

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** SB 406

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

**2. Patron:** Barker

**3. Committee:** Education and Health

**4. Title:** Nursing homes & certified nursing facilities; minimum staffing standards, administrative sanctions.

**5. Summary:** This legislation requires nursing homes to meet a baseline staffing level based on resident acuity in alignment with the Centers for Medicare and Medicaid Services staffing level recommendations. The bill requires nursing homes to collect and submit to the Department of Health certain data related to staffing. The bill gives the Commissioner of Health the power to impose administrative sanctions on nursing homes and directs the Board of Health to promulgate regulations related to the criteria and procedures for imposition of administrative sanctions or initiation of court proceedings for violations of the bill. The bill provides that nursing homes shall only be subject to administrative sanctions upon initial funding for the state share of the cost to implement the provisions of the bill. The bill establishes the Long-Term Care Services Fund for the purpose of making grants to assist in the provision of activities that protect or improve the quality of care or quality of life for residents, patients, and consumers of long-term care services.

**6. Budget Amendment Necessary:** Yes, see Item 7.

**7. Fiscal Impact Estimates:** Preliminary, see item 8.

**Expenditure Impact:**

Virginia Department of Health (Items 292 and 299)

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2023	\$340,308	1.0	General
2024	\$470,708	3.0	Indeterminate (See Item 8)
2025	\$470,708	3.0	Indeterminate (See Item 8)
2026	\$470,708	3.0	Indeterminate (See Item 8)
2027	\$470,708	3.0	Indeterminate (See Item 8)
2028	\$470,708	3.0	Indeterminate (See Item 8)
2029	\$470,708	3.0	Indeterminate (See Item 8)

Department of Medical Assistance Services (Item 304)

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2023	\$83,015,221	General
	\$91,631,025	Nongeneral
2024	\$85,301,837	General
	\$94,736,784	Nongeneral
2025	\$88,009,361	General
	\$97,743,778	Nongeneral
2026	\$90,881,040	General
	\$100,933,084	Nongeneral
2027	\$93,929,451	General
	\$104,318,669	Nongeneral
2028	\$97,168,332	General
	\$107,915,012	Nongeneral
2029	\$100,407,214	General
	\$111,512,916	Nongeneral

Department of Veterans Services (Item 469)

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2023	\$4,623,285	Nongeneral
2024	\$4,623,285	Nongeneral
2025	\$4,623,285	Nongeneral
2026	\$4,623,285	Nongeneral
2027	\$4,623,285	Nongeneral
2028	\$4,623,285	Nongeneral
2029	\$4,623,285	Nongeneral

- 8. Fiscal Implications:** The bill requires nursing homes to provide a minimum number of direct nursing care hours based on resident acuity, as calculated by the Centers for Medicare and Medicaid Services (CMS). Moreover, each certified nursing facility is required to provide at least the expected total number of direct nursing care hours, defined as care hours provided by a registered nurses (RN), licensed practical nurses (LPN), and certified nurse aides (CNA), and total registered nurse hours based on resident acuity, as calculated by CMS. Each nursing home that is not a certified nursing facility and each certified nursing facility with one or more beds that are not certified are required to provide at least the expected total number of direct nursing care hours and total RN hours based on resident acuity, as calculated by the Virginia Department of Health (VDH) in a manner substantially similar to the methodology used by CMS.

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, of which eight do not participate at all in Medicare and/or Medicaid, five that do not participate in part in Medicare and/or Medicaid, and two certified nursing homes 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. As such, the agency maintains that three additional positions would be required, one program administrative specialist III (beginning in FY 2023), one hearing and legal services officer III (beginning in FY 2024), and one financial services specialist II (beginning in FY 2024). The cost of these positions is estimated to be \$118,658 in FY 2023 and \$426,378 in FY 2024. 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 position would be responsible for ensuring timely submittal of staffing data by the 13 nursing homes that do not participate in Medicare or Medicaid, in whole or in part; this same position would also be responsible for calculating actual and expected staffing for these same facilities, for drafting correspondence to any nursing home or certified nursing facility that did not meeting its expected staffing target, and for assisting in scheduling and resource allocation for informal fact-finding conferences. It is expected that this position would begin in FY 2023.
- The hearing and legal services officer III position would be responsible for any informal fact-finding proceedings that stem from disputes with nursing facilities related to the staffing standards or sanctions. 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. It is expected that this position would begin in FY 2024.
- The financial services specialist II would be responsible for monitoring timely payment of monetary penalties and for administering the grant program of the long-term care services fund, including application review, distributing funds, and monitoring progress/outcomes from those awarded grants. It is expected that this position would begin in FY 2024.

