

SB384 Testimony.pdf

Uploaded by: Berezin, Alex

Position: FAV



02/09/2021

Hearing of the Senate Finance Committee: Support SB384

Dear Members of the Senate Finance Committee,

My name is Alex Berezin, and I serve as CEO of Complete Home Care, LLC. As a Residential Services Agency, our goal is to take care of the client with the most comprehensive services and the most compassionate care. But in order to take care of our clients, we need to take care of our staff. The majority of home care staff are not educated enough in the realm of employee/contractor classification and therefore accept whatever financial enticement an agency may offer them. Ultimately this provides no benefit but rather major downsides and risks to the staff member.

Agencies tend to misclassify to avoid paying workers compensation, taxes, unemployment insurance, overtime pay as well as certain General and Professional Liability Insurances. Especially in a time like this where many people are out of work, those benefits and protections are crucial to these individuals. Medicaid is a state funded program, a privilege for business owners to work with. Why should only some be compliant and others not? When RSAs compete for workers solely on what "tax-free" wage rate they offer, it leads to caregivers jumping from agency to agency, which skews the industry due to a lack of understanding in the area of classification.

Most states have requirements in place to avoid the misclassification dilemma. We need to take care of our staff, be compliant and in turn allow them to take care of the vulnerable population that we serve. Requiring that RSAs report, for Medicaid-funded work, workers' classifications and pay rates is not burdensome and would not put RSAs at any competitive disadvantage, but it would help encourage RSAs to do the right thing.

For these reasons, I ask that you support SB384.

SB 384 Health Facilities Residential Service Agenc

Uploaded by: Bresnahan, Tammy

Position: FAV



200 St. Paul Place, #2510 | Baltimore, MD 21202
1-866-542-8163 | Fax: 410-895-0269 | TTY: 1-877-434-7598
aarp.org/md | mdaarp@aarp.org | twitter: @aarpmaryland
facebook.com/aarpmid

**SB 384 Health Facilities - Residential Service Agencies - Compliance With State Labor Laws
Favorable
Senate Finance Committee
February 11, 2021**

Good Afternoon Chairwoman Kelley and Members of the Senate Finance Committee. I am Tammy Bresnahan. I am the Director of Advocacy for AARP MD. AARP Maryland is one of the largest membership-based organizations in the Free State, encompassing almost 900,000 members. **AARP MD overwhelmingly supports SB 384 Health Facilities - Residential Service Agencies - Compliance With State Labor Laws.** We thank Senator Kelley for sponsoring this important legislation.

AARP is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

SB 384 defines personal care worker. SB 384 also creates a short guidance document explaining how independent-contractor misclassification applies to personal care aides and requires Residential Service Agencies to read it when they obtain and renew their license. It also creates a small expansion of the existing process the Maryland Department of Health uses to track workers' time, adding two columns to the existing spreadsheet for the worker's employment classification and pay rate.

Personal care workers who work for Maryland residential service agencies provide the bulk of paid long-term care. These paraprofessional workers hold a variety of job titles, including personal care assistants, home care aides, home health aides, and certified nursing assistants (CNAs). They work in diverse settings, including private homes, adult day centers, assisted living residences and other residential care settings, and nursing homes. More than a million direct care workers in the U.S. work at jobs that may include:

- assisting with personal care activities, such as bathing, dressing, toileting, transferring, and eating;
- providing comfort and companionship;
- observing and reporting changes in a client's condition;
- preparing meals and housekeeping;
- providing oversight for people with cognitive and mental impairments; and
- Administering medications and measuring vital signs.

AARP
Real Possibilities

Although the majority of personal care workers find their jobs intrinsically rewarding, they are often low paid with limited or no benefits, high workloads, unsafe working conditions, inadequate training, a lack of respect from supervisors, lack of control over their jobs, and few opportunities for advancement, all of which contribute to high turnover.

To a large extent, the challenges facing the personal care workforce in Long Term Services and Supports in Maryland reflect nationwide realities. The workforce is comprised almost entirely of historically marginalized workers—including women, people of color, and/or immigrants—who face significant obstacles in education and employment. Despite the demands of the job and the unequivocal importance of their contributions, these workers still struggle to make a livable wage and achieve economic stability.

SB 384 will help educate Residential Service Agencies about what existing Maryland law requires when they hire personal care aides especially if they hire these workers as contractual workers. Reporting this information will help the state learn more about how state money is being spent and how the workers who are paid with state dollars are classified. For these reasons, AARP supports SB 384. For questions, please contact Tammy Bresnahan tbresnahan@aarp.org or by calling 410-302-8451.

Centers for Indept Living - SB384 Guidance and Rep

Uploaded by: Bullis, Michael

Position: FAV



Maryland Statewide
Independent Living
Council

Support SB384: Guidance and Reporting for Residential Service Agencies (RSAs)

February 11, 2020

Senate Finance Committee

Chair Kelly and Members of the Committee:

Centers for Independent Living serve people with the most significant disabilities throughout the State of Maryland. We see daily the problems created through the current system where employees are paid minimum wages, but, wrongly classified as contractors, expected to also pay their own withholdings.

Of course, it's illegal. When you are told when and where to work, you're an employee for most purposes. The problem is that these employees are essentially told, "take it or leave it." Mostly, needing to feed their families, they take it. The result is very high turnover, poor service quality and people with disabilities literally left, isolated in their homes and unable to leave, because their worker simply couldn't take it anymore.

In its simplicity, this Bill will send a loud and clear message to thousands of service providers that they can no longer scam people with disabilities, their own workers and the State of Maryland. It is a much-needed step in moving Maryland toward providing a workforce that can meet the challenges of helping people receive care in their own homes rather than expensive nursing facilities with dignity.

The undersigned Centers for Independent Living strongly urge a favorable report on this bill.

Sincerely,

Katie Collins-Ihrke, Executive Director
Accessible Resources for Independence

SB384_FAV_AlzheimersAssociation.pdf

Uploaded by: Colchamiro, Eric

Position: FAV

Testimony of the Alzheimer's Association Greater Maryland and National Capital Area Chapters
SB 384 - Health Facilities - Residential Service Agencies - Compliance with State Labor Laws
Position: Favorable

Chairwoman Kelley and Vice Chair Feldman,

My name is Eric Colchamiro, and I am the Director of Government Affairs for the Alzheimer's Association in Maryland. Thank you for the opportunity to provide testimony on SB 384, legislation which requires the Office of the Attorney General, in consultation with the Maryland Department of Health and the Maryland Department of Labor, to produce a guidance document, by December 30, 2021, concerning the application of employee protection laws to personal care aides employed by residential service agencies.

