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SENATE BILL NO. 461

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 1, 2018)

(Patron Prior to Substitute—Senator Dance)

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 4 of Title 37.2 a section numbered 37.2-402.1, relating to direct support professionals; disclosure of information related to employment.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 4 of Title 37.2 a section numbered 37.2-402.1 as follows:

§ 37.2-402.1. *Direct support professionals; disclosure of information by employers.*

A. As used in this section, "direct support professional" means a person identified by a provider, as defined in § 37.2-403, as having the primary role, on a day-to-day basis, of assisting an individual with routine personal care needs, social support, and physical assistance in a wide range of daily living activities so that the individual can lead a self-directed life in his own community.

B. A current or former employer of (i) a direct support professional or (ii) a person who manages or has managed direct support professionals may disclose information about such person's employment, which may include information about the person's job performance, professional conduct, including any violent or threatening conduct, and reason for separation, to a prospective employer of such person if, upon hiring by the prospective employer, the direct care professional or person who manages or has managed direct support professionals would be responsible for providing services to a person receiving services pursuant to a Medicaid Developmental Disability waiver or managing individuals providing services to a person receiving services pursuant to a Medicaid Developmental Disability waiver. Such prospective employer may request that the direct support professional or person who manages or has managed direct support professionals execute written consent to such disclosure on a form provided by the Department; however, failure to obtain such consent shall not prohibit the potential employer from requesting or the current or former employer from disclosing information described in this subsection.

C. A current or former employer who provides information pursuant to this section shall be immune from civil liability for furnishing such information, provided that the employer was not acting in bad faith. A current or former employer shall be presumed to be acting in good faith. The presumption of good faith shall be rebutted if it is shown by clear and convincing evidence that the employer disclosed information with knowledge that it was false, or with reckless disregard for whether it was false or not, or with the intent to deliberately mislead.

2. That, in support of the Joint Commission on Health Care's efforts to improve the quality of the Commonwealth's direct support professional workforce, the Department of Behavioral Health and Developmental Services shall, in conjunction with the Department for Aging and Rehabilitative Services, the Department of Medical Assistance Services, the Department of Social Services, the Virginia Association of Community Services Boards, the Virginia Network of Private Providers, and other relevant provider organizations and stakeholders, convene a work group to review implementation of the provisions of this act and, if necessary, develop recommendations for policy changes to increase the transparency of the employment history of direct support professional job candidates. The Department of Behavioral Health and Developmental Services shall report its recommendations to the Joint Commission on Health Care by October 1, 2018.

SENATE SUBSTITUTE

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