Department of Planning and Budget
2026 General Assembly Session
State Fiscal Impact Statement

PUBLISHED: 2/3/2026 12:49 PM **ORIGINAL**

Bill Number: SB 362 **Patron:** Carroll Foy

Bill Title: Health insurance; coverage for donor human milk, penalties

Bill Summary: The proposed legislation prohibits any person from establishing or operating a donor human milk (DHM) bank, as defined in the bill, without first obtaining a license from the State Health Commissioner and makes it a Class 6 felony for any person to establish or operate a DHM bank in the Commonwealth without obtaining such license. The bill also establishes requirements, policies, and procedures for the operation and administration of licensed DHM banks, including procedures relating to disciplinary actions, application fees, and inspections and interviews related to such DHM banks. The bill directs (i) the State Board of Health to establish a regulatory and statutory scheme for the licensure and regulation of DHM banks operating or doing business in the Commonwealth and (ii) the Commissioner to implement and enforce numerous regulations relating to the issuance, renewal, denial, suspension, and revocation of such licenses. The bill requires (a) health insurers, corporations providing health care coverage subscription contracts, and health maintenance organizations to provide coverage for expenses and (b) the state plan for medical assistance services to include a provision for payment of medical assistance services incurred in the provision of pasteurized DHM for any infant that is younger than the age of six months and who satisfies certain criteria enumerated in the bill. The bill has a delayed effective date of July 1, 2027, or whenever the State Board of Health has promulgated regulations for the licensure of DHM banks, whichever is later.

Budget Amendment Necessary: Yes **Items Impacted:** 75 (DHRM); 286 (VDH); 290, 291, 295 (DMAS); 478 (SCC); 390 (DOC)

Explanation: Funding is required for programs under the Department of Human Resources Management (DHRM), Virginia Department of Health (VDH), Department of Medical Assistance Services (DMAS), State Corporation Commission (SCC) and Department of Corrections (DOC)

Fiscal Summary: The proposed legislation will require expenditures for which agencies are not currently appropriated. See table and fiscal analysis below.

General Fund Expenditure Impact:

Agency	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
DHRM (129)	-	-	$250,000	$250,000	$250,000	$250,000
VDH (601)	-	$425,000	$45,000	$45,000	$45,000	$45,000
DMAS (602)	-	$100,000	$3,145,762	$4,333,729	$4,550,415	$4,777,936
SCC (171)	-	-	$277,475	$377,366	$384,913	$392,611
DOC (799)	-	-	$50,000	-	-	-
TOTAL	**-**	$525,000	$3,768,237	$5,006,095	$5,230,328	$5,465,547

Nongeneral Fund Expenditure Impact:

Agency	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
DHRM (129)	-	-	$330,000	$330,000	$330,000	$330,000
DMAS (602)	-	$900,000	$3,337,046	$4,593,749	$4,823,436	$5,064,608
TOTAL	**-**	$900,000	$3,667,046	$4,923,749	$5,153,436	$5,394,608

Fiscal Analysis:

Department of Human Resource Management
The Department of Human Resource Management reports that the fiscal impact of this bill on state employee health insurance costs to be approximately $580,000 ($250,000 general fund). The agency provided the following assumptions: cost of about $15,000 per year per infant, inflation, five percent of COVA infants would utilize the benefit, and the expected duration would be three months. Additional costs for such claims will be paid out of the Health Insurance Fund (HIF), which is funded through premiums charged to state employees and their employing agencies. Agencies use general fund, nongeneral fund, or some combination of the two to make these premiums, depending on the fund sources available to the agency and from which source the employee is regularly paid. A portion of these costs, approximately 15 percent, would be paid by members of the state employee health plan, either through co-pays, co-insurance, or increased premiums. The remaining 85 percent would be charged to state agencies through higher premiums, which are currently paid 50 percent from the general fund and 50 percent from nongeneral fund sources. Increased health insurance premiums would require additional general fund appropriation to be provided to state agencies.

Virginia Department of Health
VDH estimates that there will be a fiscal impact to implement the provisions of this bill. The agency's Office of Licensure and Certification (OLC) has an online application system for its existing licensure programs for medical care facility providers (e.g., hospitals, home care organizations, etc.). This system automates much of the previous manual licensing processes, includes electronic payment options, and brings transparency to licensing operations for applicants and the public. The proposed legislation would require VDH to modify its OLC application portal to create a new provider type for DHM banks with applications for an initial license, renewed license, or key changes in licensing record (e.g., change of location, change of capacity). VDH's information technology vendor has estimated a one-time cost of $425,000 in FY 2027 to support changes to its OLC application portal and an annual cost of $45,000 for added operation, maintenance, and post-deployment enhancement support associated with a new provider type.

