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SENATE BILL NO. 744

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 27, 2005)

(Patron Prior to Substitute—Senator Miller)

A BILL to amend and reenact § 32.1-353.4 of the Code of Virginia, relating to certified nurse aides.

Whereas, certified nurse aides are the persons most responsible for the care of elderly and disabled persons in long-term care facilities and health agencies; and

Whereas, Managed Care Programs have resulted in shorter stays in hospitals by patients in hospitals, leading to an increase in the level of care required by such patients in long-term care facilities; and

Whereas, the earlier discharge of patients from hospitals often increases the level of care required by persons in long-term care facilities; and

Whereas, the work required by certified nurse aides is difficult and the compensation for such work is at or slightly above minimum wage; and

Whereas, low compensation for the work required, demanding work conditions, and minimal benefits have led to a poor retention rate among certified nurse aides; now, therefore

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-353.4 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-353.4. Agreements for certain services.

A. The nonprofit organization shall provide on-site training, assistance, and other services related to the protection of the health or property of certified nursing facility residents pursuant to this chapter and for the development and administration of programs to promote the quality of care in nursing facilities. Such nonprofit organization shall be governed by a board of directors composed of the Director or his designee, a representative of the Department of Health, a representative from the Department of Social Services' Adult Protective Services Unit, a representative from the Office of the State Long-Term Care Ombudsman, and representatives from consumer, long-term care provider and business communities. The articles of incorporation of such nonprofit organization shall require the nomination of such board members by organizations and associations representing those categories of persons specified for representation on the board of directors.

B. In addition to providing for training and assistance described in subsection A, any contract or agreement with the nonprofit, tax-exempt organization made pursuant to this section shall require the board of directors of such organization to:

1. Maintain confidentiality of data as set forth in § 32.1-325.3;

2. Submit a report to the Board, the Governor, and the General Assembly no later than October 1 of each year for the preceding fiscal year. Such report shall include a certified audit and provide information on the accomplishments, priorities, and current and planned activities of the nonprofit organization; and

3. Submit, as appropriate, strategic plans to the Board, the Governor, and the General Assembly recommending specific projects to be undertaken. In developing strategic plans, the nonprofit organization shall incorporate similar activities of other public and private entities to maximize the quality of projects and to minimize the cost of such projects. The nonprofit organization shall submit the first such strategic plan to the Board, the Governor, and the General Assembly by October 1, 2000. Such initial plan shall include recommendations for promoting quality of care of all long-term care providers and for funding all projects undertaken pursuant to this chapter. The approval of the Director shall be required prior to the implementation of any recommendations set forth in a strategic plan submitted pursuant to this section.

C. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by this section. Funding for services provided pursuant to any such contract or agreement may come from charges to nursing facilities for services, from general appropriations, and from civil money penalty funds.

D. The records, reports, and communications of any staff member, employee, consultant or other person acting on behalf of the nonprofit organization established in this section are privileged communications and may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and a showing of good cause arising from extraordinary circumstances, orders the disclosure of such records, reports, and communications.

E. This section shall not be construed as providing any privilege for the medical, nursing, or administrative records maintained with respect to any patient in the ordinary course of a health care provider's business or to any facts or information contained in such records. In addition, this section shall not preclude or affect discovery of or production of evidence relating to treatment by a health care

60 provider in the ordinary course of treatment of any patient.

61 *F. In the exercise of its responsibility to provide on-site training, assistance, and other services to*
62 *promote the quality of care, and as an adjunct to training needed to become certified as a nurse aide,*
63 *the nonprofit organization may provide training to direct service workers in long-term care settings with*
64 *emphasis on practical strategies, care interventions, and timely referrals to medical professionals.*