

## Department of Planning and Budget 2021 Fiscal Impact Statement

1. **Bill Number:** SB1107

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

2. **Patron:** Stanley

3. **Committee:** Judiciary

4. **Title:** Medical malpractice; limitation on recovery.

5. **Summary:** Eliminates the cap on the recovery in actions against health care providers for medical malpractice where the act or acts of malpractice occurred on or after July 1, 2021.

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

7. **Fiscal Impact Estimates:** Indeterminate

8. **Fiscal Implications:**

The Treasury of Virginia: Division of Risk Management (DRM): The State Risk Management Plan has a \$2 million dollar limit on claims. However, Section II, C of the State Risk Management Plan states: "Recovery for claims based on acts of medical malpractice against a health care provider as defined in § 8.01-581.1 of the Code of Virginia, shall be limited as provided in § 8.01-581.15 of the Code." This creates two separate liability limits on claims. There is a \$2 million general liability limit and a limit for medical malpractice liability. The medical malpractice cap is currently at \$2.45 million and it increases by \$50,000 every six months.

If this bill is passed further legal interpretation will be necessary to determine what the fiscal impact of this legislation will be for the Commonwealth. Most state agencies currently receive general liability coverage through the State Risk Management Plan. DRM charges agencies premiums, which are based on claims experience. If the bill would make the provision in the State Risk Management Plan regarding medical malpractice claims null and void, therefore leaving the \$2 million general liability limit in place for medical malpractice claims, then the impact to the Plan would be minimal. However, if the interpretation is that the medical malpractice cap is removed and the claims would be unlimited, then that could lead to significant premium increases for certain agencies from an increase in claims.

Virginia Department of Corrections: The fiscal impact of this bill is indeterminate. Elimination of a cap on recovery for medical malpractice has the potential to significantly increase the Department's responsibility for judgements over insured policy limits for large medical contracts that the VADOC holds. This includes the comprehensive medical care provider and staffing agencies who fill vacancies with per diem nurses. These additional costs will, most likely, be passed onto the VADOC as additional expenses associated with

medical care provision. Additionally, it may impact the ability to have the COVA's liability plan extended to non-incorporated single medical providers. Currently, the VADOC contracts with multiple independent medical providers who obtain malpractice coverage through this mechanism. Passage of this bill would increase the liability exposure for the liability plan extended to these providers and could result in coverage being terminated. If these providers are no longer able to obtain coverage through the COVA liability plan, the VADOC would have difficulty finding and contracting with appropriate medical providers to ensure a constitutional required level of medical care in the VADOC facilities. At this time, there is limited information to estimate how much of a financial impact this change will have, but the information that is provided would predict a significant one.

**9. Specific Agency or Political Subdivisions Affected:** Division of Risk Management, Virginia Department of Corrections

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None