The Alzheimer's Association is tremendously concerned with the state of our direct care workforce, including the staff employed by Maryland's residential service agencies. For our patient population, individuals managing dementia—95 percent of them have at least one other chronic condition—care is complicated. Along with the importance of being adequately trained in dementia, we are concerned about the high turnover, low pay, and few opportunities for advancement which make filing direct care positions difficult. By 2030, 3.4 million more direct care workers will be needed — a 48% increase from 2015.

I am pleased that the four percent Medicaid reimbursement rate will fortify this group of providers, who have not gotten the COVID-19 related aid they need. Yet we must also take steps to protect this Maryland workforce; nearly one-third of whom are from outside the United States, and nearly 50 percent of whom have not completed education beyond high school.

We urge a favorable report for this bill, as it informs providers about appropriately managing their workforce, and so the 'bad apples' in this industry do not misclassify staff as independent contractors (where they can be paid lower wages and have limited job protections). We urge a favorable report on this bill because it further engages the State of Maryland in improving the work conditions for this essential workforce. And we urge a favorable report because it helps us collect accurate data on the wages of this workforce, and my goodness, set a better system in place for these providers and a workforce essential to Marylanders with dementia before, during, and after the pandemic.

Thank you for your time.

Caroline Center SB 384 Letter in Support 021121.pd

Uploaded by: Hammer, Karen

Position: FAV



Caroline Center

Committed to Women • Committed to Work

**SB 384: Department of Health – Residential Service Agencies - Compliance with State Labor Laws Hearing before the Economic Matters Committee, February 11, 2021
Position: SUPPORT**

Caroline Center is a nonprofit workforce development organization serving unemployed and underemployed women in Baltimore. We provide an empowering education and highly effective career skills training program, inspired by the School Sisters of Notre Dame. Our courses include holistic training for Certified Nursing Assistants (CNA)/Geriatric Nursing Assistants (GNA), and Certified Pharmacy Technicians. Caroline Center supports SB 384, which would help ensure that CNA/GNAs and other direct care workers have decent jobs that respect their rights as workers.

Job quality in the healthcare sector influences career decisions. Women attend Caroline Center because they want to work in healthcare. While between 70% and 80% of Caroline Center CNA/GNAs are working shortly after graduating, a number of them end up never joining, or joining and quickly leaving the healthcare sector, because the wages and benefits for jobs in other industries are often better. Recently, one of our star CNA/GNAs took a warehouse job at Amazon, even though she wants a career in healthcare, because Amazon offered \$16.15 per hour with benefits.

Working for a Residential Service Agency could be a good option for many CNA/GNAs – if their rights are respected. There can be more flexibility in scheduling, which helps women with children, and some direct care workers prefer the one-on-one relationships that the work entails. Unfortunately, because so many RSAs misclassify their workers as independent contractors, the appeal of these jobs is diminished, and many workers opt for other employers who do provide benefits, overtime, and other protections.

In addition to lost wages and the lack of benefits, graduates sometimes experience tax consequences from working for RSAs. They did not know that they were classified as independent contractors, or that their agencies were not withholding taxes, until they were notified by the Maryland Comptroller or the IRS. As a result, they ended up owing self-employment taxes, but lacking the funds to pay them.

SB 384's goal to provide RSAs with accurate information will improve the job quality of direct care workers. I recently spoke with a Caroline Center CNA/GNA who, having learned that she was supposed to be paid for travel time, approached the RSA she works for, and told them about the requirement. The agency representative did not know that direct care workers should be paid for travel time. Once informed, they changed their policy. The CNA/GNA received back pay and ongoing pay for travel time.

For the foregoing reasons, Caroline Center SUPPORTS SB 384 and urges a FAVORABLE report. Should you have any questions, please call Karen Hammer at 410-916-4175.

Sponsored by The School Sisters of Notre Dame

Caroline Center SB 384 Letter in Support 021121.pd

Uploaded by: Hammer, Karen

Position: FAV



Caroline Center

Committed to Women • Committed to Work

**SB 384: Department of Health – Residential Service Agencies - Compliance with State Labor Laws Hearing before the Economic Matters Committee, February 11, 2021
Position: SUPPORT**

Caroline Center is a nonprofit workforce development organization serving unemployed and underemployed women in Baltimore. We provide an empowering education and highly effective career skills training program, inspired by the School Sisters of Notre Dame. Our courses include holistic training for Certified Nursing Assistants (CNA)/Geriatric Nursing Assistants (GNA), and Certified Pharmacy Technicians. Caroline Center supports SB 384, which would help ensure that CNA/GNAs and other direct care workers have decent jobs that respect their rights as workers.

Job quality in the healthcare sector influences career decisions. Women attend Caroline Center because they want to work in healthcare. While between 70% and 80% of Caroline Center CNA/GNAs are working shortly after graduating, a number of them end up never joining, or joining and quickly leaving the healthcare sector, because the wages and benefits for jobs in other industries are often better. Recently, one of our star CNA/GNAs took a warehouse job at Amazon, even though she wants a career in healthcare, because Amazon offered \$16.15 per hour with benefits.

Working for a Residential Service Agency could be a good option for many CNA/GNAs – if their rights are respected. There can be more flexibility in scheduling, which helps women with children, and some direct care workers prefer the one-on-one relationships that the work entails. Unfortunately, because so many RSAs misclassify their workers as independent contractors, the appeal of these jobs is diminished, and many workers opt for other employers who do provide benefits, overtime, and other protections.

In addition to lost wages and the lack of benefits, graduates sometimes experience tax consequences from working for RSAs. They did not know that they were classified as independent contractors, or that their agencies were not withholding taxes, until they were notified by the Maryland Comptroller or the IRS. As a result, they ended up owing self-employment taxes, but lacking the funds to pay them.

SB 384's goal to provide RSAs with accurate information will improve the job quality of direct care workers. I recently spoke with a Caroline Center CNA/GNA who, having learned that she was supposed to be paid for travel time, approached the RSA she works for, and told them about the requirement. The agency representative did not know that direct care workers should be paid for travel time. Once informed, they changed their policy. The CNA/GNA received back pay and ongoing pay for travel time.

For the foregoing reasons, Caroline Center SUPPORTS SB 384 and urges a FAVORABLE report. Should you have any questions, please call Karen Hammer at 410-916-4175.

Sponsored by The School Sisters of Notre Dame

Caroline Center SB 384 Letter in Support 021121.pd

Uploaded by: Hammer, Karen

Position: FAV



Caroline Center

Committed to Women • Committed to Work

**SB 384: Department of Health – Residential Service Agencies - Compliance with State Labor Laws Hearing before the Economic Matters Committee, February 11, 2021
Position: SUPPORT**

Caroline Center is a nonprofit workforce development organization serving unemployed and underemployed women in Baltimore. We provide an empowering education and highly effective career skills training program, inspired by the School Sisters of Notre Dame. Our courses include holistic training for Certified Nursing Assistants (CNA)/Geriatric Nursing Assistants (GNA), and Certified Pharmacy Technicians. Caroline Center supports SB 384, which would help ensure that CNA/GNAs and other direct care workers have decent jobs that respect their rights as workers.

