

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB1297

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

2. Patron: DeSteph

3. Committee: Rehabilitation and Social Services

4. Title: In-person visitation policies and procedures at certain facilities.

5. Summary: Requires hospitals, nursing home, certified nursing facilities, hospices or hospice facilities, assisted living facilities, and intermediate care facilities to establish certain in-person visitation policies and procedures. The bill (i) requires that such policies include screening, personal protective equipment, and other infection control protocols for visitors; (ii) prohibits such policies from requiring the visitor to provide proof of immunization or vaccination; (iii) requires such policies to allow consensual physical contact between the visitor and the resident, client, or patient of the facility; (iv) authorizes the resident, client, or patient to designate an essential caregiver and establishes requirements related to essential caregivers; (v) requires that such policies allow unrestricted in-person visitation under certain circumstances; (vi) provides that the policies and procedures may require visitors to agree in writing to follow such policies and procedures; (vii) authorizes facilities to suspend in-person visitation of specific visitors for violations of such agreement; (viii) requires facilities to make their in-person policies and procedures available to the Department of Health for review when applying for initial licensure, licensure renewal, or change of ownership; and (ix) requires facilities to make their in-person visitation policies and procedures easily accessible from their website; and (x) the Department shall dedicate a stand-alone page on its website to explain the in-person visitation requirements of this article and provide a link to the Department's webpage to report complaints.

6. Budget Amendment Necessary: Yes, item 292 (VDH) and item 348 (DSS).

7. Fiscal Impact Estimates:

7a. Expenditure Impact - Virginia Department of Health:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2024	\$274,429	2	01000
2025	\$262,774	2	01000
2026	\$262,774	2	01000
2027	\$262,774	2	01000
2028	\$262,774	2	01000
2029	\$262,774	2	01000

2030	\$262,774	2	01000
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7b. Expenditure Impact - Department of Social Services:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2024	\$390,753	4	01000
2025	\$412,352	4	01000
2026	\$412,352	4	01000
2027	\$412,352	4	01000
2028	\$412,352	4	01000
2029	\$412,352	4	01000
2030	\$412,352	4	01000

8. Fiscal Implications: The provisions of this legislation would have a fiscal impact.

Virginia Department of Health: The Virginia Department of Health (VDH) projects that there will be a fiscal impact to VDH's hospital, nursing home, and hospice licensure program. The provisions of the bill requires facilities to make their in-person policies and procedures available to the Department of Health for review when applying for initial licensure, licensure renewal, or change of ownership. VDH receives approximately 700 applications annually from hospitals, nursing homes, and hospices. This includes all applications for initial licenses, renewed licenses, and changes in ownership. VDH does not have the ability to absorb an increase in workload within existing resources for reviewing visitation policies and procedures as part of the application processes for initial licensure, licensure renewal, or change of ownership. The addition of the visitation policies to the application would require additional supervisor review to ensure it meets the statutory minimums prescribed by the bill, while also not conflicting with federal regulations for Medicare and Medicaid. The time it takes to review initial visitation policy submissions is indeterminate at this time, but based on VDH's experience, it can require multiple interactions with the applicant. Additionally, the length of a given policy is not standardized (one facility could have a 5-page policy and another facility could have a 10-page policy). Because a majority of the facilities affected by this legislation in the Commonwealth are certified to participate in Medicare, Medicaid, or both, the visitation policies submitted by nursing homes in order to be compliant with the provisions of the bill must also be compliant with federal law. The review will be more intensive, especially as the guidance on visitation from the Centers for Medicare and Medicaid Services (CMS) has continued to evolve over the course of the pandemic and as we have moved forward into an endemic response to COVID-19. Visitation policy currently is not something that VDH routinely looks at, either under license renewals, change of ownership, or under CMS guidance, unless there has been a complaint specifically about visitation. VDH anticipates the one Health Care Compliance Specialist II (\$132,694 annually) would function as an additional supervisor to handle the increase in workload associated with the application process.