The agency asserts that a new reporting portal would also be necessary to implement the bill's provisions. VDH estimates that \$221,650 in FY 2023 would be needed to create a reporting portal for the 13 nursing homes that do not participate in Medicare or Medicaid, in whole or in part. It is assumed that this portal would be used to collect time and attendance data, modeled on the staffing data that CMS collects, and to then analyze the data to calculate actual and expected staffing. VDH estimates the ongoing operating cost of this portal to be \$44,330.

The provisions of the bill add an auditing requirement on VDH. The auditing of payroll data would be in the form of comparing the payroll to the actual staffing schedules and staffing records onsite at the nursing home. VDH survey staff do perform reviews of staffing schedules and records when called for in a federal survey, so no additional resources are needed as the expertise is already present.

The total estimated fiscal impact on VDH is \$340,308 in FY 2023 and \$470,708 in FY 2024. The bill provides the Commissioner of Health with the authority to levy administrative

sanctions on nursing facilities that do not comply with the Commonwealth's nursing facility staffing standards and that revenue can be used to support these new administrative costs. However, these sanctions cannot be imposed until the initial funding for the state share of implementation costs is provided. As such, it is assumed that the initial costs (FY 2023) would need to be supported with general fund dollars; after which new program costs may be covered with revenue from nursing facility sanctions. Should this revenue not be available, then those costs would shift to the general fund.

#### Department of Medical Assistance Services

This bill creates staffing standards for nursing facilities that are generally higher than their current staffing levels. Hiring the necessary staff to meet these standards is expected to increase overall facility operating costs. Since Medicaid is the largest payer of nursing facility costs, 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 2023 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.

To estimate the fiscal impact of this bill, DMAS calculated a potential staffing standard modeled on CMS recommendations then multiplied the additional hours needed to meet this standard by average nursing wages and Medicaid days. Specific assumptions are as follows:

- DMAS calculated the potential nurse staffing requirements according to CMS's "Design for Care Compare Nursing Home Five-Star Quality Rating System: Technical Users' Guide" published January 2022. DMAS determined that the CMS recommended nationwide nurse staffing hours per patient per day are: 0.73 hours for RNs, 0.91 hours for LPNs, and 2.26 hours for CNAs. Again, this standard is an estimate for the purpose of determining a potential fiscal impact. The final state standard will depend on the regulations promulgated by VDH which must be "substantially similar to the methodology used by CMS."
- Using nursing facility wage survey data (CY 2020), DMAS calculated that the average cost for each additional nursing hour worked was: CNA \$20.58, LPN \$34.14 and RN \$46.56. These costs were inflated based on the historical and projected nursing home inflation. However, wages were not adjusted for minimum wage or other increases outside of projected inflation that might occur.
- Total patient days (CY 2019) and Medicaid days by nursing home (FY 2021) were used. However, this data does not necessarily reflect the overall trend of decreasing nursing home utilization. For example, no adjustments related to COVID-19 were made.

Based on these assumptions and calculations, DMAS estimates that enacting the legislation would increase nursing facility costs to care for Medicaid recipients by approximately \$174.6 million (\$83.0 million general fund) in FY 2023. The continued increase in out-year amounts reflect the assumption of continued inflation.

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 \$4.6 million annually. This cost reflects the need to add 10 staff (four LPN/RNs and six CNAs) that will provide approximately 78 hours of additional care each day. The care centers are supported entirely with nongeneral fund dollars, so no additional state support is expected to be necessary. It should be noted that DVS is expected to add two additional care facilities that would also be impacted. However, it is currently unclear when these facilities will open so any potential cost cannot yet be 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 bill is a companion to HB 330.