Job quality in the healthcare sector influences career decisions. Women attend Caroline Center because they want to work in healthcare. While between 70% and 80% of Caroline Center CNA/GNAs are working shortly after graduating, a number of them end up never joining, or joining and quickly leaving the healthcare sector, because the wages and benefits for jobs in other industries are often better. Recently, one of our star CNA/GNAs took a warehouse job at Amazon, even though she wants a career in healthcare, because Amazon offered \$16.15 per hour with benefits.

Working for a Residential Service Agency could be a good option for many CNA/GNAs – if their rights are respected. There can be more flexibility in scheduling, which helps women with children, and some direct care workers prefer the one-on-one relationships that the work entails. Unfortunately, because so many RSAs misclassify their workers as independent contractors, the appeal of these jobs is diminished, and many workers opt for other employers who do provide benefits, overtime, and other protections.

In addition to lost wages and the lack of benefits, graduates sometimes experience tax consequences from working for RSAs. They did not know that they were classified as independent contractors, or that their agencies were not withholding taxes, until they were notified by the Maryland Comptroller or the IRS. As a result, they ended up owing self-employment taxes, but lacking the funds to pay them.

SB 384's goal to provide RSAs with accurate information will improve the job quality of direct care workers. I recently spoke with a Caroline Center CNA/GNA who, having learned that she was supposed to be paid for travel time, approached the RSA she works for, and told them about the requirement. The agency representative did not know that direct care workers should be paid for travel time. Once informed, they changed their policy. The CNA/GNA received back pay and ongoing pay for travel time.

For the foregoing reasons, Caroline Center SUPPORTS SB 384 and urges a FAVORABLE report. Should you have any questions, please call Karen Hammer at 410-916-4175.

Sponsored by The School Sisters of Notre Dame

Caroline Center SB 384 Letter in Support 021121.pd

Uploaded by: Hammer, Karen

Position: FAV



Caroline Center

Committed to Women • Committed to Work

**SB 384: Department of Health – Residential Service Agencies - Compliance with State Labor Laws Hearing before the Economic Matters Committee, February 11, 2021
Position: SUPPORT**

Caroline Center is a nonprofit workforce development organization serving unemployed and underemployed women in Baltimore. We provide an empowering education and highly effective career skills training program, inspired by the School Sisters of Notre Dame. Our courses include holistic training for Certified Nursing Assistants (CNA)/Geriatric Nursing Assistants (GNA), and Certified Pharmacy Technicians. Caroline Center supports SB 384, which would help ensure that CNA/GNAs and other direct care workers have decent jobs that respect their rights as workers.

Job quality in the healthcare sector influences career decisions. Women attend Caroline Center because they want to work in healthcare. While between 70% and 80% of Caroline Center CNA/GNAs are working shortly after graduating, a number of them end up never joining, or joining and quickly leaving the healthcare sector, because the wages and benefits for jobs in other industries are often better. Recently, one of our star CNA/GNAs took a warehouse job at Amazon, even though she wants a career in healthcare, because Amazon offered \$16.15 per hour with benefits.

Working for a Residential Service Agency could be a good option for many CNA/GNAs – if their rights are respected. There can be more flexibility in scheduling, which helps women with children, and some direct care workers prefer the one-on-one relationships that the work entails. Unfortunately, because so many RSAs misclassify their workers as independent contractors, the appeal of these jobs is diminished, and many workers opt for other employers who do provide benefits, overtime, and other protections.

In addition to lost wages and the lack of benefits, graduates sometimes experience tax consequences from working for RSAs. They did not know that they were classified as independent contractors, or that their agencies were not withholding taxes, until they were notified by the Maryland Comptroller or the IRS. As a result, they ended up owing self-employment taxes, but lacking the funds to pay them.

SB 384's goal to provide RSAs with accurate information will improve the job quality of direct care workers. I recently spoke with a Caroline Center CNA/GNA who, having learned that she was supposed to be paid for travel time, approached the RSA she works for, and told them about the requirement. The agency representative did not know that direct care workers should be paid for travel time. Once informed, they changed their policy. The CNA/GNA received back pay and ongoing pay for travel time.

For the foregoing reasons, Caroline Center SUPPORTS SB 384 and urges a FAVORABLE report. Should you have any questions, please call Karen Hammer at 410-916-4175.

Sponsored by The School Sisters of Notre Dame

Kelley Testimony SB 384 .pdf

Uploaded by: Kelley, Delores

Position: FAV

SENATOR DELORES G. KELLEY
Legislative District 10
Baltimore County

—
Chair
Finance Committee

—
Executive Nominations Committee
Rules Committee
Legislative Policy Committee



Miller Senate Office Building
11 Bladen Street, Suite 3 East
Annapolis, Maryland 21401
410-841-3606 · 301-858-3606
800-492-7122 Ext. 3606
Fax 410-841-3399 · 301-858-3399
Delores.Kelley@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**TESTIMONY OF SENATOR DELORES G. KELLEY
REGARDING SENATE BILL 384-HEALTH FACILITIES-
RESIDENTIAL SERVICE AGENCIES-COMPLIANCE WITH
STATE LABOR LAWS**

BEFORE THE SENATE FINANCE COMMITTEE

February 11, 2021

Mr. Vice-Chair and Members:

The current pandemic is highlighting a long standing and increasing problem of many “personal care aides” being misclassified intentionally or unintentionally as independent contractors, by the agencies which recruit them, control their work assignments duties, hours,

SB 384

Page 2

and net pay. Such independent contractors also collect fees owed from either the client, who is served, or from the client's insurer. Yet many companies or business owners classify the workers whom they send into the homes of ill or disabled clients as "independent contractors," not as employees of the business owner or agency which controls every aspect of the worker's employment.

Senate Bill 384 is here, not to punish, but to educate such misguided agency heads or employers so they are

SB 384

Page 3

clear about specification and legal requirements for properly classifying their home care workers.

The Bill's reporting requirements regarding worker's pay rate and classification as employee or independent contractor simply applies only to Medicaid-funded home care, and not to the rest of Maryland's home care market. This limited reporting requirement is consistent with Maryland's existing policy that businesses receiving state funds should be transparent in using such funds.

SB 384 requires agencies involved in personal home care simply to read and sign the guidance document

SB 384

Page 4

which they will receive once every three years, when applying for renewal of licensure from the Maryland Department of Health. Also, the bill clarifies that the only new requirement applies only to Medicaid-funded home care, not to home care funded from any other sources.

There are no enforcement provisions in SB 384. If the Department finds continuing problems of personal care misclassification once the Bill's requirements are in place, we can decide at that time how to further address the misclassification problem residential care agencies. The Bill does permit the Department to not

SB 384

Page 5

renew the license of any residential Service Agency that persists in misclassifying its workers.

