty.

5. Summary: Requires, that following the declaration by the Governor of a state of emergency pursuant to §44-146.17, Code of Virginia, that includes or is followed by any additional executive order in furtherance of such declaration that includes a stay-at-home or shelter-in-place order, employers shall (i) compensate each of their essential workers at a rate not less than one and one-half times the essential worker's regular rate of pay for any hours worked during the closure order and (ii) provide their essential workers with personal protective equipment related to the state of emergency and recommended for the relevant work site or job task by the Virginia Department of Labor and Industry, the State Department of Health, the U.S. Centers for Disease Control and Prevention, or the federal Occupational Safety and Health Administration. The bill defines "essential worker" as an individual employed as a health care provider, home care provider, or airport worker or by an essential retail business, as specified in the bill. The bill subjects violators to the same civil penalties, and provides the same cause of action for an employer's failure to pay the required hazard pay, as are currently imposed for failing to pay wages generally.

6. Budget Amendment Necessary: Yes. See item 8.

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

8. Fiscal Implications: The provisions of this bill require that employers provide hazard pay for essential workers as defined by this bill and personal protective equipment (PPE) for those employees defined as essential workers. These requirements would become effective following the declaration of a state-of-emergency by the Governor that includes or is followed by a declaration that includes a stay-at-home or shelter-in-place order.

Department of Labor and Industry (DOLI)

DOLI estimates that if a stay at home or shelter in place order were declared, two additional compliance officers would be needed to investigate additional claims, at an annualized general fund cost of \$205,364. DOLI based this on an estimate of 497 additional wage claims that would have to be investigated. DOLI indicates that a compliance officer investigates 250 to 300 claims a year, depending on complexity, and that an assistant compliance officer screens or resolves less complex cases. Any revenue impact of this bill is indeterminate, as it

is not possible to estimate the number of violations that may occur. Civil penalties owed as a result of this bill are to be deposited into the general fund.

Virginia State Police (VSP)

Any expenditure to the agency would depend on when an order is issued and the duration of such an order. According to VSP, hazard pay at the rate of time-and-a-half would be required for the agency's non-exempt employees assigned to the Aviation Unit and the wage non-exempt physician assigned to the Search and Recovery Team. Under such an order, the monthly cost of this requirement would be \$75,068, and would impact the wages of 21 employees. VSP anticipates no fiscal impact pertaining to the provision of personal protective equipment, as this is already provided to employees.

Department of Veterans Services (DVS)

DVS anticipates that the proposed legislation would impact all of its veterans care center employees, who are responsible for providing healthcare and other quality of life services for residents at the Sitter & Barfoot Veterans Care Center in Richmond and the Virginia Veterans Care Center in Roanoke. The agency estimates that in a typical pay period, both care centers expend an average of \$1.09 million, which includes salaries, wages, overtime, and shift differential pay. DVS estimates that during a hazard pay event, the average expenditure for these same employees would be approximately \$1.63 million per pay period, an increase of \$542,968.19 for every pay period of a hazard pay event. Given that there are 24 pay periods per year, the agency would expect to expend approximately \$13.0 million in additional payroll costs if a hazard pay event were to last that long.

These employees are all paid with nongeneral fund support, primarily from the special revenues the care centers collect from patient payments (including Medicare, Medicaid, federal subsidies, and self-pay sources). Because the duration such a hazard pay event would last is unknown, the exact fiscal impact on DVS cannot be determined at this time.

Additionally, DVS is currently building two new care centers (Jones & Cabacoy VCC in Virginia Beach and Puller VCC in Fauquier), which are scheduled to open in calendar year 2022. There would be additional fiscal impacts on these two facilities that cannot be determined at this time.

Department of Medical Assistance Services (DMAS)

DMAS does not expect this bill to have an immediate fiscal impact as a stay-at-home or shelter-in-place order is not currently in effect. However, should such an order require the compensation of essential workers at one and a half times the employee's regular rate of pay, it is assumed that there would be a significant impact on the state's Medicaid program. The most direct impact would be in the service area of consumer directed attendant care. In this model of care, the Medicaid members select their personal care, respite or companion care attendant and the Medicaid program pays for the wages of the attendant plus appropriate employer taxes and benefits. DMAS pays consumer directed attendants approximately \$560 million a year or \$47 million a month. Of this monthly amount, approximately \$11.5 million is for care delivered fee for service and the remainder is delivered through Virginia's Commonwealth Coordinated Care Plus managed care program. Most of this care is paid through the Medicaid program that is funded half by the federal government and half from

state funds. Adding an additional 50% to the wages of the attendants, DMAS estimates this increase at a cost of approximately \$23 million a month (\$11.7 million from the general fund).

The agency-directed model of care also provides personal care, respite, and companion care through in-home attendants, but the employers of the attendants are private agencies. DMAS assumes these agencies would not have the ability to pay time and a half for any extended length of time. While not explicit in the bill, DMAS assumes the state would need to fund this hazard pay. DMAS does not have direct attendant information for the agency directed attendants as they do for consumer directed care. Total expenditures for agency directed care is approximately \$600 million a year compared to \$560 million a year for consumer directed personal care. However, based on relative reimbursement rates DMAS estimates there are about 20 percent fewer hours of care through agency directed attendants. DMAS assumes the general fund cost of one month of hazard pay for agency directed care to be 80 percent that of consumer directed attendants or approximately \$18.3 million (\$9.1 million general fund).

