

NDWA Comments SB180 Maryland.pdf

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Position: FAV

NATIONAL DOMESTIC WORKERS ALLIANCE

Wednesday, February 8, 2023

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

Comments in support of SB180: Residential Service Agencies - Reimbursement - Personal Assistance Services

The **National Domestic Workers Alliance (“NDWA”)** submits this testimony in support of SB180, Residential Service Agencies - Reimbursement - Personal Assistance Services.

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 over 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 300,000 domestic workers on a regular basis through our 63 affiliate organizations in 36 cities and 17 states (including Maryland), our local chapters in Atlanta, Durham, Philadelphia, San Jose, the DC, Maryland and Virginia metro area, 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.

¹ To learn more about NDWA, please visit domesticworkers.org.

² Linda Burnham & Nik Theodore, Home Economics: The Invisible and Unregulated World of Domestic Work, pp. 26-28, (2012), available at <https://www.domesticworkers.org/wp-content/uploads/2021/06/HomeEconomicsReport.pdf/>.

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.

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.

Many of our home care members across the country – including in Maryland – experience misclassification by the home care agencies that hire and dispatch them to do caregiving for people with disabilities or the elderly. During the pandemic, home care workers risked their lives every single day – their safety and health, and that of their families – to provide essential care. Despite being on the frontlines, home care workers misclassified as independent contractors were left without benefits or a safety net. And most home care workers in Maryland who provide care funded and paid through Maryland’s Medicaid waiver programs continue to receive shamefully low pay. In NDWA’s experience, these workers nearly always earn less than \$15 an hour, and often earn less than \$13 an hour.

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.

SB180 takes an important step in the right direction. It will ensure that Medicaid funds only reimburse RSAs who classify home care workers as employees and thus, disincentivize RSAs from misclassifying the home care workers who work for them as independent contractors.

Medicaid-funded work is government-funded work. We should not neglect a workforce that is 90% women and mostly women of color – as it is in Maryland – and ignore poor job quality, low pay and misclassification that cuts workers from the social safety net and denies them benefits like workers’ compensation for this essential workforce. In fact, we should be paying *extra* attention to this workforce, especially on how they are being treated by home care agencies that pay them with the state funds. ***Maryland will never solve the home care workforce crisis – a growing shortage of these essential workers – until it ensures that home care jobs are quality jobs with benefits.***

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 SB180. Home care workers are essential, taking care 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.

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/oessrci.htm](https://www.bls.gov/oes/current/oessrci.htm).

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

Sincerely,

Alana Eichner
National Domestic Workers Alliance
Co-Director of DMV Chapter

SB180 Testimony.pdf

Uploaded by: Alex Berezin

Position: FAV

Dear Members of the Senate Finance Committee,

I am writing to express my strong support for SB180. As CEO of Complete Home Care and someone who has been in the home and community based service industry for over 13 years, I believe it is important to ensure that personal care aides who work under Medicaid programs are properly classified as employees and not misclassified as independent contractors.

It is unacceptable that, despite enforcement efforts by the U.S. Department of Labor and guidance from the Office of the Attorney General, many home care agencies continue to misclassify these workers. As someone who has seen the effects of misclassification, I understand the harm it can cause to both the workers and the consumers. This misclassification affects not only the workers, who are denied benefits and face a higher tax burden, but also the clients who depend on them for their independence, the law-abiding home care agencies that face unfair competition, and the state of Maryland, which is deprived of critical revenue. It is unacceptable that the current system allows for such widespread misclassification, leading to a decline in job quality and a reduction in the social safety net for the workers.

I am grateful that SB180 offers a solution to this long-standing problem. By requiring the Maryland Department of Health to only reimburse residential service agencies if the personal care aides are classified as employees, this bill will level the playing field for law-abiding agencies, professionalize the workforce, improve the quality of care, and ensure that public dollars are not used to violate the law.

In conclusion, I urge you to support SB180 and ensure that personal care aides are properly classified as employees. This bill would provide a simple solution that will benefit all parties involved. Thank you for your time and consideration.

Sincerely,

Alex Berezin

SB180_Marylanders for Patient Rights_fav.pdf

Uploaded by: Anna Palmisano

Position: FAV

Marylanders for Patient Rights

MARYLANDERS FOR PATIENT RIGHTS REQUESTS A FAVORABLE REPORT ON SB180 Residential Service Agencies – Reimbursement -- Personal Assistance Services

Marylanders for Patient Rights is a leading advocacy group for patients in our state. We strongly believe that SB180 is critically important to ensuring that we maintain and build a workforce of personal care aides that is so essential to Maryland patients as our population ages. We urge you to provide a favorable report.