The Bill requires agencies to read and to sign the guidance document only once every three years, when applying for renewal of licenses from the Maryland Department of Health, rather than every year. This Bill requires reporting of the worker's employment classification (i.e. employee or independent contractor) and pay rate.

There are no enforcement provisions in this Bill, the purpose of which is to help state agencies work

SB 384

Page 6

together to end misclassification by residential service agencies.

Given the current pandemic, we need more personal care workers to care for home-bound and/or disabled and elderly residents.

Misclassification of home care works is both a race equity issue and a gender equity issue, as such a very high percentage of these workers in Maryland are Black women and other women of color. When they're misclassified, it can cause financial disaster for them and their families if they're injured, because it is much

SB 384

Page 7

**harder for a misclassified worker to get worker's
compensation. I therefore urge your favorable report
of Senate Bill 384.**

2021-02-11 SB 384 (Support).pdf

Uploaded by: Kemerer, Hannibal

Position: FAV

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

February 11, 2021

TO: The Honorable Delores G. Kelley
Chair, Finance Committee

FROM: The Office of the Attorney General

RE: Senate Bill 384 – Health Facilities – Residential Service Agencies – Compliance with
State Labor Laws – **SUPPORT**

The Office of the Attorney General urges the favorable report of Senate Bill 384, which would require the Maryland Department of Health, Maryland Department of Labor, and the Office of the Attorney General to produce a guidance document concerning the application of Maryland Wage and Hour Laws to the employment of “personal care aides” by residential service agencies (hereinafter, RSAs).

There are about 1,351 RSAs in Maryland, and collectively they employ tens of thousands of workers at or near minimum wage. However, many of the employees at RSAs, notably, personal care aides, are misclassified as independent contractors. As independent contractors, these individuals do not have the protections of Maryland wage and employment laws – which means the loss of minimum wage and overtime benefits, unemployment benefits, workers’ compensation benefits, protections against illegal employment discrimination, and lack of protections against wage theft for RSA workers.¹

Senate Bill 384 would develop guidelines to properly classify personal care aides as employees, rather than independent contractors. In so doing, personal care aides would be afforded the protections of Maryland wage and employment law.

For these reasons, the Attorney General urges the Committee to favorably report Senate Bill 384.

cc: Members of the Finance Committee

¹ Md. Dep’t of Lab., *Employee or Independent Contractor? – The Maryland Guide to Wage Payment and Employment Standards*, <https://www.dllr.state.md.us/labor/wagepay/wpempindcont.shtml> (last visited Feb. 9, 2021).

SB 384 - Direct care transparency - support.pdf

Uploaded by: Meyer, Christopher

Position: FAV

Maryland Should Invest in Good Jobs; Clear Standards, Transparency Will Help

Position Statement in Support of Senate Bill 384

Given before the Senate Finance Committee

Maryland's budget is a moral document that has the power to move us toward broadly shared prosperity if invested wisely, and just as much power to move us in the wrong direction if not. Investing Marylanders' shared resources in decent jobs that pay a family-supporting wage is vital to support a healthy, equitable economy. Senate Bill 384 would advance these goals while strengthening our long-term care workforce. For these reasons, the Maryland Center on Economic Policy supports Senate Bill 384.

Long-term care workers provide essential services to aging Marylanders and Marylanders with disabilities, but the state struggles to meet the need for these workers. Demographic change is expected to worsen this shortfall in coming years and decades. Paltry wages and dangerous working conditions are an important contributor to this worker shortage, and disproportionately harm women of color, who constitute the bulk of this workforce.

Research shows that long-term care provided in the community rather than in residential facilities is especially beneficial, leading to better health outcomes for clients and often lower Medicaid costs. However, the private agencies the state relies on to provide these services do not consistently follow labor law—such as by misclassifying care workers as independent contractors rather than employees. This misclassification excludes workers from basic wage and hour protections and shifts tax responsibilities from the employer to the worker.

Senate Bill 384 would ensure that home care agencies are aware of applicable labor law and enables the state to monitor compliance. A three-page, plain-English explanation of agencies' responsibilities will make it easier for agencies to be confident they are following the law.

The bill's reporting requirements are equally important. Maryland lawmakers have taken a number of smart steps to ensure that state investments are made transparently, such as by requiring employers subject to prevailing wage laws to report wages and by requiring online publication of state procurement contracts. Senate Bill 384 creates a simple reporting process to ensure the Maryland Department of Health knows how much home care agencies pay their workers. This helps the state invest in a healthy economy. The process is designed to avoid creating burdens for employers:

- The process simply adds two columns to a spreadsheet the agencies already provide to the state
- The process does not make any information publicly available or available to competitors
- The information is generally submitted only annually.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Finance Committee make a favorable report on Senate Bill 384.

SB384_FAVORABLE_Marylanders for Patient Rights.pdf

Uploaded by: Palmisano, Anna

Position: FAV

Marylanders for Patient Rights

Marylanders for Patient Rights - FAVORABLE SB 384

Chair Delores Kelley
Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen St., Annapolis, MD 21401

Dear Chair Kelley,

On behalf of Marylanders for Patient Rights, I am writing in **SUPPORT OF SB 384**, Residential Service Agencies – Compliance with State Labor Laws. This commonsense bill will help Maryland's 30,0000 personal care aides who have been among the most at-risk frontline workers as the pandemic raged through our elderly population. This workforce is too often marginalized, despite the critical role it plays in caring for our elderly family members and friends.

The bill, which focuses on guidance and reporting for Residential Service Agencies (RSAs), will help to protect workers and improve existing law by increasing transparency and improving the quality of data collection. First, the bill will help to educate RSAs by creating a short guidance document which will be required reading for RSAs prior to obtaining or renewing a license. Second, for Medicaid-funded work only, two additional items of data will be added to existing tracking: employment classification and pay rate. This will help the state to better track a vulnerable workforce and to ensure transparency.

I urge your committee to return a FAVORABLE report on SB 384, and to support our personal care aides who play such a vital role in protecting the elderly and disabled in Maryland.

Thank you,
Anna Palmisano

Anna Palmisano, Ph.D.
Marylanders for Patient Rights
palmscience@verizon.net
www.marylandpatientrights.org

Public Justice Center - FAVORABLE - SB384.pdf

Uploaded by: Rodwin, David

Position: FAV



David Rodwin, Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-5815-9409, ext. 249
rodwind@publicjustice.org

SB 384 - Health Facilities - Residential Service Agencies - Compliance with State Labor Laws Hearing before the Senate Finance Committee, February 11, 2021

Position: SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project aims to ensure that our state's low-wage workers receive fair and full payment for their labor, as well as other basic protections on the job. The PJC **supports SB 384** and urges a **favorable** report.

