

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: HB 2158

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

2. Patron: Fariss

3. Committee: Health, Welfare and Institutions

4. Title: Right of recovery on third-party claims; transferability

5. Summary: The proposed legislation establishes the Department of Medical Assistance Services' (DMAS) ability to transfer its right of recovery on third-party claims to managed care organizations (MCO). The bill specifies that managed care organizations receive the same right to recovery as the Department upon transfer of the claim and gives managed care organizations a one-year period in which to identify and bill a third party, after which the Department may pursue a claim.

6. Budget Amendment Necessary: Yes, Item 304

7. Fiscal Impact Estimates: Preliminary; See Item 8

7.a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2024	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General
2025	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General
2026	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General
2027	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General
2028	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General
2029	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General
2030	\$8,345,888	General
	(\$8,345,888)	Nongeneral
	Indeterminate, See Item 8	General

7.b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2024	(\$8,345,888)	Virginia Health Care Fund
2025	(\$8,345,888)	Virginia Health Care Fund
2026	(\$8,345,888)	Virginia Health Care Fund
2027	(\$8,345,888)	Virginia Health Care Fund
2028	(\$8,345,888)	Virginia Health Care Fund
2029	(\$8,345,888)	Virginia Health Care Fund
2030	(\$8,345,888)	Virginia Health Care Fund

- 8. Fiscal Implications:** The Medicaid program is, in most cases, considered the payer of last resort. If another insurer or program has the responsibility to pay for medical costs incurred by a Medicaid-eligible individual, that entity is generally required to pay all or part of the cost of the claim prior to Medicaid making any payment. This is known as third party liability (TPL). However, when Medicaid services are provided prior to the identification of TPL, DMAS pursues and attempts to recover these liabilities. The state share of all recovered TPL revenue is then deposited into the Virginia Health Care Fund¹. Item 304 C.2. of the 2022 Appropriation Act (Chapter 2, 2022 Virginia Acts of Assembly, Special Session I) requires that revenues deposited to the Virginia Health Care Fund only be used as the state share of Medicaid. As such, any actions that reduce revenue deposited to the Virginia Health Care Fund will require a dollar-for-dollar general fund increase in the Medicaid program.

DMAS indicates that the financial impact of the proposed bill is expected to be significant for the Medicaid program as it would allow Medicaid MCOs, for one year, to pursue TPL and retain the state share of recoveries. To the extent MCOs were successful in recovering TPL, revenue in the Virginia Health Care Fund would decline and general fund costs would increase. For the purposes of this estimate, it is assumed that future TPL collections would trend, based on an average of the last three years of collections (FY 2020 through FY 2022), at approximately \$16.7 million annually. Approximately half of these funds would be returned to the federal government. In addition, it is assumed that Medicaid MCOs would actively engage in TPL recovery efforts sufficient to identify and collect these TPL recoveries within the timeframes prescribed in the bill. As such, approximately \$8.3 million in TPL revenue would be lost to the Virginia Health Care Fund and general fund costs would increase by a similar amount.

In addition to the quantifiable loss in TPL recovery revenue, DMAS maintains that this bill may have other potential fiscal impacts that cannot be determined at this time. Currently, should DMAS fail to fully comply with TPL protocols or make any miscalculation of TPL recoveries, then the federal government would likely issue a disallowance and/or require repayment. DMAS would not be able to delegate this responsibility to the MCOs. At the same time, this bill is expected to considerably increase the complexity of the TPL recovery process which, in turn, could increase the likelihood of errors. It is expected that each MCO (currently six) would all need to develop separate recovery units to complete this process and be able to track member transitions (i.e., between MCOs and fee-for-service). While there is

¹ The federal portion of any TPL recovery is returned to the federal government.

no way to estimate the impact of future federal repayments, such actions have historically ranged from hundreds of thousands of dollars to several million dollars.

9. Specific Agency or Political Subdivisions Affected:

Department of Medical Assistance Services

10. Technical Amendment Necessary: No

11. Other Comments: DMAS notes that the provisions of this bill would allow Medicaid MCOs to receive and retain additional revenue for services that were paid for by the department. At present, MCOs receive capitation fees to cover payment of services to Medicaid members, with proceeds from TPL recoveries being collected by DMAS and reinvested directly into the Medicaid program. Under the proposed bill, the MCOs would keep their capitation fees as well as retain the proceeds from TPL recovery efforts.