

Fiscal Analysis: Currently, § 37.2-419, Code of Virginia, allows the Commissioner of DBHDS to issue sanctions or civil penalties when a provider does not comply with regulations relating to human rights. The proposed legislation would require the commissioner to penalize providers who fail to comply if such violation poses a

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threat to the life of individuals receiving services or where there are recurring violations that pose a threat to health or safety.

These sanctions are considered a legal matter subject to the Administrative Process Act (APA), which can be a detailed, prescriptive, and time-intensive process. Based on current data, DBHDS estimates that there will be 1,560 sanctions issued in the first year. From a staffing perspective, a single sanction action requires an estimated minimum of 40 hours of time from the legal officer, in addition to preparation and participation by the DBHDS licensing director and the DBHDS Office of Licensing staff in the informal hearing process. Sanctions also trigger ongoing enhanced monitoring and oversight responsibilities, averaging an additional three hours per week per provider. To handle the additional workload that will come with the sanction process, DBHDS projects a need for three additional on-going positions with an annual salary of \$96,579, with total costs to include fringe benefits and non-personnel costs of \$154,349, for a total cost of \$463,048. It is possible that the number of sanctions in successive years will decline as providers change practices to avoid the sanction process.

The process requires issuance of a letter of intent, and sanctions require a special order and an informal fact-finding hearing. When a provider appeals the outcome of a mandated informal fact-finding conference and the case proceeds to a formal hearing, additional funding will be required to cover legal and hearing-related expenses. Recent DBHDS cases that proceeded to a formal hearing resulted in approximately \$25,000 in attorney fees. DBHDS estimates that eight providers per year will request a formal hearing, resulting in an annual impact of about \$200,000.

Revenue Generation

The amount of new revenue to be generated from civil penalties as a result of this legislation is indeterminate. Of the allowable sanctions, the commissioner may penalize a provider up to \$500 per day, however there are several other allowable sanctions that do not include civil penalties, including probation, mandatory training, or limiting capacity. It is unknown how many providers would receive a civil penalty and what the timeline would be for compliance. If each of the 1,560 sanctions included a monetary penalty of \$500 for one day, revenue generation would be \$780,000, however it is unlikely that every provider would be penalized monetarily or that the maximum penalty would be levied. § 19.2-353, Code of Virginia, requires that proceeds of all fines and penalties collected for offenses committed against the Commonwealth be paid into the state treasury to the credit of the Literary Fund.

Other: The provisions of this bill to establish regulations requiring providers to conduct emergency medical drills are similar to those contained in HB1370.