The problem: Maryland's 30,000 personal care aides are often misclassified as independent contractors, denying them access to the social safety net and reducing job quality when Maryland faces a shortage of these essential workers.

- A 2018 [study](#) found that Maryland will need nearly 40 percent more care workers over the next ten years due to our aging population. But poor job quality is causing a shortage. The shortage is worsening during the pandemic, as many care recipients seek to leave nursing facilities.
- Misclassification occurs when employers wrongly call personal care aides "independent contractors" (meaning they are self-employed and have their own businesses) instead of employees. Misclassification cuts workers out of social safety net protections like workers' compensation and unemployment insurance that are available to employees but not independent contractors.
- Some employers misclassify their workers because they rely on "word of mouth" in the industry rather than legal advice. Correcting misclassification will improve job quality and attract more personal care aides to the field at a time when our state needs them more than ever.

SB 384's solution: guidance and reporting.

- The bill has two parts. First, it would require the development of a short guidance document that would explain the differences between independent contractors and employees, and how these differences apply to the home care industry. The bill would then require that residential service agencies (MDH-licensed home care agencies) read this guidance document when they obtain their license. This will help educate RSAs about existing Maryland law; without it, many RSAs will continue to rely on incorrect word of mouth.
- Second, for Medicaid-funded work only, it minimally expands reporting by adding two data points to the existing system MDH already uses to track Medicaid-funded personal care: the worker's employment

classification and pay rate. Reporting this information will help Maryland learn more about how state money is spent.

This bill is consistent with state policy that businesses receiving state money should use it transparently.

- Maryland has long sought to ensure that businesses receiving state money use it transparently and create decent jobs, as shown by Maryland's Prevailing Wage and Living Wage Laws. In the Prevailing and Living Wage contexts, businesses not only pay higher wages but submit biweekly payroll reports showing the precise dollar amount every worker was paid.
- SB 384 offers a narrower and less burdensome means of ensuring transparency. For Medicaid-funded work only, it would simply add two columns to an existing spreadsheet MDH uses to track Medicaid-funded personal care work: one for the worker's classification as employee or independent contractor, and one for the worker's pay rate. This information will help inform the state about how its money is spent.

Misclassification of personal care aides is both a *race equity* issue and a *gender equity* issue.

- Historically, care work was often not considered "real work" because it was performed by women, especially women of color. Personal care aides in Maryland are mostly Black women: about 90% are women and about 70% are Black.
- When personal care aides are wrongly classified as independent contractors, it makes it much harder to obtain workers' compensation—and injury rates are extremely high due to the lifting the job entails. This can cause financial crisis and even homelessness.
- Misclassification also increases workers' tax burden as they mistakenly file as "self-employed." In the aggregate, misclassification increases instability for many Black families and deepens the racial wealth gap.

Misclassification of personal care aides hurts businesses doing the right thing—which is why the country's leading home care trade association denies membership to home care agencies that classify such workers as independent contractors.

- Home care agencies that properly classify their employees face unfair competition from agencies that misclassify their workers. Businesses that misclassify their employees do not pay employment taxes, giving them an unfair—and illegal—advantage over businesses that follow the law.
- Home care agencies that misclassify their employees also "poach" workers from law-abiding agencies by promising them tax-free pay—but without telling workers that they will face a much higher tax burden at the end of the year as supposedly "self-employed" individuals. This increased turnover hurts home care agencies and consumers of care.
- For these reasons, the country's leading home care trade association—the Home Care Association of America, with chapters in 16 states—requires its members to hire their caregivers as W-2 employees and "supports efforts to clarify and fully enforce existing worker classification laws." Please see the attached policy page of the Home Care Association of America and press release from Age Safe America—a leading organization dedicated to quality care—explaining this position and the reasons for it, with relevant sections highlighted.

For the reasons indicated above, the Public Justice Center **SUPPORTS SB 384** and requests a **FAVORABLE** report.

[Member Login](#) | [Become a Member](#)



[MEMBERSHIP RESOURCES](#)

[STATE CHAPTERS](#)

[EDUCATION/EVENTS](#)

[ADVOCACY/POLICY](#)

[ABOUT HCAOA](#)

[FIND A JOB](#)

[Home](#) | [Advocacy/Policy](#) | [Issues & Positions](#)

Issue Briefs, Position & White Papers

POSITION

Worker Misclassification

The Home Care Association of America (HCAOA) supports efforts to clarify and fully enforce existing worker classification laws. Many in-home, non-medical companion care workers should be classified as employees, because how, where and when they perform their duties is controlled by the person or entity who sets up the assignment. HCAOA asks that you support legislative and regulatory efforts to enhance appropriate worker classification.

[DOWNLOAD](#)

POSITION

Elder Abuse Guidelines

Elder abuse is a serious problem affecting hundreds of thousands of older persons each year. Professionals in the field of aging are in a unique position to recognize this problem and initiate intervention. HCAOA supports the development of policies and procedures by its member agencies to reduce the incidence of elder abuse, and to recognize it and respond properly when it is encountered.

[DOWNLOAD](#)

POSITION

Keep Home Care Affordable

There is a critical issue surrounding the affordability of home care in the United States. As an advocate for private duty home care, the Home Care Association highlights important ways to keep home care affordable in the United States.

Age Safe® America Announces the Home Care Association of America as a Preferred Partner

Seniors, family members and homeowners are looking to Age Safe America for trusted information on home safety and aging-in-place solutions.

SARASOTA, Fla. ([PRWEB](#)) June 18, 2019 -- Age Safe America, LLC and Home Care Association of America (HCAOA) have negotiated an opportunity for all HCAOA Members to be preferred home care providers on the nationwide Age Safe® Services Registry. The Registry refers vetted professionals to aging Americans and their families. Members of the Age Safe Services Registry undergo a "best practices" background screening by their US based partner and/or belong to a reputable industry association and/or carry recognized professional credentials.

The Age Safe Services Registry is the only national network of [Senior Home Safety Specialists™](#) and Aging Services Providers with a focus on home safety and independent living. As a trusted source, Age Safe America receives inquiries from seniors and their adult children looking for a myriad of services, products, recommendations and solutions to successfully grow old in the place they choose; which for 9 out of 10 older Americans is their own home.

The Home Care Association of America is the leading trade association for the home care industry. Since its founding, HCAOA has made standards of care and patient safety central to its mission. Through its Standards and Ethics Committee, HCAOA has developed guidelines for the hiring, screening, training, and supervising of caregivers at all levels, often going beyond what is required by state regulations.

HCAOA membership eligibility requirements highlight the values and practices that separate HCAOA members from other providers in the home care market. For example, HCAOA members are required to hire their caregivers as W2 employees, rather than independent contractors. While families may be tempted to hire caregivers working as independent contractors because they generally work for a lower hourly rate, they often fail to understand that their liability exposure can be even greater as they essentially become their caregivers' employer.

