

Department of Planning and Budget 2023 Fiscal Impact Statement

1. **Bill Number:** HB1902

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

2. **Patron:** Hope

3. **Committee:** General Laws

4. **Title:** Administrative Process Act; appeal of case decisions regarding grant or denial of public assistance.

5. **Summary:** Removes the prohibition against appeals regarding the adequacy of standards of need and payment levels for public assistance and social services programs and provisions limiting the court to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. Current law allows court review of agency decisions regarding the grant or denial of Temporary Assistance for Needy Families, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization but limits such review to whether the agency relied on evidence to support its decision.

6. **Budget Amendment Necessary:** No.

7. **Fiscal Impact Estimates:** Preliminary. Indeterminate. See Item 8.

8. **Fiscal Implications:** The proposed legislation eliminates the exceptions and limitations to court review of agency determinations relating to public assistance programs administered by the Department of Social Services (DSS) and Department of Medical Assistance Services (DMAS). Under current Virginia Code § 2.2-4025, appeals of DSS and DMAS agency administrative decisions are limited in scope. Courts cannot rule upon the adequacy of program standards of need, reimbursement levels, the validity of state and federal laws, or agency regulations upon which agency decisions are based. In addition, the court's review is currently limited to the agency record (i.e., it cannot supplement the record on court review). This bill would eliminate each of these limitations to a court's judgment. Currently, Virginia Code §2.2-4025 applies to both individual and provider administrative appeals. Therefore, it is assumed that the bill's provisions would extend beyond individual appeals and remove existing limitations on court reviews of all DSS and DMAS agency decisions.

Department of Medical Assistance Services (DMAS)

Currently, in the context of DMAS administrative appeals, Medicaid providers cannot challenge the validity of the Code sections, regulations, or Appropriation Act language with respect to items including reimbursement rates, auditing or quality standards. The same

would apply to challenges raised by enrollees and applicants with respect to issues such as eligibility criteria or assistance levels. Because the court would no longer be limited to the agency record, appellants would have the equivalent of a trial de novo in circuit court, potentially creating the need for agency staff to generate voluminous documentation to support the agency's decision. This in turn would cause increases in workloads for agency staff, possibly requiring additional staff positions.

Department of Social Services (DSS)

This bill allows individuals unsatisfied with the adequacy of standards of need and payment levels for public assistance and social services programs to appeal through the administrative appeals process. The Department of Social Services (DSS) internal appeals and fair hearings process (Section 63.2-517, Code of Virginia) remains unchanged by this legislation. Since the Code does not allow appeals at DSS for the adequacy of standards of need and payment levels, the administrative appeals permitted by this bill will bypass the DSS process and be appealed directly to the circuit court.

This appeals process will require the local departments of social services' (LDSS) staff to prepare and provide reports and documentation to the courts related to appeals based on the adequacy of standards of need and payment levels. Currently, the Office of the Attorney General (OAG) handles appeals that escalate from the DSS internal appeals process to the circuit court administrative appeals process, but since this new category of appeals is not currently within DSS's appeals purview, local department attorneys will be required to handle appeals that go directly to the circuit court.

Impacts

Estimated case counts for Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid, Children's Health Insurance Program (CHIP), general relief, and auxiliary grants total more than three million recipients. It is unknown how many of these individuals would appeal the adequacy of standards of need and payment levels. However, many of these programs are funded at least in part by federal funds and are governed by federal rules and regulations. If a circuit court judge, in an appeal, rules that current payments are inadequate and grants an individual a higher payment than is authorized by federal or state guidelines, that increased payment amount will likely have to be funded with general fund dollars.

Based on the above information as provided by DSS and DMAS, it appears that the proposed legislation could potentially have significant fiscal implications for the impacted agencies and the Commonwealth. Allowing individuals and providers to challenge the adequacy of the standards of need and payment levels for benefit programs would not only generate a need for additional agency staff but could also limit the ability of the legislative and executive branches to control program spending.

However, the fiscal impact is indeterminate at this time since there is no reasonable way to predict how new challenges would affect agency operations or how greater judicial oversight of benefit programs would impact state spending. The removal of these limitations to court

review would also create a new vehicle for civil litigation against both agencies in circuit court. Providers and individuals would be able to bring legal challenges to the General Assembly's statutes and budget mandates.

According to the Supreme Court, this bill does not have a material impact on the courts system. Additionally, this bill has no impact on the Office of the Attorney General.

9. Specific Agency or Political Subdivisions Affected: Department of Social Services, local departments of social services, Department of Medical Assistance Services, Department of Aging and Rehabilitative Services, Circuit Courts, Office of the Attorney General

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is identical to SB998.