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**HOUSE BILL NO. 425**

Offered January 11, 2006

Prefiled January 6, 2006

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 37.1, consisting of sections numbered 59.1-459.1 through 59.1-459.6, relating to home health care workers and consumers; civil penalties.*

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Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 37.1, consisting of sections numbered 59.1-459.1 through 59.1-459.6, as follows:**

**CHAPTER 37.1.****HOME CARE CONSUMER AND WORKER PROTECTION ACT.****§ 59.1-459.1. Definitions.**

"Activities of daily living" means eating, dressing, grooming, bathing, use of the toilet, transferring, or personal hygiene, including preparation and cleanup related to any of those activities.

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Companion services" means those services that provide fellowship, care, and protection for an individual. Companion services include, but are not limited to, transportation, letter writing, mail reading, and escort services.

"Consumer" means either an individual who receives home care services in his temporary or permanent residence through a home care services worker, or an individual who pays for and directs the services, if not the person receiving services.

"Consumer notice" shall mean the notice provided to a consumer which shall include, at a minimum, the following information:

1. The duties, responsibilities, obligations, and legal liabilities of the placement agency to the home care services worker and to the consumer. Such description shall clearly set forth the consumer's responsibility, if any, for:

a. Day-to-day supervision of the home care services worker;

b. Assigning duties to the home care services worker;

c. Hiring, firing, and discipline of the home care services worker;

d. Provision of equipment or materials for use by the home care services worker;

e. Performing a criminal background check on the home care services worker;

f. Checking home care services worker references; and

g. Ensuring credentials and appropriate licensure/certification of a home care services worker.

2. A statement identifying the placement agency as an employer, joint employer, leasing employer, or non-employer, as applicable, of the home care services worker along with the responsibility the placement agency will assume, if any, for the payment of the home care services worker's wages, including overtime pay for hours worked in excess of 40 hours in a work week, taxes, social security, Medicare, workers' compensation, and unemployment compensation payments.

3. A statement that, regardless of the placement agency's status, the consumer may be considered an employer under various state and federal employment laws, and that, if this is the case, he may be held responsible for the payment of the home care services worker's federal, state, and local taxes, social security, Medicare, overtime and minimum wages, unemployment, and workers' compensation insurance payments.

4. A list of the forms that the consumer may be required by law to complete and submit as an employer.

5. The penalties that may be assessed against the consumer in the event that he is determined to be an employer but has not fulfilled his obligations as an employer.

6. The Department's appropriate phone number and address, in the event the consumer has questions concerning the content of the notice.

"Department" means the Department of Agriculture and Consumer Services.

"Home care aide" means an individual working for hire in a person's temporary or permanent place of residence to assist with activities of daily living.

"Home care services" means skilled or nonskilled care provided to an individual in or at his

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59 temporary or permanent residence for the purpose of enabling that individual to remain safely and  
60 comfortably in his temporary or permanent residence. Home care includes, but is not limited to, nursing  
61 services, home care aide services, companion services, and homemaker services.

62 "Home care services worker" means any individual performing home care services of any kind or  
63 character whatsoever for hire.

64 "Homemaker services" means assisting with or performing household tasks such as housekeeping,  
65 shopping, laundry, meal planning and preparation, cleaning, handyman services, and seasonal chores.

66 "Person" means any individual, firm, association, partnership, company or corporation, or other  
67 legal entity.

68 "Placement agency" means any person engaged for gain or profit in the business of securing or  
69 attempting to secure home care services work for an individual or of securing or attempting to secure a  
70 home care services worker for a consumer. The term shall include, but is not limited to, employment  
71 agencies, nurse registries, and any other entity that places a home care services worker for hire by a  
72 consumer in that consumer's temporary or permanent residence for purposes of providing home care  
73 services.

74 "Skilled services" means services provided by a registered nurse, a licensed practical nurse, or any  
75 other health care professional licensed, certified, or registered by the Commonwealth.