"Quality home care services is an essential part of a successful aging in place plan, and Age Safe America's vision and core values align well with HCAOA," said Phil Bongiorno, Executive Director of Home Care Association of America. "This partnership represents a leap forward in access to full-service care for the millions of seniors choosing to age at home. Our member providers will be able to forge new partnerships with other key service providers, and the Age Safe® Services Registry will benefit from a wider array of home care providers."

Age Safe America was created in an effort to help reduce and prevent falls and their associated costs. They have positioned themselves as training and consulting leaders with their Senior Home Safety Specialist™ certification. Since 2015 Age Safe America has trained professionals throughout North America, Europe and the Middle East to meet the growing need for home safety assessments and aging in place home modifications. The company has trained healthcare professionals, home care providers, case managers, social workers, first responders, entrepreneurs, industry executives, assisted living communities, realtors, senior move managers, contractors, remodelers, home inspectors, handyman services, as well as staff and leadership of non-profit and Fortune 100 companies.

"We are very excited to initiate this partnership with the HCAOA and its quality membership. So far this year the Registry has seen considerable growth. Currently we are working with other leading industry associations and organizations with the same high level of standards to continue building the Registry nationwide," said Steven Bailey, Managing Director of Age Safe America, LLC.

About Age Safe America, LLC

[Age Safe® America](#) is a national membership, training and advocacy organization. Since 2015 the company has been directed by recognized experts in fall prevention, senior home safety, aging- in-place, universal design, home modifications, environmental assessment, and marketing to seniors and aging boomers. They provide training, consulting, certifications, product reviews, tools, resources and support to businesses and organizations providing products and services to seniors and their adult children.

About Home Care Association of America

Founded in 2002, the [Home Care Association of America](#) (HCAOA) is the industry's leading trade association – currently representing nearly 3,000 companies that employ more than 500,000 caregivers across the United States. HCAOA serves as the home care industry's unified voice. Representing a diverse number of small, mid-level and large corporations, HCAOA unites the industry through speaking with one voice in Washington, D.C. and state capitals across the country. HCAOA protects industry interests, promotes industry values, tackles barriers to growth and takes on industry-wide issues.



Contact Information

Steven Bailey

Age Safe America, LLC

<http://agesafeamerica.com/>

+1 941-706-1535

Keith Campbell

Home Care Association of America

<http://www.hcaoa.org/>

202-508-3874

Online Web 2.0 Version

You can read the online version of this press release [here](#).

NDWA comment SB384:HB652.pdf

Uploaded by: Viturro, Mariana

Position: FAV

Tuesday, February 9, 2021

Submitted via: <https://mgaleg.maryland.gov/mgawebiste/MyMGATracking/WitnessSignup>

Comments in support of SB384/HB652: Guidance and Reporting for Residential Service Agencies (RSAs)

The **National Domestic Workers Alliance (“NDWA”)** submits this testimony in support of SB384/HB652: Guidance and Reporting for Residential Service Agencies (RSAs). The National Domestic Workers Alliance (NDWA)¹ is the nation’s leading voice for dignity and fairness for the millions of domestic workers in the United States.² Founded in 2007, the National Domestic Workers Alliance represents 2.2 million domestic workers who work as nannies, home care workers, and house cleaners in private homes, providing essential care and supportive services to our children, aging parents, and loved ones with disabilities every day. NDWA reaches and engages over 250,000 domestic workers on a regular basis through our 63 affiliate organizations in 36 cities and 17 states, our local chapters in Atlanta, Durham, Seattle, Philadelphia, Washington, D.C., and New York City, and our digital platforms. Domestic workers are overwhelmingly women, well over half are women of color, and more than a third are immigrants.³ As of 2019, domestic workers are more likely than other workers to have been born outside the United States; one in five domestic workers is a foreign-born noncitizen.⁴

Domestic and care workers comprise a growing workforce that has been historically excluded from basic workplace protections, such as minimum wage, overtime, anti-discrimination protections, health and safety, and the right to organize. NDWA has led the movement both at the federal level and in several states to pass legislation to eliminate the exclusions. Unfortunately, the rampant misclassification in the domestic and home care industry undermines these efforts and enables employers to evade minimum wage, overtime, and other labor laws that domestic and home care workers have fought to secure.

In the home care workforce context alone, the workforce has more than doubled in size over the past 10 years from nearly 840,000 in 2007 to over two million in 2017.⁵ As the baby-boom population ages and the elderly population grows, the demand for the services of health aides and personal care aides will continue to increase.⁶ Yet the work is still not valued, receiving extremely low pay, no benefits and limited protections, and rampant misclassification only degrades the quality of the job further.

¹ <https://www.domesticworkers.org/raising-standards>

² Linda Burnham & Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work*, pp. 26-28, (2012), available at <http://www.domesticworkers.org/homeeconomics/>.

³ Wolfe, J., Kandra, J., & Shierholz, H. (May 2020). *Domestic Workers Chartbook*. Economic Policy Institute. <https://www.epi.org/publication/domestic-workers-chartbook-a-comprehensive-look-at-the-demographics-wages-benefits-and-poverty-rates-of-the-professionals-who-care-for-our-family-members-and-clean-our-homes/>.

⁴ Id.

⁵ Stephen Campbell, *U.S. Home Care Workers: Key Facts (2018)*, available at <https://phinational.org/resource/u-s-home-care-workers-key-facts-2018/>

⁶ U.S. Bureau of Labor Statistics (BLS), Division of Occupational Employment Statistics (OES). 2018. May 2007 to May 2017 National Industry-Specific Occupational Employment and Wage Estimates. <https://www.bls.gov/oes/current/oesrci.htm>.

National Domestic Workers Alliance (NDWA)
Oakland, CA, New York City, NY, Washington D.C. and Atlanta, GA

Many of our home care members across the country experience misclassification by the home care agencies that hire and dispatch them to do caregiving for people with disabilities or the elderly. For example, in 2018, the Los Angeles' City Attorney's Office settled a landmark misclassification case on behalf of 200 home care workers against [Hand Home Provider, Inc.](#), which was required to pay \$250,000 in restitution and \$100,000 in civil penalties.⁷ Based on these actions, along with countless other misclassification cases, NDWA's affiliate in Los Angeles has established a hotline to report misclassification in the industry and to provide ongoing support to home care workers victims of misclassification.⁸

Now, in the midst of the pandemic, it has become more clear that home care work is truly essential work. Home care workers are risking their lives every single day -- their safety and health, and that of their families -- to provide essential care. Despite being on the frontlines of the pandemic, home care workers misclassified as independent contractors have been left without benefits or a safety net.

