

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

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ORIGINAL

Bill Number: SB536H1

Patron: Stanley

Bill Title: Medical malpractice actions; limitation on recovery; prejudgment interest; limitation on collection; statute of limitations; insurance requirements for nursing homes.

Bill Summary: Increases the cap on the recovery in actions against health care providers for medical malpractice where the act(s) of malpractice occurred on or after July 1, 2027, to \$6 million. The bill directs that on July 1, 2029, and every two years thereafter, the total amount recoverable in such actions shall be adjusted pursuant to the cost-of-living adjustment compounded annually over the preceding two-year period by the annual percentage reflected in the medical care component most recently published in the Consumer Price Index for All Urban Consumers (CPI-U) in the South region, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, and rounded to the nearest \$10,000, as determined by the Department of Planning and Budget and submitted to the Virginia Code Commission. The bill provides that in an action for malpractice where the act(s) of malpractice occurred on or after July 1, 2027, when a judge or jury awards prejudgment interest against a health care provider, and the total verdict plus interest exceeds the listed total amount recoverable, the patient may recover up to two years of prejudgment interest in addition to the total amount recoverable, with the discretion of the judge or jury over whether to award prejudgment interest and the effective accrual date of such interest. Additionally, the bill limits collection against the personal income or assets of a health care provider sued in his individual capacity for medical malpractice, modifies the conditions for which an extension may be provided to the two-year limitation period in actions for malpractice against a health care provider, and sets a professional liability coverage minimum of \$3 million per patient occurrence for each nursing home and certified nursing facility.

Budget Amendment Necessary: No

Items Impacted: N/A

Fiscal Summary: The Virginia Department of the Treasury anticipates an indeterminate but material increase in medical malpractice insurance rates for the state, which would likely lead to higher premiums charged to state agencies. The Department of Corrections anticipates these changes may increase overall medical costs to the agency. Additionally, this legislation may result in impacts to the public academic health systems affiliated with public institutions of higher education in the Commonwealth that provide health care services. Any impacts from future award costs, increased litigation costs, price changes, or Medicaid payments are indeterminate. The Department of Planning and Budget can support the requirements of the bill with existing resources.

Fiscal Analysis: Current statute includes caps on the recovery in actions against health care providers for medical malpractice at \$2.75 million for acts that occur on or after July 1, 2026, with increases each fiscal year until June 30, 2031, after which the amount is capped at \$3.0 million. This legislation increases the cap on damages for actions of malpractice to \$6 million starting July 1, 2027, and requires a cost-of-living adjustment every two years beginning July 1, 2029.

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State Agency Impact

The Department of the Treasury (Treasury) indicates this legislation will impose a direct, material, and adverse fiscal impact on the Commonwealth of Virginia's self-insured medical malpractice programs. Because the Commonwealth's programs are funded entirely by the Commonwealth through state appropriations and participant premium assessments and do not utilize commercial medical malpractice insurance of any kind, every dollar of increased statutory exposure is absorbed by state funds. The proposed \$3.2 million increase in the medical malpractice cap for the initial effective period alone — combined with ongoing CPI-U indexed escalations, new prejudgment interest exposure, nursing home insurance mandates, and strengthened plaintiff bargaining positions — creates a compounding and indeterminate fiscal risk for which current plan reserves are not adequately funded. As a result, additional funding may be required to ensure the solvency of the State Insurance Reserve Trust Fund (SIRTF).

Treasury's Department of Risk Management (DRM) administers the Commonwealth's self-insured liability programs under the authority of Virginia Code § 2.2-1837 and § 2.2-1839.

- § 2.2-1837 authorizes the creation of the Public Liability Risk Management Program (State Plan) and § 2.2-1837(B) provides for the establishment of a trust fund or contribution to the SIRTF for the payment of claims covered under the plan.
- § 2.2-1839 authorizes the creation of the Constitutional Officer and Regional Jail Risk Management Plan (VaRISK) and the Virginia Liability Risk Management Plan (VaRISK2) and § 2.2-1839(E) provides for the establishment of a trust fund or contribution to the SIRTF for the payment of claims covered under such plans. DRM is further authorized to set premiums and administrative costs to best ensure the financial stability of the plans.

Critically, none of these plans — the State Plan, VaRISK, nor VaRISK2 — purchase commercial medical malpractice insurance on the open market. Every dollar paid in judgments, settlements, and litigation costs comes directly from state funds, and there is no commercial insurer backstop of any kind. Any potential increases in payments would be paid from the SIRTF, as the Commonwealth self-insures for medical malpractice claims. Higher reserves translate directly to higher premiums for all plan members.

Additionally, Treasury anticipates the increase in the statutory cap would materially strengthen plaintiffs' bargaining positions in medical malpractice litigation, impairing the Commonwealth's longstanding ability to achieve cost-effective pre-trial resolutions. Treasury believes that plaintiff demand levels will rise in direct proportion to the new \$6 million ceiling, making voluntary settlement at lower amounts less likely. A greater number of suits could proceed to trial, increasing litigation-related costs including expert fees, attorney fees, depositions, and court costs borne by DRM on behalf of plan members. Aggregate annual litigation costs for VaRISK and VaRISK2 are projected to increase materially even absent any growth in the number of claims filed.

