

## Department of Planning and Budget 2017 Fiscal Impact Statement

**1. Bill Number:** SB 1404

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** DeSteph, Bill R. Jr.

**3. Committee:** Education and Health

**4. Title:** Department of Medical Assistance Services; eligibility for services under waiver

**5. Summary:** The proposed legislation prohibits the Department of Medical Assistance Services from reducing, terminating, suspending, or denying services for an individual enrolled in a waiver who is otherwise eligible for such services on the basis of such individual's informed choice of place of residence in the Commonwealth.

**6. Budget Amendment Necessary:** No See Item 8.

**7. Fiscal Impact Cannot Be Determined:** See Item 8.

**8. Fiscal Implications:** The proposed legislation requires that services be provided to individuals who may chose a setting that does not meet federal rules. In the event that such a setting is chosen, then the federal government will not provide Medicaid matching dollars. Therefore, any such costs would have to be covered by a separate program, outside of Medicaid, and entirely supported with general fund dollars.

In January 2014, the Centers for Medicare and Medicaid Services (CMS) published new regulations, commonly referred to as the "CMS Home and Community Based Services (HCBS) Final Rule", that prescribe the required characteristics for Medicaid HCBS waiver settings, which include, among others:

- It is integrated in and supports full access to the greater community;
- It is selected by the individual from among a variety of setting options;
- It optimizes autonomy and independence in making life choices;
- It facilitates individual choice in selecting both services and service providers
- Have the freedom to decorate and furnish their sleeping and/or dwelling unit; and
- Be able to have visitors at any time.

While individuals do have the ability to choose services they wish to receive, the setting in which they live must meet federal requirements for the services to be provided there if they are to be reimbursed by the federal government pursuant to Medicaid rules. CMS requires all states to bring Medicaid HCBS settings into full compliance with the HCBS regulations'

settings provision by March 17, 2019, which will establish additional conditions that would lead to non-compliance. Virginia submitted its Statewide Transition Plan outlining how it will comply with the new conditions under this federal rule, and it received initial approval by CMS in December 2016.

The Department of Medical Assistance Services (DMAS) maintains that the proposed legislation does not account for the federal requirements for HCBS settings. Since, based on the proposed bill, individuals could choose a setting that does not meet the HCBS Final Rule's required characteristics, such services under Virginia's Medicaid program would be out of compliance beginning March 17, 2019. DMAS would not be able to draw down federal matching funds for these non-compliant services. Federal law does not provide for any waivers of this regulation and, therefore this legislation has a potential fiscal impact.

Total expenditures for the HCBS waivers were more than \$1.5 billion in state fiscal year 2016. Approximately half of that amount was paid with federal matching dollars. Should this bill become law and the current federal rule remain in place; it is assumed that Virginia would need to continue to provide individuals with all of the services for which they are eligible, even if those services are not eligible for Medicaid reimbursement due to their setting.

The cost of this program cannot be determined as there is no way to estimate how many individuals and what services would need to be covered. Further, it is not possible to estimate the impact this bill may have on the status of the Commonwealth's current settlement with the federal Department of Justice.

**9. Specific Agency or Political Subdivisions Affected:**

Department of Medical Assistance Services

Department of Behavioral Health and Developmental Services

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None

**Date:** 1/17/17