

Department of Planning and Budget 2023 Fiscal Impact Statement

1. **Bill Number:** SB1432

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

2. **Patron:** Hashmi

3. **Committee:** Education and Health

4. **Title:** Health records privacy; consumer-generated health information.

5. **Summary:** Requires certain entities that collect, gather, or use consumer-generated health information, defined in the bill, to take reasonable measures to safeguard the such aggregated health data, including (i) adopting technical and organizational measures to ensure that consumer-generated health information is not linked to any individual, household, or device used by an individual or a household; (ii) committing not to attempt to re-identify or associate the aggregated health data with any individual, household, or device used by an individual or a household; and (iii) requiring that recipients of all transfers of aggregated health data uphold the same commitments. The bill provides civil remedies for violations of consumer-generated health information privacy.

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

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

8. **Fiscal Implications:** This bill requires entities that collect, gather, and/or use consumer-generated health information, as defined by the bill, to take certain precautions to protect that information. Additionally, the bill allows for civil action against a person or entity that negligently, knowingly, willfully, or recklessly obtains, discloses, or uses the individual's consumer-generated health information in violation of the bill. The bill also allows the Attorney General, an attorney for the Commonwealth, or an attorney for a locality to bring civil action for the same purpose. For each violation, the court can impose up to \$25,000 in civil penalties. In the event that the Attorney General, an attorney for the Commonwealth, or an attorney for a locality brings the action, any civil penalties shall be paid into the Virginia Health Care Fund.

The State Council of Higher Education for Virginia (SCHEV) has indicated that the fiscal impact on public institutions of higher education is difficult to estimate, but contends that additional fines would be imposed if there is a breach of personal health data above those requirements that would be imposed by the federal government. The new fines are up to \$25,000 per violation, which could result in thousands of dollars in fines, should an

individual bring action against an institute of higher education and a court rule in the individual's favor. One specific area of potential impact for institutes of higher education is each institute's athletic department and the use of wearable technology within the departments.

The Department of Social Services (DSS) has indicated that local departments of social services (LDSS) may potentially collect or view consumer-generated health information, as defined in the bill. If the agency determines that local departments are collecting this information, DSS would need to develop functionalities within its Virginia Case Management System (VaCMS) to comply with the bill. There would be a one-time cost of \$300,000 (\$175,000 general fund) to add these functionalities to the current system.

The Department of Medical Assistance Services (DMAS) maintains that the bill's provisions related to data storage and sharing would limit the agency's ability to administer the Commonwealth's medical assistance programs. Moreover, the bill would put DMAS out of compliance with federal requirements. As of yet, there is not sufficient information to develop an estimate of potential costs. Therefore, the potential fiscal impact on medical assistance programs is indeterminate at this time.

The bill allows the courts to levy a civil penalty of not more than \$25,000 for each violation of its provisions. Any revenue generated by such penalties resulting from an action brought to the court by the Attorney General, an attorney for the Commonwealth, or an attorney for a locality must be paid into the Virginia Health Care Fund. Item 304 C.2. of the 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 increase revenue deposited to the Virginia Health Care Fund will generate a dollar-for-dollar general fund decrease in the Medicaid program. However, there is no way to estimate the number or amount of potential civil penalties, as such this fiscal impact is indeterminate.

The Department of Health (VDH) foresees no fiscal impact as a result of this bill.

Other agencies may be affected by this legislation. Those impacts are unknown at this time, but this fiscal impact statement will be updated if new information is provided.

9. Specific Agency or Political Subdivisions Affected: Department of Health, Department of Medical Assistance Services, Department of Social Services, local departments of social services, public institutions of higher education, Office of the Attorney General, courts

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to HB 2219.