Misclassification inflicts the most damage on workers of color and women, such as home care workers, who predominate in the low-paying jobs where independent contractor misclassification is common. All workers who are misclassified suffer from a lack of workplace protections, but women, people of color, and immigrants face unique barriers to economic security and disproportionately must accept low-wage, unsafe, and insecure working conditions. And in times of high unemployment like today, individual workers have even less market power than usual to demand fair conditions, especially in jobs that historically have been undervalued; they are forced to accept take-it-or-leave-it job conditions.

SB384/HB652: Guidance and Reporting for Residential Service Agencies (RSAs) is an important step towards resolving the prevalent misclassification in the home care industry and ensuring home care workers have basic employment rights, protections and benefits. It addresses the lack of data on the home care workforce that limits the state's knowledge on this key sector and the solutions it can craft and enact. Secondly, increasing access to information on the independent contractor classification process and their rights and protections will facilitate enforcement to prevent and challenge misclassification. This bill will establish an important precedent and model for other states to replicate in improving work standards for the home care workforce.

Work should provide people with economic stability, safety, and the opportunity to contribute to their communities. It should be a place where workers are treated fairly and with respect. Home care workers deserve good jobs that enable them to provide for themselves and their families.

For these reasons, we wholeheartedly support SB384/HB652: Guidance and Reporting for Residential Service Agencies (RSAs). The pandemic has laid bare that home care workers are essential, taking care

⁷ "Filipino Home Care Workers Win Wage Theft in Southern California," Oct. 2018-
<https://www.asianjournal.com/usa/datetime-usa/filipino-home-care-workers-win-wage-theft-case-in-southern-california/>

⁸ Pilipino Workers Center launches home care labor violations tip line in May 2019
<https://www.cadomesticworkers.org/news/pilipino-workers-center-california-domestic-workers-coalition-launch-california-homecare-agency-labor-violations-tip-line/>

of our families. It is time for us to start thinking about their needs and this bill is an important way to care for them.

For more information pertaining to our comments, I can be reached at: mariana@domesticworkers.org.

Sincerely,

Mariana Viturro
National Domestic Workers Alliance
Deputy Director

Support Letter for SB384.pdf

Uploaded by: Weadock, Kyle

Position: FAV

February 5, 2021

SUPPORT SB384/HB652: Guidance and Reporting for Residential Service Agencies (RSAs)

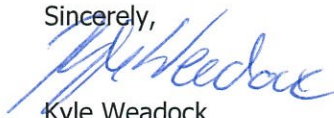
To Whom It May Concern:

My name is Kyle Weadock, President/Owner of Access Nursing Services of Maryland, Inc (ANS). ANS is a licensed Residential Service Agency (RSA #1008) which has been providing personal care services to Medicaid recipients and other patients in the state of Maryland for nearly thirty years. All of our caregivers are classified as W-2 employees of ANS and, as such, are covered under our liability and workers compensation insurance certificates which minimizes serious financial risk to the caregiver and patient due to potential injury. The majority of our caregivers are variable-hour, as-needed employees and classifying them as W-2 employees has caused no issue with the flexibility of use or scheduling of our workforce.

I firmly believe that a Residential Service Agency classifying caregivers as anything other than W-2 employees is inappropriate and downright negligent. Hiring and utilizing caregivers as independent contractors exposes them not only to serious financial risk due to the lack of insurance coverage if they're injured but it also places them in a complicated tax situation which they don't understand. I've personally witnessed caregivers classified as an independent contractor being unable to renew their license or certification with the Maryland Board of Nursing because they owe a large tax liability to the State. These caregivers were unaware of the tax situation and repercussions they were placed in because the RSA utilizing their services didn't appropriately explain this information to them before being hired. This jeopardized their livelihood by not being able to work due to a non-renewed license/certification and their ability to provide for their families. Additionally, classifying caregivers as independent contractors places the patients at serious financial risk because if the caregiver is injured on the job they can pursue legal action against the patient directly to be compensated for time lost on the job as opposed to submitting a claim to the RSA's workers compensation policy insurer which they would be required to carry if the caregivers were classified as W-2 employees. In my experience, this is not communicated to patients by the RSA either upon admission and start of care which I believe to be dishonest and careless.

Bottom line, I personally feel that much more needs to be done to stop RSA's from misclassifying caregivers as independent contractors. ANS along with a handful of other agencies we're friendly competitors with have been conducting business for decades with caregivers being classified as W-2 employees so obviously it is possible to do even in the longterm which is why I strongly support SB384/HB652.

Sincerely,

A handwritten signature in blue ink that reads "K. Weadock".

Kyle Weadock
President/Owner

Scanned from a Xerox Multifunction Printer (1) (2)

Uploaded by: Bayne, Mark

Position: FWA



Comprehensive Nursing Services, Inc.
Comprehensive Home Health Services

January 19, 2021

Del. Lily Qi
House Office Building, Room 223
6 Bladen St., Annapolis, MD 21401

Testimony IN SUPPORT OF SB384-Health Facilities – Residential Service Agencies – Compliance With State Labor 3 Laws

Dear Delegate Qi,

My name is Dr. Mark Bayne, and I am the co-owner of Comprehensive Nursing Services, Inc. CNS is a licensed Residential Service Agency accredited by the Joint Commission. We provided in-home nursing services for over 33 years to medically technology-dependent patients. I am testifying today in support of SB384.

The Independent Contractor Defined as per the IRS states: "The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done." This statement conflicts with our Maryland COMAR regulation 10.07.05.12 (Section E) for Nursing Supervision, which states:

(1) For clients who require skilled services or assistance with the activities of daily living, an agency shall have a registered nurse to provide oversight for:

(a) Implementation of the care plan;

(b) Delegation;

(c) Supervision; and

(d) Training.

(2) The registered nurse shall provide periodic, on-site supervision of care:

(a) At least every 45 days if the staff administers medications to the client;

(b) At least every three months if the staff assists the client with self-administration of medications;

(c) At least every four months if the staff does not administer medications or assist the client with medication self-administration; or



Joint Commission Accredited

8817 Belair Road | Suite 203 | Baltimore, MD | 21236-2446
410.529.0078 | Fax 410.529.4511 | www.comp nursing.com

(d) At a greater frequency established by the registered nurse due to the client's medical condition or clinical status.

(3) The agency shall maintain accurate documentation of the supervision that is provided by the registered nurse.

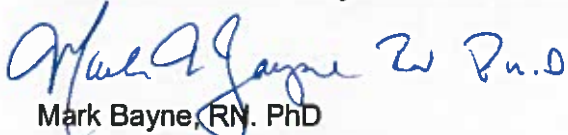
Mr. Jared Murphy, the attorney for DLLR agreed that this business practice is out of compliance, and RSA's cannot function with subcontractors.

Aside from operating outside the labor law, agencies that utilize sub-contractors do not provide the proper safeguards to their clients.

