

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: HB 1446

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

2. Patron: Orrock

3. Committee: Appropriations

4. Title: Certified nursing facilities; minimum staffing standards, sanctions

5. Summary: The substitute bill sets nursing staffing requirements for certified nursing facilities, imposes administrative sanctions on a certified nursing facility if it does not comply with the staffing requirements, and provides for exemptions to the administrative sanctions under certain circumstances. The bill has a delayed effective date of July 1, 2025.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary, see Item 8

Expenditure Impact:

<i>Fiscal Year</i>	<i>Agency</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2024	-	-		-
2025	-	-		-
2026	VDH	\$382,889	2.0	General
	DMAS	\$ 2,947,068	-	General
	DMAS	\$ 3,480,113	-	Nongeneral
	DVS	\$4,623,285	10.0	Indeterminate*
2027	VDH	\$382,889	2.0	General
	DMAS	\$ 3,059,057	-	General
	DMAS	\$ 3,612,357	-	Nongeneral
	DVS	\$4,623,285	10.0	Indeterminate*
2028	VDH	\$466,380	2.0	General
	DMAS	\$ 3,175,301	-	General
	DMAS	\$ 3,749,627	-	Nongeneral
	DVS	\$4,623,285	10.0	Indeterminate*
2029	VDH	\$466,380	2.0	General
	DMAS	\$ 3,295,962	-	General
	DMAS	\$ 3,892,112	-	Nongeneral
	DVS	\$4,623,285	10.0	Indeterminate*
2030	VDH	\$466,380	2.0	General
	DMAS	\$ 3,295,962	-	General
	DMAS	\$ 3,892,112	-	Nongeneral
	DVS	\$4,623,285	10.0	Indeterminate*

*It is currently unclear as to the extent nongeneral fund reimbursement will be available to cover the added costs.

8. Fiscal Implications:

Virginia Department of Health

The Virginia Department of Health (VDH) asserts that the provisions of this bill will increase the workload of the agency's nursing home licensure program. There are currently 288 licensed nursing homes in Virginia, eight of which operate under a hospital license and two of which that are exempt from licensure, all of which would be subject to the staffing mandate proposed by this bill. As such, VDH expects additional workload associated with the added oversight and enforcement responsibilities. The existing program staff are fully utilized and cannot absorb these additional duties. The agency maintains that two additional full-time positions would be needed in FY 2026, one Program Administrative Specialist III (\$186,535) and one Hearing and Legal Services Officer III (\$196,354). In addition, one wage Financial Services Specialist II (\$83,491) position would be needed beginning in FY 2028, as that is the soonest year in which civil monetary penalties can be assessed as three consecutive years of noncompliance are needed for that sanction to be an option. These estimates include expected salary, fringe benefits and related nonpersonal services costs (i.e., computer, supplies, etc.). The following provides more detail as to the expected role of each position:

- The Program Administrative Specialist III would be responsible for corresponding with certified nursing facilities not meeting the staffing standard, receiving and reviewing any explanations for noncompliance from certified nursing facilities, receiving and reviewing corrective action plans for staffing standards from certified nursing facilities, monitoring implementation of administrative sanctions other than civil monetary penalties, and assisting in planning, preparation, and resource allocation for informal fact-finding conferences.
- The Hearing and Legal Services Officer III would be responsible for presiding at informal fact-finding proceedings for certified nursing facilities that disputed VDH's initial determination that they failed to meet the staffing standard and/or disputed the administrative sanction proposed; this position would also be responsible for writing a recommendation to the State Health Commissioner regarding the final disposition of the matter for the Commissioner's approval or denial, in whole or in part.
- The Financial Services Specialist II would be responsible for monitoring timely payment of monetary penalties and apportioning the monetary penalties to the right fund, as directed in the proposed subsection E of § 32.1-27.2, Code of Virginia; the volume of work that monitoring payment and apportioning funds is anticipated to take no more than 1,500 hours a year, so a wage position should be sufficient.