Many other providers such as hospitals, nursing homes, intermediate care facilities, intellectual and developmental disabled waivers, group homes, day support, community service boards and private clinics would also be impacted by this bill. While again, the bill does not explicitly authorize rate increases to cover these increased costs, the viability of some entities may be threatened. For example, 70 percent of nursing home costs are for personnel wages and Virginia Medicaid pays about \$1 billion for nursing home care or \$58 million in wages a month. Again, all these cost considerations are subject to the stay-at-home and shelter-in-place declarations. Due to the unknown timing of such a declaration and the issues described in the items above, the fiscal impact for these portions of the bill are indeterminate.

Department of Behavioral Health and Developmental Services (DBHDS)

While the total number of employees that would be impacted is unclear, if DBHDS were to pay all direct care staff at all state facilities time and a half, the impact is an additional \$6,083,612 per pay period in cost, or \$12,167,224 per month.

Department for Aging and Rehabilitative Services (DARS)

According to DARS, should such an order require the compensation of essential workers at one and a half times the employee's regular rate of pay; it is assumed that there would be a significant impact on the PAS program. The PAS program provides consumer directed personal assistance services to individuals with disabilities who do not qualify for Medicaid waiver services. This state GF program allows individuals with significant disabilities to work and live in their communities. There is currently a waitlist for services. Since the program is funded from the general fund additional funding would be needed or consumer hours or the number of clients served would need to be reduced. This could ultimately lead to individuals seeking higher cost options outside of their community such as nursing facility care.

Also, PAS consumers are the employer of record. As such, they would be required to provide PPE. This may be a financial burden for some.

If a shelter-in-place order is issued, it also would impact local departments of social services and Area Agencies on Aging who provide personal care, home/chore/companion services to clients in the community. If additional funding is not provided, they would need to reduce hours or reduce the number of individuals receiving services.

The additional costs associated with DARS cannot be determined at this point.

Institutions of Higher Education

The provisions of this legislation could result in increased costs for the Virginia Commonwealth University Health System (VCUHS) and the University of Virginia Medical Center (UVAMC). For every month of an emergency declaration that includes a stay-at-home or shelter-in-place requirements, VCUHS estimates they could incur an additional \$19.1 million in increased costs, to pay time and a half to their essential workers. UVAMC estimated an impact of \$17 million for a previous iteration of this bill during the 2020 Special Session. An updated figure from UVAMC is not yet available. Information on the potential impact on other institutions of higher education and health systems is pending.

Department of Corrections (DOC)

The agency estimates an indeterminate impact from this bill. DOC employs over 600 health care providers who would be affected by the provisions of this bill. This number includes 389 classified, 119 wage, and 95 contractor positions. The DOC estimates that paying these health care providers one and one-half times the essential workers' regular rate of pay for hours they work would cost the agency an additional \$2.7 million for every month a stay-at-home or shelter-in-place order is in effect (amount provided covers the increase in pay, above the affected workers' regular pay). The actual cost to the agency would depend on the length of such order. The DOC reports that it spends approximately \$337,700 per month to provide health care workers with PPE. Because DOC is already meeting the PPE requirement set by the bill, it will not have an additional fiscal impact on the agency.

Department of Juvenile Justice (DJJ)

The agency estimates an indeterminate impact from this bill, as it is not possible to anticipate the length of a potential emergency declaration with stay-at-home orders. On a weekly basis, the potential fiscal impact would be \$65,731 for salary and wage costs of 82 healthcare providers, and \$1,545 for PPE. Hazard pay would be payable to four doctors, 34 nurses, six medical assistants, one laboratory technician, 21 psychologists, three clinical workers, 12 counselors, and one health services administrator.

Virginia Alcoholic Beverage Control Authority (ABC)

ABC anticipates an indeterminate expenditure impact as a result of this bill. According to the agency, if one and one-half times an affected employee's rate of pay were required for wage employees (\$100,057.74), non-exempt employees (\$48,286.11), and exempt employees (\$69,707.33), the resulting costs would be \$872,188 per month of duration of a stay-at-home

order. While ABC is supported by nongeneral fund revenue, these additional expenses would reduce transfers to the general fund.

Department of Aviation (DOA)

DOA anticipates that two positions would be considered airport workers and eligible for hazard pay as a result of the provisions of this bill. The monthly cost to provide hazard pay for both of these positions would be approximately \$7,250. DOA would need to cover these costs by redirecting nongeneral fund revenues, such as aviation fees and taxes, from other priorities.

Department of Military Affairs (DMA), the Virginia Lottery, the Court System

DMA and the Lottery anticipate no impact as a result of this bill. Information from the courts is pending

- 9. Specific Agency or Political Subdivisions Affected:** State agencies that support individuals employed as a health care provider, home care provider, airport worker or by an essential retail business; courts.

10. Technical Amendment Necessary: No.

11. Other Comments: None.