The caregiver workforce continues to decline in alarming numbers, leaving many vulnerable patients without the help they need. It is very difficult for patients to have a revolving group of caregivers while those workers, understandably, seek better employment situations. That is why it is vital to ensure that this important workforce is treated fairly and attracts qualified and caring employees.

Basically, SB180 will ensure that personal care aides who work under certain Medicaid programs are properly classified as employees, rather than as independent contractors. The current misclassification of thousands of these essential workers has created harm by cutting workers out of ready access to benefits and imposing a higher self-employment tax burden.

The bill would address the misclassification problem by requiring that the Maryland Department of Health only reimburse Residential Service Agencies for in-home personal care under certain Medicaid waiver programs if the personal care aides are properly classified as employees.

Personal care aides have been treated as marginalized workers for too long. Please provide a favorable report on SB180, and support Maryland caregivers and their patients.

Thank you,

A C Palmisano

Anna C. Palmisano, Ph.D
Director, Marylanders for Patient Rights
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ASellers DRM Final Testimony in Support SB180 Resi

Uploaded by: Audrey Sellers

Position: FAV

SENATE FINANCE COMMITTEE
SENATE BILL 180: RESIDENTIAL SERVICE AGENCIES – REIMBURSEMENT – PERSONAL ASSISTANCE SERVICES

FEBRUARY 9, 2023

POSITION: SUPPORT

Thank you to the Chair and Committee Members, for the opportunity to provide testimony on Senate Bill 180: Residential Service Agencies – Reimbursement – Personal Assistance Services. Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the federally designated Protection and Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to increase opportunities for Marylanders with disabilities to be integrated in their communities, live independently and access high-quality, affordable health care.

Demand for health care workers is high, but job quality is often low, resulting in poor outcomes for people that require care. SB 180 would require residential services providers to classify their personal care aides (PCAs) as employees in order to be reimbursed for Medicaid-funded services in certain programs. This reclassification would benefit care provider businesses in Maryland and their employees. It would help the state address the historical race and gender inequalities inherent in care giving. Care work often is not considered “work” because it is performed by women, especially women of color. PCAs in Maryland are mostly Black women, and many are immigrants: about 90% are women and about 70% are Black and about 25% are immigrants.¹

Very low wages and independent contractor status trap these workers and their families in poverty. There are jobs, such as those at Target, where the work is not as taxing, workers are classified as employees, and the required skill level is lower offering \$24 per hour, almost twice as much as Maryland’s minimum wage. Requiring employee status for reimbursement will help move Maryland closer to race equity and gender equity and incentivize PCAs to stay in the field.

DRM’s clients have reported significant aide shortages during the public health emergency, which resulted in one client being stuck in their wheelchair for almost 48 hours. While staff shortages and call-outs are not new problems, it has gotten worse over the last two years as many PCAs have left the field for other work. The lack of equity and livable wages for PCAs reflects a system that does not value this workforce or the people PCAs serve. People with

¹ PHI, The Direct Services Workforce in Long-Term Services and Supports in Maryland and the District of Columbia, 2018, available at <http://phinational.org/resource/the-direct-services-workforce-in-ltss-in-md-and-dc/>; <http://www.phinational.org/news/phi-launches-institute-to-address-inequities-in-the-direct-care-workforce/>.

disabilities deserve a care system that invests in PCAs and ensures that they are able to receive the medically necessary care they are entitled to.

Health care is a critical public service, especially given the current pandemic. People with intellectual and developmental disabilities are three times more likely to become infected with COVID-19 and die than those without disabilities.² PCA staffing shortages are placing Marylanders with disabilities in danger of unnecessary institutionalization and significant gaps in care. SB 180 will have the impact of improving Maryland's HCBS system, both for participants and providers, which furthers the goals of and complies with the Olmstead decision and community integration mandate of the Americans with Disabilities Act (ADA).³ For these reasons, DRM strongly supports Senate Bill 180.

If you have any questions regarding DRM's testimony, please contact me using the information in my signature below. I appreciate the Committee's time and consideration in reviewing my testimony.

