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HOUSE BILL NO. 2089

Offered January 13, 2025

Prefiled January 7, 2025

A *BILL* to amend the Code of Virginia by adding in Chapter 10 of Title 32.1 an article numbered 5, consisting of sections numbered 32.1-331.18 through 32.1-331.22, and by adding in Chapter 4 of Title 40.1 an article numbered 6, consisting of sections numbered 40.1-77.1, 40.1-77.2, and 40.1-77.3, and to repeal § 32.1-331.04 of the Code of Virginia, relating to collective bargaining; individual home care providers.

Patrons—Shin, Tran, Bennett-Parker, Convirs-Fowler, Cousins and Price; Senators: Salim and Srinivasan

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 10 of Title 32.1 an article numbered 5, consisting of sections numbered 32.1-331.18 through 32.1-331.22, and by adding in Chapter 4 of Title 40.1 an article numbered 6, consisting of sections numbered 40.1-77.1, 40.1-77.2, and 40.1-77.3, as follows:

Article 5.**Virginia Home Care Authority.****§ 32.1-331.18. Virginia Home Care Authority; creation.**

There is hereby created within the Department of Medical Assistance Services the Virginia Home Care Authority to ensure the effectiveness and quality of the services of home care programs in the Commonwealth.

§ 32.1-331.19. Definitions.

As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Home Care Authority established pursuant to this article.

"Collective bargaining" has the same meaning as provided in § 40.1-77.1.

"Covered program" means a program to provide direct support services funded in whole or in part by the Commonwealth, including consumer-directed care services under the Commonwealth Coordinated Care program and state plan programs or waiver programs established pursuant to home and community-based service waivers authorized under § 1115 or 1915(c) the federal Social Security Act.

"Direct support services" means personal care services that assist participants with instrumental activities of daily living, including grooming, toileting, bathing, eating, dressing, monitoring health status and physical condition, and assisting with housekeeping activities, and other in-home, long-term services and supports provided to an elderly person or person with a disability to meet such person's daily living needs and ensure that such person may adequately function at home and have safe access to the community.

"Exclusive bargaining representative" has the same meaning as provided in § 40.1-77.1.

"Individual provider" means an individual employed by a participant or the representative of a participant to provide direct support services to such participant.

"Interested Parties Advisory Group" means the group convened by the Authority pursuant to § 32.1-331.21.

"Participant" means an individual who receives direct support services from an individual provider through a covered program.

"Participant's representative" means a participant's legal guardian or an individual having the authority and responsibility to act on behalf of a participant with respect to the provision of direct support services through a covered program.

§ 32.1-331.20. Authority composition; membership; quorum.

A. The Authority shall consist of five members to be appointed in accordance with the provisions of this section. The Director of the Department, or his designee, shall be a permanent member of the Authority and shall serve as chair. The Secretary of Health and Human Resources shall appoint two members representing the interests of participants and participant representatives and two members representing nonprofit organizations that advocate on behalf of elderly adults or people with disabilities.

B. Except for the initial appointments specified by this subsection, appointees to the Authority by the Secretary of Health and Human Resources shall serve four-year terms. For the initial appointments to the Authority:

1. One member representative who represents participants and participant representatives shall be appointed to a term expiring July 1, 2026.

2. One member representative who represents a nonprofit organization shall be appointed to a term

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59 expiring July 1, 2027.

60 3. One member representative who represents participants and participant representatives shall be
61 appointed to a term expiring July 1, 2028.

62 4. One member representative who represents a nonprofit organization shall be appointed to a term
63 expiring July 1, 2029.

64 C. If a vacancy occurs, a new Authority member shall be appointed or designated to serve the remainder
65 of the unexpired term or, if the vacancy occurs as the result of the completion of a term, to serve a full term.

66 D. Members of the Authority may serve successive terms.

67 E. A majority of the members of the Authority shall constitute a quorum for the transaction of any
68 business. The Authority shall make its own policies and procedures and shall adopt bylaws not inconsistent
69 with this article governing its operations. The Authority shall adopt bylaws consistent with the Virginia
70 Freedom of Information Act (§ 2.2-3700 et seq.), governing its procedures and the holding of meetings. The
71 Authority shall meet at the call of the chair and as may be provided in the bylaws.

72 **§ 32.1-331.21. Powers and duties of Authority.**

73 The Authority shall have the following powers and duties:

74 1. To establish and maintain a central registry of individual providers;

75 2. To create a system to match participants who need direct support services with individual providers;

76 3. To arrange for the provision of a paid training program to be available to all individual providers.
77 Such training program shall be developed in consultation with participants and participants' representatives,
78 individual providers, and any exclusive bargaining representative of independent providers. The Authority
79 shall establish requirements for the provision of such training;

80 4. To act as joint employer for individual providers by:

81 a. Serving as the public employer of individual providers for purposes of collective bargaining pursuant
82 to Article 6 (§ 40.1-77.1 et seq.) of Chapter 4 of Title 40.1;

83 b. Ensuring that individual providers' payments, wages, and benefits are timely and accurately processed
84 and that appropriate withholdings and tax deductions are made; and

85 c. Maintaining personnel records for individual providers, including tracking their participation in
86 orientations and trainings;

87 5. To provide for a mandatory orientation program for individual providers related to employment in
88 providing direct support services, which orientation program shall meet the following requirements:

89 a. Attendance shall be limited to independent providers, participants, independent providers' employer of
90 record, and an exclusive bargaining representative of independent providers;

91 b. The orientation shall be conducted on paid time;

92 c. An individual provider shall attend an initial orientation within 45 days after the date such individual
93 provider begins to provide direct support services;

94 d. An exclusive bargaining representative shall be permitted to attend each orientation, to distribute
95 materials, to collect materials from attendees, and to deliver a presentation that is up to 30 minutes long
96 during each orientation; and

97 e. The Authority shall provide an attending exclusive bargaining representative a list of each individual
98 provider registered for an orientation at least 24 hours before the orientation begins;

99 6. Espouse, support, and work to preserve participant selection and self-direction of individual providers;

100 7. To support individual providers through a variety of methods aimed at encouraging competence,
101 achieving quality services for participants, and improving individual provider retention through improved
102 job satisfaction;

103 8. To serve as a communications hub for the individual provider workforce to share information relevant
104 to individual providers;

105 9. To maintain neutrality regarding individual providers' selection of an exclusive bargaining
106 representative;

107 10. To compile, update, and maintain a quarterly list of the names, home addresses, home telephone
108 numbers, cell phone numbers, and email addresses, if known, of all individual providers paid to provide
109 direct support services under a covered program during that quarter, and provide that list to individual
110 providers' exclusive bargaining representative, if applicable, on a quarterly basis;

111 11. To provide home care assistance to participants to ensure a continuation of direct support services in
112 the event their individual provider is absent or no longer able to perform their responsibilities;

113 12. To receive, investigate, and respond to complaints or concerns from participants, participants'
114 representatives, individual providers, and individual providers' exclusive representative, regarding the
115 provision of direct support services;

116 13. To oversee the quality of direct support services and ensure direct support services are provided in
117 conformance with all applicable requirements;

118 14. To actively pursue and implement all available strategies to maximize federal Medicaid
119 reimbursement for individual provider programs;

120 15. To convene and support an Interested Parties Advisory Group, as described in § 32.1-331.22, at least

every two years and as often as the Authority deems necessary to meet its obligations in accordance with applicable requirements including federal Medicaid requirements;

16. To collect statewide information and data related to the individual provider workforce, including individual provider pay, retention and turnover rates, individual provider job satisfaction, service gaps caused by individual provider shortages, and other relevant information, including relevant information requested by the Interested Parties Advisory Group;

17. To enter into contracts and agreements, and contract for services of persons or entities, as appropriate to accomplish the purposes and provisions of this article;

18. To employ, appoint, engage, and compensate employees to accomplish the purposes and provisions of this article; and

19. Except as otherwise provided by law, to perform all other acts necessary or convenient to implement the purposes and provisions of this article.

§ 32.1-331.22. Interested Parties Advisory Group.

The Interested Parties Advisory Group convened by the Authority pursuant to subdivision 15 of § 32.1-331.21 shall include participants, individual providers, representatives of the Department, and the exclusive bargaining representative of individual providers. The Interested Parties Advisory Group shall make recommendations to the Authority concerning adequate payments and other workforce supports for individual providers.

Article 6.

Individual Home Care Providers.

§ 40.1-77.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Collective bargaining" means to perform the mutual obligation of an employer by its representatives and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, and other terms and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement, and includes executing a written contract incorporating the terms of any agreement reached.

"Covered program" has the same meaning as provided in § 32.1-331.19.

"Direct support services" has the same meaning as provided in § 32.1-331.19.

"Exclusive bargaining representative" means an individual or entity certified as the exclusive bargaining representative of a bargaining unit.

"Individual provider" has the same meaning as provided in § 32.1-331.19.

"Participant" has the same meaning as provided in § 32.1-331.19.

"Participant's representative" has the same meaning as provided in § 32.1-331.19.

"Virginia Home Care Authority" or "the Authority" means the Virginia Home Care Authority established pursuant to § 32.1-331.18.

§ 40.1-77.2. Participant rights.

Participants or participants' representatives retain the rights to select, hire, direct, supervise, and terminate the services of any individual provider providing direct support services for the participant. Nothing in this article shall be construed to alter such rights. No provision of any agreement reached between any exclusive bargaining representative of individual providers and the Authority shall interfere with such rights.

§ 40.1-77.3. Collective bargaining by individual providers.

A. Individual providers may select an exclusive bargaining representative and collectively bargain with the Virginia Home Care Authority. The scope of collective bargaining between individual providers and the Authority shall include wages, benefits, and all terms and conditions of employment that are within the Authority's control, but shall not extend to those rights reserved to participants and participants' representatives pursuant to § 40.1-77.2.

B. Any exclusive bargaining representative of individual providers shall be selected by and shall represent all individual providers in the Commonwealth, including individual providers who are related to a participant or participant's representative.

2. That § 32.1-331.04 of the Code of Virginia is repealed.

3. That the provisions of this act shall not become effective unless legislation is enacted in the Commonwealth authorizing public employees to engage in collective bargaining, as defined by § 40.1-77.1 of the Code of Virginia, as created by this act. If such legislation is enacted, the Department of Labor and Industry shall certify to the Virginia Code Commission that such contingency has been met.