

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5116

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: Guzman

3. Committee: Appropriations

4. Title: Paid quarantine leave.

5. Summary: Requires public and private employers to provide eligible employees paid quarantine leave. The bill provides that such paid quarantine leave is available for immediate use by the employee, regardless of how long the employee has been employed by the employer. The bill provides that such paid quarantine leave may be used for (i) an eligible employee's illness or health condition related to the COVID-19 virus; an eligible employee's need for medical diagnosis, care, or treatment of an illness or health condition related to the COVID-19 virus; or an eligible employee's need for preventive medical care related to the COVID-19 virus; (ii) care of a family member with an illness or health condition related to the COVID-19 virus; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness or health condition related to the COVID-19 virus; or care of a family member who needs preventive medical care related to the COVID-19 virus; or (iii) care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee's or family member's presence in the community may jeopardize the health of others because of his exposure to the COVID-19 virus, whether or not the eligible employee or family member has actually contracted COVID-19.

The bill prohibits employers from taking certain retaliatory actions against an employee related to paid quarantine leave or because the employee is ineligible for or has exhausted his paid quarantine leave and is absent from work without compensation for the same purposes an employee may use paid quarantine leave. The bill provides that an employee is authorized to bring a civil action against the employer for violations of the bill's provisions. The bill sunsets upon the expiration of the state of emergency declared by the Governor in response to the COVID-19 pandemic in Executive Order 51 (2020).

6. Budget Amendment Necessary: Yes, Item 120 and Item 313 of HB5005/SB5015, as introduced, for the duration of the state of emergency. The estimates reflect anticipated costs if the state of emergency remains in effect through FY 2022.

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

Expenditure Impact: Department of Labor and Industry – Item 120

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020	0	0	N/A
2021	46,108	1	General
2022	92,215	1	General

Expenditure Impact: Department of Medical Assistance Services – Item 313

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020	0	0	N/A
2021	28,767,276	0	General
2022	29,836,300	0	General

- 8. Fiscal Implications:** This fiscal impact estimate is preliminary and will be updated if additional information regarding the bill's fiscal implications becomes available. The amounts in this estimate are based on the state of emergency extending into fiscal year 2022.

This bill requires that all employers provide their employees paid quarantine leave in response to the COVID-19 pandemic and for the duration of the state of emergency in the Commonwealth due to the novel coronavirus declared in EO 51(20).

Department of Labor and Industry

The Department of Labor and Industry (DOLI) anticipates that this bill will result in an increase in inquiries requiring a response by agency compliance staff. Since the federal Families First Coronavirus Relief Act (FFCRA) became effective, the agency has received an increase of 600 to 1050 calls per month, in comparison to 2019, most of which were referred to the U.S. Department of Labor. The volume of calls that DOLI will be required to address is anticipated to be similar. To address this increase, DOLI indicates that the agency will need an additional assistant compliance officer position to receive contacts about the provisions of this bill and direct callers to the proper means to address their concerns during the effective dates of this bill. If the state of emergency remains in effect through the remainder of the fiscal year, the FY 2021 estimated general fund cost to DOLI is \$46,108; for FY 2022 and each full fiscal year thereafter that the EO is effective, the general fund cost to DOLI is \$92,215. To date, DOLI has absorbed the impact of the additional COVID related calls, however, additional General fund support will be necessary as the agency cannot absorb the additional cost associated with the increased workload from this bill.

State Employee Costs

According to the Department of Human Resource Management (DHRM), the impact of this bill on state agencies relative to state employees cannot be determined. Current leave benefits under the Commonwealth's standard Public Health Emergency Leave (PHEL) policy, along with policy exceptions in place since March 26, 2020, provide all state employees up to four weeks, or 160 hours, of paid public health emergency leave per year. The proposed legislation would grant at least two weeks of paid leave (80 hours), which the Commonwealth's PHEL policy, with the March 26, 2020 exceptions, already exceeds. The

bill would extend certain exceptions to the standard policy that are currently in place until the expiration of the state of emergency declared by the Governor in response to the COVID-19 pandemic.

The fiscal impact to state agencies related to state employees would occur due to two primary causes. First, this bill would require paid leave for wage employees who otherwise do not receive paid leave. Second, costs would be incurred if agencies were required to hire additional staff or to pay overtime for staff to replace staff who are on leave. However, these costs are being incurred under current state policy.