The bill provides that in the event that the Centers for Medicare and Medicaid Services amends, revises, or deletes the payroll base journal reporting requirements, forms, and processes after January 1, 2022, the State Health Commissioner must convene a stakeholder workgroup to make recommendations on what process will be used for determining replacement staffing ratios. VDH maintains that the agency does not have the subject matter knowledge to competently meet this legislative requirement. The agency further indicates that VDH would hire a contractor to provide this expertise, which VDH estimates would cost

approximately \$100,000 based on contracts with similar scopes of work. The timing of this potential need is unknown since there is no way to predict future federal action.

VDH also indicated that the cost of creating a new chapter of regulations to implement the provisions of the bill will be less than \$5,000 and can be absorbed by existing agency staffing and resources.

Department of Medical Assistance Services

This bill requires each certified nursing facility to provide at least 3.08 hours of case mix-adjusted total nurse staffing hours per resident per day on average as determined annually for use in the Virginia Medicaid Nursing Facility Value-Based Purchasing (VBP) program, utilizing job codes for the calculation of total nurse staffing hours per resident per day following the Centers for Medicare and Medicaid Services (CMS) definitions as of January 1, 2022, used for similar purposes and including certified nursing assistants, licensed practical nurses, and registered nurses.

This bill creates staffing standards for nursing facilities that is expected to be overall higher than current facility staffing levels. Hiring the necessary staff to meet these standards is expected to increase facility operating costs. Since Medicaid is the largest payer of nursing facility costs in the Commonwealth, the Medicaid program would be impacted through future rate setting. However, for the purposes of this analysis, it is assumed that Medicaid rates would need to be increased starting in FY 2026 to account for the added costs. The lack of a prospective rate increase to cover these costs could jeopardize the financial stability of many nursing homes and result in decreased access to nursing home care for Medicaid beneficiaries.

Using calendar year 2021 nursing facility wage survey data, calendar year 2020 patient days, and state fiscal year 2022 total Medicaid days by nursing home, the Department of Medical Assistance Services (DMAS) compared the number of nursing hours worked with the total number of patient days by facility to determine the number of nursing hours worked per patient day and associated Medicaid cost. DMAS then calculated the additional nursing hours needed to meet the target of 3.08 direct care services hours. Assuming staffing costs will be adjusted annually to account for nursing facility inflation, DMAS estimates that enacting the legislation would increase nursing facility costs to care for Medicaid recipients by approximately \$6.4 million in FY 2026. Cost estimates include annual inflation based on projected nursing home inflation. It should be noted that all Medicaid cost estimates included in this statement were developed with current nursing facility data which is largely influenced by recent events. For example, Medicaid days may be understated, and staffing may be overstated due to utilization changes related to COVID-19. Moreover, future changes in patient acuity and nursing facility utilization would further affect estimated costs. As such, the fiscal impact on Medicaid may vary considerably based on actual facility operations and costs.

Department of Veterans Services

The Department of Veterans Services (DVS) currently operates two facilities and estimates the fiscal impact of meeting the staffing standards required by this bill to be at least \$4.6

million annually. This cost reflects the need to add 10 staff at the care centers in Richmond and Roanoke that will provide approximately 78 hours of additional care each day. These care centers are currently supported entirely with nongeneral fund dollars, but the agency is uncertain if nongeneral fund reimbursement (primarily Medicaid, Medicare, U.S. Department of Veterans Affairs, and private pay) would be sufficient to cover the increased costs. The potential need for supplemental general fund support cannot be ruled out. It should be noted that DVS will open two additional veterans care centers in 2023 that would also be impacted, but the potential impact on these two new centers has not yet been determined.

9. Specific Agency or Political Subdivisions Affected:

Virginia Department of Health

Department of Medical Assistance Services

Department of Veterans Services

10. Technical Amendment Necessary: No

11. Other Comments: This substitute bill is a companion to SB 1339.