The provisions of the bill also applies to assisted living facilities (ALFs), intermediate care facilities for individuals with intellectual disability (ICF/IIDs), and training centers. These entities are not licensed by VDH and therefore VDH would have to create a new process for

the receipt of those facilities' visitation policies. One Program Administrative Specialist II (\$130,080 annually) would be responsible for receiving and disseminating these visitation policies to the respective licensing authority (Department of Social Services and the Department of Behavioral Health and Developmental Services), annual records destruction of these visitation policies held by VDH in conformity with current Library of Virginia record retention policies, and responding to records requests under the Virginia Freedom of Information Act (FOIA). VDH does not post application attachments online so members of the public would have to submit a records request under FOIA or request the information from the facility per the provisions of the bill. VDH's Office of Licensure and Certification (OLC) already has a high volume of FOIA requests unrelated to visitation policies, which strain the existing staff and resources as OLC has no staff member whose role is 100 percent FOIA. Additionally, the complaints and constituent mail inquiries VDH has received regarding visitation during the pandemic drastically increased. VDH anticipates a sustained interest in visitation because of the public's experiences during the pandemic. VDH could also enter a memorandum of understanding with DSS and DBHDS who currently license assisted living facilities (ALFs) and intermediate care facilities for individuals with intellectual disability (ICF/IIDs). These agencies currently have the operational resources to license these facilities. DSS already reviews in-person visitation policies as part of licensure.

VDH would need to make system modifications to its online application system for its hospital, nursing home, and hospice licensure programs. Based on estimates from the IT vendor, this would be a one-time cost of \$11,655 to modify the application portal to allow for the submission of visitation policies with every application for an initial license, a renewed license, or change in ownership as well as modify the application approval checklist.

Costs to obtain a license to access the application system (\$175 annually) setup an inbox to receive these submissions (\$70 annually), and amend regulations, which will be less than \$5,000, can be handled within existing resources.

The bill also requires that VDH shall dedicate a stand-alone page on its website to explain the in-person visitation requirements of this article and provide a link to the Department's webpage to report complaints. It is unknown how many additional complaints would result from the passage of this legislation. If the increase in complaints is significant VDH may need additional resources.

Department of Social Services: This legislation requires assisted living (ALF) and other facilities to develop and implement visitation policies and procedures that includes infection control protocol for visitors. This will increase visitation restrictions and suspend visitation for individuals who do not comply with visitation policies and procedures as prescribed in this bill. This bill also allows facilities to revoke visitation when the policies and procedures are not followed. These types of procedures would be more time consuming to investigate, i.e., the visitor thinks they followed the rules, but the ALF disagrees, and stops visitations. The licensing inspectors would have to sort through the complaints and the complainant would want the issues addressed quickly since their visitation with their loved one has been

halted. This will increase the number of complaints to the Department of Social Services (DSS), which would require additional staff time to address these complaints.

DSS receives approximately 1,000 complaints annually. If this bill is passed, DSS expects a 25 to 30 percent increase in complaints. This complaint type would require staff to travel to the facility and review documents, such as visitor logs, as well as interview residents and facility staff. The inspector would then need to review all the evidence gathered and complete the investigation, write up the inspection summary, any noted violations on the violation notice, and post to the website. The facility's history and the level of noted violations would factor into any inspection and, if the violations were significant, it could require additional follow up which may include additional facility visits. The location and size of the facility would determine staff time. It is very difficult to determine the actual number of complaints DSS would receive given the variety of providers, program size and scope. The Division of Licensing is at full capacity and cannot take on additional work. Therefore, DSS will need 4 licensing inspectors (1 per region) at an average salary of \$65,000. Assuming positions would be filled within the first quarter of FY 2024, the cost for staff is \$324,753 GF in FY 2024 and \$412,352 GF in FY 2025 and each year thereafter. Staff costs include salary, benefits, non-personnel position costs (such as phone and computer charges), as well as a one-time-on-boarding cost in the first year.

Passage of this bill would require ALFs to send their visitation policies to DSS at initial application and at renewal application for inspectors to review. DSS would need an upload button or category in both applications to do this. DSS would also need to electronically store the uploaded documents. This will require system changes for a one-time cost of \$66,000 GF to develop a new provider type, new document types and other system changes.

Department of Behavioral Health and Developmental Services: The department has stated the provisions of this legislation would not have a fiscal impact.

9. Specific Agency or Political Subdivisions Affected: The Virginia Department of Health, the Department of Social Services, and the Department of Behavioral Health and Developmental Services.

10. Technical Amendment Necessary: No.

11. Other Comments: HB2160, introduced by Delegate LaRock, is a companion bill.