Any fiscal impact to state agencies would depend in part on the amount of leave used by such employees and the need for state agencies to bring on additional staff or pay existing staff overtime to address the workload of employees on leave, as well as the duration of the pandemic. Accordingly, the fiscal impact related to state employees is indeterminate at this time.

Medicaid Program Costs

The Department of Medical Assistance Services (DMAS) indicates that the provision of paid quarantine leave, as required by this bill, would have a significant fiscal impact on the state's Medicaid program. The most immediate 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. Pursuant to this bill, DMAS assumes that the Commonwealth would need to pay for the cost of the quarantine days, as well as the substitute care hours. While the substitute care would still be eligible for federal matching funds, quarantine leave is considered non-service hours and thus not eligible for federal match. Therefore, the cost of reimbursing the quarantining attendants must be entirely supported with general fund dollars.

Currently, there are nearly 22,000 consumer directed attendants who average over 20 hours of care a week with an average of seven hours of care per day. DMAS assumes that this population would be eligible for two weeks or 14 days of quarantine leave per year. On average Virginia Medicaid pays approximately \$80 a day for consumer directed attendant care. DMAS assumes that attendants would use two-thirds of available quarantine leave hours over the course of a year with a total general fund cost of \$16,677,221 in FY 2021. The future course of the pandemic is unknown at this time, but if a policy of 14 days of quarantine leave was continued into FY 2022, DMAS would assume five percent utilization growth resulting in total general fund cost of \$17,511,082. In addition, DMAS assumes a one-time implementation cost of \$50,000 for all personal care vendors in FY 2021 and \$0.25 per member per month for ongoing administrative costs. Based on these assumptions, DMAS estimates administrative general fund costs of \$416,000 in FY 2021 and \$67,460 in FY 2022.

The agency-directed model of care also provides personal care, respite, and companion care through in-home attendants; however, the employers of the attendants are private agencies. DMAS assumes these agencies would not have the ability to pay for both care and for attendants to quarantine. While not explicit in the bill, DMAS assumes the state would need to fund this quarantine leave or lose the agency directed model. DMAS does not have the

same level of detailed direct attendant information for the agency directed attendants as they do for consumer directed care. Total expenditures for agency directed care is approximately \$575 million a year compared to \$600 million a year for consumer directed personal care. However, based on relative reimbursement rates DMAS estimates there are about 30 percent fewer agency direct attendants. With fewer estimated attendants, DMAS assumes the general fund costs in FY 2021 would be 70 percent of the costs for consumer directed attendants or \$11,674,055 (general fund). Similar to the consumer directed assumption, the potential general fund cost in FY 2022 would be \$12,257,758.

Many other Medicaid providers such as hospitals, nursing homes, intermediate care facilities, intellectual and developmental disabled waivers, group homes, day support, community service boards, and private clinics also would be impacted by this bill. While again, the bill does not explicitly authorize rate increases to cover these increased costs, the viability of some agencies may be threatened. For example, 70 percent of nursing home costs are for eligible personnel wages and Virginia Medicaid pays about \$1 billion for nursing home care. Even small increases to current employee benefits would result in significant pressure to raise nursing facility rates. Further study would be required to determine the impact. Due to the issues described in the items above, the fiscal impact for these portions of the bill are indeterminate at this time.

In summary, DMAS' current estimate of this bill's impact on the Medicaid program is as follows:

	FY 2021	FY 2022
Consumer Directed Attendants	\$16,677,221	\$17,511,082
Administrative Costs	\$416,000	\$67,460
Agency Directed Attendants	\$11,674,055	\$12,257,758
Other Impacted Providers	<u>Indeterminate</u>	<u>Indeterminate</u>
	\$28,767,276	\$29,836,300

Local Costs

In addition to state agencies, this bill will have an indeterminate impact on local departments of social services (LDSS). The Department of Social Services estimates that for every 100 local staff members that take paid quarantine leave and have their positions temporarily backfilled for that period, it would cost \$190,129 (\$65,594 GF; \$95,065 NGF; \$29,470 local). Since paid quarantine leave is capped at two weeks, many LDSS will not backfill a position for that short of a period; as such, the fiscal impact of this legislation on LDSS is anticipated to be small.

9. Specific Agency or Political Subdivisions Affected: All state agencies and political subdivisions.

10. Technical Amendment Necessary: Yes. Line 18. Strike "means".

11. Other Comments: None.