Since VDH is aware of only one accredited milk bank in Virginia, the inspection burden is anticipated to be limited to one facility at the present time. VDH has indicated that the inspections of the milk banks could be absorbed by existing staff; therefore, no new positions would be required at this time. VDH estimates that it would be able to absorb regulatory costs to license and monitor the one existing facility in Virginia. Hospitals are generally providing DHM at their own expense for babies in the pediatric intensive care units (PICUs) and neonatal intensive care units (NICUs). It is expected that the introduction of this bill may change this situation, potentially adding approximately 45 facilities with a NICU, PICU, or both as DHM banks. At this time, however, it cannot be determined how many facilities may seek licensure in the future. VDH also anticipates that the number of facilities required to be licensed may increase due to the provision in the bill that requires entities who operate or do business within the Commonwealth that collect, store, sell, distribute, or pasteurize DHM and human milk-derived products to meet the licensing standards and requirements for DHM banks. Should the number of facilities increase, there may be increased demand on VDH resources which would necessitate additional positions.

While the proposal gives the State Board of Health the authority to collect fees in connection with its licensure program, because the known population of regulants is one, the agency would be unable to set reasonable fees commensurate with the cost of the program. Therefore, the expenditures associated with this bill would need to be supported by the general fund at least until a stable population of regulants is established.

Department of Medical Assistance Services

The bill requires DMAS to provide coverage for expenses incurred in the provision of DHM. The requirement applies if the covered person is an infant under the age of six months, the milk is obtained from a DHM bank that meets quality guidelines established by VDH, and a licensed medical practitioner has issued an order for an infant who satisfies certain criteria. The bill's provisions are expected to apply to both Medicaid and Family Access to Medical Insurance Security (FAMIS) Plan for infants.

DMAS reports that the cost of DHM is covered within the hospital inpatient payment for babies receiving care in neonatal intensive care units (NICU); however, Virginia does not cover DHM costs once an infant is discharged from the hospital (i.e., outpatient costs). Based on information from the American Academy of Pediatrics, the average cost of pasteurized DHM is assumed to be $5.22 per ounce. Assuming, on average, approximately 35 ounces of breast milk per baby is used each day, the average daily cost of providing outpatient DHM is approximately $183. As this is a new service, there is no way to readily project the number of children that would receive DHM or length of time DHM may be utilized on an outpatient basis. National data and scholarly articles report a wide range of potential utilization expectations related to the use of DHM. For the purposes of this statement, DMAS estimates that, on average, 123 eligible infants each day could utilize DHM between leaving the hospital and less than six months of age. However, this assumption is a general estimate, and the actual number will largely depend on how many children meet the bill's eligibility criteria. Based on these assumptions and FY 2025 data, the estimated baseline cost of providing DHM for eligible infants would be approximately $675,000 each month, or $8.1 million annually. It is estimated that this amount would grow by five percent in subsequent years. In addition, it is estimated that 10 percent of infants would be covered under FAMIS with the rest covered by Medicaid based on the ratio of FAMIS to Medicaid newborns in FY 2025.

It is assumed that Medicaid and CHIP coverage of DHM would coincide with the bill's effective date of July 1, 2027. Given the delayed enactment, it is assumed that DMAS will have sufficient time to establish the service and a full year of medical assistance costs are assumed in FY 2028. However, it is further assumed that costs would ramp up over the first seven months of coverage. As such, based on these assumptions, a general estimate of this bill's impact on Medicaid and FAMIS medical costs is $6.5 million ($3.1 million general fund) in FY 2028.

DMAS estimates a one-time administrative cost of $1.0 million ($0.1 million general fund) in FY 2027 for changes to Medicaid Enterprise Systems to allow coverage of DHM. These system costs are eligible for an enhanced federal match rate of 90 percent federal and 10 percent state.

State Corporation Commission
It is assumed that coverage for DHM begins July 1, 2027. Because coverage for DHM is in addition to the essential health benefits (EHBs) contained in the EHB benchmark plan, federal law (45 C.F.R. § 155.170) requires the state to defray the cost of this additional benefit by making payments to health carriers for claims paid under the new additional benefit. Payments are distributed on a quarterly basis; for example, carriers would receive defrayal payments for claims occurring from July to September in the following calendar quarter. Because of this lag in payments, appropriations in FY 2028 would only be needed to cover three quarters (payment issued in Q2 for claims occurring in Q1).

The annual defrayal payment amount, which is paid from the general fund, is based on the previous analysis of the Bureau of Insurance (BOI) as presented to the Health Insurance Reform Commission in 2021 and adjusted based on enrollment changes in the individual market and for inflation using the Consumer Price Index medical care index. BOI does caution that since defrayal payments are based on actual claims, the amount of general fund appropriations may need to be adjusted once it begins receiving claims data for donor human milk from health carriers. In addition to the defrayal amounts from the general fund, BOI estimates that it would need nongeneral fund appropriations for a contract actuary ($5,000) for claims data. BOI also estimates that defrayal payments would annually take 80 hours ($6,015, reflecting hourly rate and a multiplier to capture fringe benefits and overhead) of a policy advisor's time; however, the cost of these hours can be absorbed within existing resources. The estimated expenses are based on BOI's historical experience in making defrayal payments for the state-mandated health benefit of hearing aids for minors.

As noted in the explanation above, the FY 2028 estimates are for three quarters' expenses; all subsequent fiscal year estimates reflect a full year's worth of payments to carriers. A two percent annual inflationary rate has been assumed beginning in FY2028 and later and is reflected in the fiscal impact.

Department of Corrections
The bill would create a new Class 6 felony. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 725 of the Acts of Assembly of 2025, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Other: None