76 "Worker Notice" means a form that contains, at a minimum, the following information:

77 1. The duties, responsibilities, obligations, and legal liabilities of the placement agency, the  
78 consumer, and the home care services worker, in the event that the home care services worker is  
79 determined to be an independent contractor. Such notice shall include the following information:

80 a. A statement as to the party responsible for the payment of the home care services worker's wages,  
81 including overtime pay for hours worked in excess of 40 hours in a work week, taxes, social security,  
82 Medicare, unemployment, and workers' compensation insurance;

83 b. A statement identifying which party will be responsible for the home care services worker's hiring,  
84 firing, discipline, day-to-day supervision, assignment of duties, and provision of equipment or materials  
85 for use by the home care services worker.

86 2. The Department's appropriate phone number and address, in the event the home care services  
87 worker has questions concerning the contents of the notice.

88 § 59.1-459.2. Application of the Act.

89 This Act shall apply to all persons that meet the definition of a placement agency. However, health  
90 care organizations that meet this definition but receive payment through public funding sources shall be  
91 exempt from the provisions of the Act.

92 § 59.1-459.3. Consumer Notice.

93 A. A placement agency shall provide a consumer with a Consumer Notice (Notice). The Notice shall  
94 be provided to the consumer each time a home care services worker is placed in the consumer's home.  
95 A separate Notice shall not be required in those instances where a home care services worker is  
96 temporarily covering or substituting for the consumer's regular home care services worker.

97 B. The Notice shall be on a form developed by the Department.

98 C. The Notice must be signed by the consumer and retained by the placement agency at its office for  
99 not less than five years.

100 D. A placement agency's failure to provide such a Notice to a home care services worker shall  
101 subject that agency to civil fines or penalties as set forth in this Act.

102 E. A placement agency's failure to provide a Notice shall not relieve a consumer of any of his duties  
103 or obligations as an employer. However, in the event a placement agency fails to provide a Notice and  
104 the consumer is determined by the Department to be liable to the home care services worker for  
105 payment of wages, taxes, workers' compensation, or unemployment compensation, the consumer shall  
106 have a right of indemnification against the placement agency, which shall include the actual amounts  
107 paid to or on behalf of the home care services worker, as well as the consumer's attorney fees and  
108 costs.

109 § 59.1-459.4. Worker Notice.

110 A. A placement agency shall provide a Worker Notice to each home care services worker who is  
111 placed with a consumer. The Worker Notice shall set out the home care services worker's legal  
112 relationship with the placement agency and the consumer. The Worker Notice shall be provided to the  
113 home care services worker upon his placement in a consumer's home.

114 B. The Worker Notice shall be on a form developed by the Department.

115 C. The Worker Notice must be signed by the worker and retained by the placement agency at its  
116 office for not less than five years.

117 § 59.1-459.5. Investigations; orders; civil penalties.

118 A. The Department may at any time, and shall upon receiving a complaint from any interested  
119 person, investigate a placement agency's violation of this Act.

120 B. The Commissioner or his authorized representative may examine the premises of any placement

agency, may compel by subpoena, for examination or inspection, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in any investigation or hearing, and may administer oaths or affirmations to witnesses.

C. After appropriate notice and investigation, and if supported by the evidence, the Department may issue and cause to be served on any person an order to cease and desist from violation of this Act and to take any further action that is determined to be necessary to eliminate the effect of the violation.

D. Whenever it appears that any person has violated a valid order of the Department issued under this Act, the Commissioner may commence an action and obtain from the court an order directing the person to obey the order of the Department or be subject to punishment for contempt of court.

E. In addition to any order or action, the Department may petition a court of competent jurisdiction for an order enjoining any violation of this Act.

F. Any placement agency that violates this Act or the rules adopted under this Act shall be subject to a civil penalty of \$100 per day per violation. Civil penalties may be assessed by the Department in an administrative action and may, if necessary, be recovered in a civil action brought by the Commissioner through the Attorney General or the attorney for any county or city in which the violation occurred. The court may order that the civil penalties assessed for violation of this Act, together with any costs or attorney fees arising out of the action to collect the penalties, be paid to the Department. The fact that the violation has ceased does not excuse any person from liability for civil penalties arising from the violation.

§ 59.1-459.6. Administrative Process Act.

Pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), the Board may promulgate regulations necessary to carry out the purposes and provisions of this Act.

Any person aggrieved by a final order or decision under this Act shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).