Further, the new prejudgment interest provision creates additional exposure beyond the cap. Section 8.01-581.15(C) established by this bill permits a patient to recover up to two years of prejudgment interest in addition to the \$6 million cap where the verdict plus interest exceeds the cap. This provision effectively

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creates a total recovery potential in excess of \$6 million for claims accruing on or after July 1, 2027. For self-insured plans, this additional exposure is borne entirely by state funds and is not contemplated in existing actuarial reserve calculations.

Virginia Commonwealth University (VCU) Health System Liability Premium Impact

MCV Physicians, VCU Health System's (VCUHSA) faculty practice plan, employs over 1,100 physicians and over 700 advanced practice providers (e.g., nurse practitioners, physician assistants, certified registered nurse anesthetists, PhDs, and certified nurse midwives). Medical malpractice coverage varies by specialty, and premiums for malpractice coverage and reinsurance for providers employed by MCV Physicians total approximately \$11.2 million.

The impact on malpractice premiums for VCUHSA entities (hospitals and faculty practice plan) for the first year (7/1/2027 - 6/30/2028) is estimated to be an additional \$5 million. Additionally, VCUHSA anticipates that in year one there will be increases in premiums paid for reinsurance. Because the cap will have more than doubled, VCUHSA expects aggregates and attachment points to increase substantially, and anticipates that excess insurers and reinsurers will reduce their capacity and charge higher premiums for the capacity they are willing to provide. In year one, VCUHSA expects reinsurance premium increases of at least \$1.1 million. In addition, VCUHSA will be required to fund additional surplus to meet aggregates and attachment points that reflect the increased risk to VCUHSA, which is indeterminate at this time but expected to range between \$5 million to \$10 million. In sum, in year one VCUHSA estimates an increase in premiums of \$6.1 million and will have to fund an indeterminate amount of additional surplus.

Furthermore, VCUHSA expects premium increases in the second year and beyond of at least five percent. Additionally, VCUHSA estimates that each adjustment based on CPI-U would result in a one percent premium increase at a minimum. Lastly, based on a study by outside consultants, VCUHSA anticipates a potential 20 percent increase in claim frequency due to the greater opportunity for potential recovery, resulting in further increases in malpractice liability rates of at least 20 percent, which will further increase premium costs.

Operations of VCUHSA are fully supported by revenues generated by the entity. The VCUHSA is a separate legal entity that does not have a state appropriation.

University of Virginia (UVA) Medical Center Liability Premium Impact

UVA Medical Center (UVAMC) anticipates increases in medical malpractice insurance rates of at least \$8.5 million annually. This estimate primarily reflects projected increases in both primary and excess coverage premiums, based on a conservative analysis by a consultant. It does not account for additional costs associated with the discovery rule or pre-judgment interest that could exceed the cap, which are difficult to quantify at this time. The table below summarizes the calculations of projected increases by entity.

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Entity	Current Premium	Projected Increase	Additional Cost
Community Health Medical Group – physicians	\$1,400,000	20%	\$280,000
UVA Physicians Group (UPG)	\$6,500,000	20%	\$1,300,000
Community Health Hospital-Employed Staff – non-physicians	\$1,920,473	77.5%	\$1,488,367
Excess Coverage – physicians	\$1,500,000	150%	\$2,250,000
Excess Coverage – non-physicians	\$2,463,973	119.5%	\$2,944,448
UVA Trainees – residents/fellows	\$1,250,000	20%	\$250,000
Total Additional Cost Per Year			\$8,512,815

Operations of the UVAMC are fully supported by revenues generated by the entity. As a component of UVA, the UVAMC has a sum sufficient state nongeneral fund appropriation in Item 190 of the Budget Bill (HB/SB 30) to reflect the anticipated expenditure of the revenues generated by the Medical Center. Any impact on the nongeneral fund appropriation for the UVAMC from this legislation is indeterminate.

Department of Corrections Impact

The Department of Corrections (DOC) indicates the changes in this bill may increase overall medical costs to DOC; however, the fiscal impact is indeterminate.

Department of Planning and Budget Impact

The second enactment requires the Department of Planning and Budget (DPB) to update the amount for the limitation on recovery in medical malpractice actions by June 30, 2029, and at each two-year interval thereafter using the calculation prescribed in the bill. DPB can support this requirement with existing resources.

Other: Treasury provided the additional information below on the background of VaRISK, VaRISK2, and the State Plan.

Plan Name	Background
VaRISK	<ul style="list-style-type: none"> -Provides medical malpractice self-insurance for constitutional officers, regional jails, and affiliated health care providers. -Current plan limit: \$1 million per occurrence (\$1.5 million for sheriffs by statute). -In medical malpractice cases, coverage extends up to the applicable statutory cap. -Funded entirely through state-managed premium assessments deposited into the SIRTF.

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VaRISK2	<ul style="list-style-type: none">-Extends medical malpractice coverage to local government entities including community services boards (CSBs), free clinics, and other local public health care providers.-Current plan limit: \$1 million per occurrence.-In medical malpractice cases, coverage extends up to the applicable statutory cap.-Volunteer physicians at free clinics currently receive coverage at no premium cost.-Funded on a self-insured, state-managed basis.
State Plan	<ul style="list-style-type: none">-Provides coverage for state agencies and state-employed health care providers, including physicians, nurses, and other licensed practitioners.-Current plan limit: \$2 million per occurrence.-In medical malpractice cases, coverage extends up to the applicable statutory cap.-Fully self-insured through state appropriations.