Operating under 1099 is unjust to employees. Applicants applying to my company find themselves to have tax struggles because, under their former 1099 employer, they did not realize the agency was not withholding Federal and State taxes. These employees potentially are also not covered under malpractice or workers' compensation.

Additionally, this is unfair to the agencies that follow the COMAR regulations with W-2 employees. Agencies like mine are responsible for FUTA, Maryland unemployment, and FICA. We also carry professional liability and workers' compensation insurance. Agencies operating within the labor laws scope with W-2 employees must pay these additional costs to run a business. I am also required to pay for overtime and healthcare to qualifying employees. Agencies that employ subcontractors do not carry this overhead.

Lastly, this is unfair to the State of Maryland. The State has lost revenue due to agencies operating outside the scope of the labor laws. RSA's using subcontracted employees, the State of Maryland, cannot collect Federal and State unemployment from these agencies". Last year, my company, Comprehensive Nursing Services, paid over ten thousand dollars in Maryland State Unemployment taxes. Thank you for your time,



Mark Bayne, RN, PhD
Director of Nursing Services
Comprehensive Nursing Services, Inc
8817 Belair Road, Suite 203
Baltimore, Maryland 21236-2446
Tel-410.529.0078
Fax-410.5295019

Scanned from a Xerox Multifunction Printer (28).pd

Uploaded by: Bayne, Mark

Position: FWA



Comprehensive Nursing Services, Inc.
Comprehensive Home Health Services

February 5, 2021

Hon. Delores Goodwin Kelly
Miller Senate Office Building, 3 East Wing
11 Bladen St., Annapolis, MD 21401

Hon. Lily Qi
House Office Building, Room 223
6 Bladen St., Annapolis, MD 21401

Dear Senator Kelley and Delegate Qi,

My name is Dr. Mark Bayne, and I am the co-owner of Comprehensive Nursing Services, Inc. CNS is a licensed Residential Service Agency accredited by the Joint Commission. Recently I submitted written testimony in favor of SB384.

I support this bill as it justifies the unfairness that employees, patients, and the State of Maryland burden, unlike RSA's that operate using sub-contracted employees. However, I am asking that the bill expand its personal care aide definition to include LPN and RN's. These licensed professionals contribute to the caregivers' population and working under agencies using 1099 is unfair to them.

As stated in my testimony, applicants applying to my company find themselves to have tax struggles because of the lack of withholding Federal and State taxes, which results in unfairness to the employee. I am also concerned that the families being cared for may not be protected with workers' compensation or medical malpractice.

Additionally, this is unfair to the agencies such as mine, responsible for FUTA, Maryland unemployment, and FICA. We also carry professional liability and workers' compensation insurance. Agencies that employ subcontractors do not have this overhead and pay time and a half.

And finally, this practice is unfair to the State of Maryland because the State has lost revenue due to RSA's using subcontracted employees. The State of Maryland cannot collect State unemployment from these agencies". As I have stated, CNS paid over ten thousand dollars in Maryland unemployment tax in 2020.

I appreciate your attention to this issue as it has been something, I have been trying to bring light for some time. I hope that you consider expanding this bill to include LPN's and RN's. If you would like to discuss further, I would be happy to schedule a time to speak.

Thank You,

Mark Bayne, RN, PhD

Director of Nursing Services



Joint Commission Accredited

8817 Belair Road | Suite 203 | Baltimore, MD | 21236-2446
410.529.0078 | Fax 410.529.4511 | www.comp nursing.com

SB0384_FWA_MNCHA_RSA Compliance with State Labor L

Uploaded by: Kauffman, Danna

Position: FWA



Senate Bill 384: *Health Facilities – Residential Service Agencies –
Compliance with State Labor Laws*

Senate Finance Committee
February 11, 2021

Position: SUPPORT with Amendment

On behalf of the Maryland-National Capital Homecare Association (MNCHA), whose members include Medicare-certified home health agencies, private duty companies and durable medical equipment suppliers across the State, we support Senate Bill 384 with an amendment. Simply stated, the bill requires the Office of the Attorney General, in consultation with the Maryland Department of Labor, to produce a guidance document concerning the application of employee protection laws to the employment of personal care aides employed by residential service agencies. The bill also requires a residential service agency receiving Medicaid reimbursement to report the classification and the rate of pay for personal care aides to the Department of Health.

MNCHA supports the development and distribution of the guidance document to ensure that residential service agencies understand the distinction between employee and independent contractor. MNCHA also supports the requirement for residential agencies to certify compliance with applicable laws. However, as drafted, the bill requires that the certification be done on initial license and upon renewal. During the 2018 Session, legislation was enacted that created non-lapsing licenses for health care facilities, including residential service agencies. Therefore, MNCHA recommends altering the language to require certification as a condition of initial licensure and every three years on a form developed by the Department of Labor.

MNCHA, however, does not support the reporting of pay rates for personal care aides and request that this provision be stricken from the bill. This adds another administrative burden on residential service agencies which are already struggling, which has been exacerbated through low Medicaid reimbursement rates and the lack of State funds to offset COVID-19 pandemic costs.

With these changes, MNCHA supports a favorable report.

For More Information:

Dawn Seek
Executive Director
Maryland-National Capital Homecare Association
Office: 410-980-6135

Danna Kauffman
Schwartz, Metz and Wise, P.A.
dkauffman@smwpa.com
410-244-7000

3 - FIN - SB 384 - MDH - LOI.pdf

Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: INFO



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

February 10, 2021

The Honorable Delores G. Kelley, Chair
Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, MD 21401-1991

RE: Senate Bill 384 - Health Facilities - Residential Service Agencies - Compliance with State Labor Laws – Letter of Information

Dear Chair Kelley and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information on Senate Bill 384 – Residential Service Agencies - Compliance with State Labor Laws.

SB 384 requires the Office of the Attorney General, in consultation with MDH and the Maryland Department of Labor, to produce a guidance document, by December 30, 2021, concerning the application of employee protection laws to personal care aides employed by residential service agencies, requiring a residential service agency to certify certain information through the signature of a certain individual as a condition of obtaining or renewing a license, etc.

Due to ongoing COVID-19 response efforts, MDH unfortunately does not have the fiscal or personnel resources to implement this bill if it is passed. Many of MDH's current personnel have already increased their workload and absorbed additional tasks that are critical to the COVID-19 response.

We recognize and value the importance of this bill and its impact on Marylanders. As such, we respectfully request this bill be held and reintroduced in the 2022 Session. We look forward to working with the bill sponsor(s) and appropriate stakeholders in the interim.

I hope this information is useful. If you have questions or need more information about this subject, please do not hesitate to contact me at (410) 260-3190 or webster.ye@maryland.gov or Deputy Director of Governmental Affairs Heather Shek at heather.shek@maryland.gov and the same number.

Sincerely,

A handwritten signature in blue ink, appearing to read "Webster Ye".

Webster Ye
Assistant Secretary, Health Policy