

## Department of Planning and Budget 2011 Fiscal Impact Statement

**1. Bill Number:** SB 1241

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

**2. Patron:** Edwards

**3. Committee:** Courts of Justice

**4. Title:** Commonwealth's lien for payment of medical services - limitations

**5. Summary:** This bill provides that a lien granted to the Commonwealth against any recovery from a third party obtained by an injured person whose medical costs were paid pursuant to the Virginia medical assistance program shall only attach to the portion of the claim representing compensation for medical expenses incurred by the injured person. In the course of determining the amount of the Commonwealth's lien, a court may determine the fairness of any allocation of the proceeds from a claim for medical expenses.

**6. Budget Amendment Necessary:** Yes, Item 297, Medicaid Program Services.

**7. Fiscal Impact Estimates are:** Final.

**Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2011	\$0	-	GF
2011	\$0	-	NGF
2012	\$2,879,122	-	GF
2012	(\$2,879,122)	-	NGF
2013	\$2,965,496	-	GF
2013	(\$2,965,496)	-	NGF
2014	\$3,054,461	-	GF
2014	(\$3,054,461)	-	NGF
2015	\$3,146,095	-	GF
2015	(\$3,146,095)	-	NGF
2016	\$3,240,478	-	GF
2016	(\$3,240,478)	-	NGF
2017	\$3,337,692	-	GF
2017	(\$3,337,692)	-	NGF

**8. Fiscal Implications:** The proposed bill would reduce the amount of recoveries received by the Department of Medicaid Assistance Services (DMAS) for tort and malpractice medical liens. Currently, Medicaid liens are recovered based on the total settlement amount up to the amount paid by the program. When sufficient settlement funds are available, Medicaid recovers 100

percent of the lien amount. This bill would limit recovery to that portion of the settlement allocated to medical expenses. When the portion of the settlement allocated to medical expenses is less than the Medicaid lien amount, it would result in a reduction to the Medicaid lien.

When settlement funds are received for Medicaid liens and the total funds are not sufficient to cover attorney fees as well as the Medicaid lien, the case is referred to the Office of the Attorney General (OAG) for compromise. The proposed bill would limit the OAG's compromise to that portion of the settlement allocated to medical expenses. Currently, the OAG's compromise is based the total settlement amount and any reduction is absorbed equally by all parties. The bill further allows for the courts to determine the allocation of proceeds related to medical expenses versus the entire settlement amount. This bill aims to reduce only the medical portion of any settlement received for tort and malpractice. All other costs included in the settlement such as attorney fees, damage to personal property and punitive damages would remain intact.

Under current law, Medicaid recipients have a responsibility to reimburse the program when payments for medical care have been received from a third party (Section 12VAC30-40-10). Funds received by the recipient as a result of a personal injury settlement constitute a third party payment. Settlement payments received by Medicaid recipients could also impact the recipient's eligibility status with Medicaid. Virginia regulations require a Medicaid applicant, as a condition of eligibility, to assign rights to medical support and to payment for medical care from any third party for services that are reimbursed by Medicaid.

The state share of lien recoveries is deposited by DMAS into the Virginia Health Care Fund (VHCF) to be used in lieu of general fund support for the ongoing expenditures of the Medicaid program. Any decrease in VHCF revenue will have to be replaced with additional general fund appropriation.

Collection data from FY 2009 and FY 2010 shows that total recoveries for third-party Medicaid liens averages \$5.5 million for in-house collections and \$1.4 million for compromised settlements. The estimates below assume the lien amount will grow at three percent per year. The collection rates for in-house and compromised settlements are 100 percent and 33 percent of the lien amount, respectively. DMAS will have to return to the federal government its share of any revenue received. The table below estimates that DMAS' deposits into the VHCF will decrease by approximately \$3.0 million in FY 2012. These funds will have to be replaced with general fund dollars.

This fiscal impact assumes that the Medicaid lien recovery amount, based on this bill, will be four percent of the total settlement amount. This assumption is based on Arkansas' recent experience, due to the United States Supreme Court's decision in *Arkansas v. Alhborn*, since they made a similar change that likely will impact Virginia in much the same way. This case resulted in Medicaid receiving approximately 4 percent of the total settlement amount.

This bill may also have an impact on other state agencies that apply liens for the recovery of medical costs paid by a state program. The impact will be similar, but only the Medicaid impact, which is the most significant impact, is estimated in this statement.

<b>Information and Assumptions</b>	
(1)	The Medicaid lien recovery amount is typically 100 percent when sufficient funds are available to pay all parties.
(2)	The Medicaid lien recovery amount is typically no less than 1/3 of the total settlement in a compromise situation.
(3)	The Medicaid lien recovery amount equals approx. four percent of the total settlement amount - per SB 1241.
(4)	Assumed growth rate in recoveries is three percent.
(5)	Federal Medicaid match rate is 50 percent.

<b>Current Policy ( Assumptions 1 and 2)</b>							
Fiscal Year	Medicaid Lien Amt - In house Recoveries	Medicaid Recovery (100%)	Medicaid lien - compromised settlement	Medicaid Recovery (33%)	Total Medicaid Recoveries	Federal Share	State Share
2012	\$5,414,590	\$5,414,590	\$1,931,859	\$637,513	\$6,052,103	\$3,026,051	\$3,026,051
2013	\$5,577,027	\$5,577,027	\$1,989,814	\$656,639	\$6,233,666	\$3,116,833	\$3,116,833
2014	\$5,744,338	\$5,744,338	\$2,049,509	\$676,338	\$6,420,676	\$3,210,338	\$3,210,338
2015	\$5,916,668	\$5,916,668	\$2,110,994	\$696,628	\$6,613,296	\$3,306,648	\$3,306,648
2016	\$6,094,168	\$6,094,168	\$2,174,324	\$717,527	\$6,811,695	\$3,405,848	\$3,405,848
2017	\$6,276,993	\$6,276,993	\$2,239,554	\$739,053	\$7,016,046	\$3,508,023	\$3,508,023

<b>Proposed Policy (Assumption 3)</b>								
Fiscal Year	Medicaid Lien Amt - In house Recoveries	Medicaid Recovery (4%)	Medicaid lien - compromised settlement	Medicaid Recovery (4%)	Total Medicaid Recoveries	Federal Share	State Share	Net Impact on VHCF
2012	\$5,414,590	\$216,584	\$1,931,859	\$77,274	\$293,858	\$146,929	\$146,929	(\$2,879,122)
2013	\$5,577,027	\$223,081	\$1,989,814	\$79,593	\$302,674	\$151,337	\$151,337	(\$2,965,496)
2014	\$5,744,338	\$229,774	\$2,049,509	\$81,980	\$311,754	\$155,877	\$155,877	(\$3,054,461)
2015	\$5,916,668	\$236,667	\$2,110,994	\$84,440	\$321,106	\$160,553	\$160,553	(\$3,146,095)
2016	\$6,094,168	\$243,767	\$2,174,324	\$86,973	\$330,740	\$165,370	\$165,370	(\$3,240,478)
2017	\$6,276,993	\$251,080	\$2,239,554	\$89,582	\$340,662	\$170,331	\$170,331	(\$3,337,692)

**9. Specific Agency or Political Subdivisions Affected:** Department of Medical Assistance Services and other agencies of the Commonwealth may be affected as well.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.

**Date:** 1/26/11

**Document:** G:\GA Sessions\2011 Session\SB1241.Doc  
c: Secretary of Health and Human Services