Respectfully,

Audrey Sellers

Advocate

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² Risk Factors for COVID-19 Mortality among Privately Insured Patients, A FAIR Health White Paper in Collaboration with the West Health Institute and Marty Makary, MD, MPH, from Johns Hopkins University School of Medicine, November 11, 2020, at <https://s3.amazonaws.com/media2.fairhealth.org/whitepaper/asset/Risk%20Factors%20for%20COVID19%20Mortality%20among%20Privately%20Insured%20Patients%20-%20A%20Claims%20Data%20Analysis%20-%20A%20FAIR%20Health%20White%20Paper.pdf>

³ Olmstead v. L.C., 527 U.S. 581 (1999); 42 U.S.C. § 12101.

SB180_Maryland Center on Economic Policy_FAV.pdf

Uploaded by: Christopher Meyer

Position: FAV

State-Funded Home Care Agencies Must Follow Labor Law

Position Statement in Support of Senate Bill 180

Given before the Senate Finance Committee

Home care workers are a vital part of the social infrastructure that keeps Maryland going. These workers provide essential services to aging Marylanders and Marylanders with disabilities. They provide long-term care in the community, rather than in residential facilities, which brings many documented benefits. But today we are failing to ensure that home care jobs are good jobs, and the result is a severe and growing labor shortage in the industry. Senate Bill 180 would strengthen Maryland's home care workforce by requiring that the state reimburse Medicaid-funded home care agencies only if they properly classify their workers as employees as required under Maryland labor law. **For these reasons, the Maryland Center on Economic Policy supports Senate Bill 180.**

Maryland already has a serious shortage of home care workers.ⁱ If current practices continue, this shortage will only grow in coming years as our state's population continues to age. Maryland's 65+ population grew by 18% from 2015 to 2021, while the 20–64 population increased by only 0.2%. By 2030, our 65+ population is projected to grow by another 29% as the 20–64 population slightly declines.ⁱⁱ We will be increasingly unable to meet the need for home care if we do not make the occupation significantly more attractive to workers.

The current shortage of home care workers is due in large part to paltry wages and dangerous working conditions.ⁱⁱⁱ As of 2021, a typical home care worker in Maryland took home only \$14.08 per hour.^{iv} However, this statistic *overstates* home care workers' true earnings because of the too-common practice of private home care agencies misclassifying workers as independent contractors rather than employees.^v **This misclassification violates federal and state labor law, strips workers of wage and hour protections, and shifts tax responsibilities from employers to workers.**

Because of the tax-shifting worker misclassification enables, a home care worker who is labeled an independent contractor can expect to take home the equivalent of only **\$12.91 per hour** paid to an employee.^{vi}

Home care agencies' refusal to abide by labor law disproportionately harms women of color, who constitute the bulk of this workforce:^{vii}

- 63% of home care workers in Maryland are Black, and 76% are workers of color.
- 80% of home care workers in Maryland are women, and 60% are women of color.
- 43% of home care workers in Maryland were born outside the United States.

Lawmakers have taken limited steps to combat misclassification and strengthen worker protections in recent years. These include requiring management at home care agencies to read and acknowledge a clear explanation of

employee classification law and requiring agencies to report to the state the number of workers they label as independent contractors. These are meaningful steps in the right direction. Senate Bill 180 presents a more comprehensive solution, requiring the state to reimburse Medicaid-funded home care agencies only if they properly classify their workers as employees.

The Maryland Attorney General's home care agency guidance makes clear why this requirement is appropriate:^{viii}

- While several areas of labor law use slightly different definitions of employment, common themes include the payment of wages, managerial control over the way work is performed, and the relationship between the work performed and the employer's core business.
- Home care agencies typically pay wages rather than a negotiated fee for service; agencies exercise significant control over workers' performance, such as by enforcing compliance with state rules for long-term care providers; and home care workers' jobs are *precisely* the core business of home care agencies.

Moreover, even if a few atypical cases may currently exist where independent contractor classification satisfies the letter of the law, requiring that Medicaid-funded home care agencies classify workers as employees advances several important policy goals:

- Most state and federal worker protection laws apply to employees. These include bedrock wage and hour law, the Healthy Working Families Act, and worker's compensation and unemployment insurance. When agencies misclassify workers, they are denying them these basic protections. **An industry without basic worker protections cannot recruit and retain a robust workforce**, and the resulting labor shortage is already harming Marylanders.
- Misclassification improperly shifts tax administration from agency human resources staff onto workers. Properly classifying workers as employees would ensure that income taxes are accurately withheld, reducing potential incorrect payments from simply handing a worker a Form 1099. **This would reduce state revenue losses** and protect workers from inadvertently accumulating intractable tax debt.
- How we invest our shared resources reflects what we value as a state. Our current practice creates low-quality jobs and asks the people who take them to provide some of the most important care work for Maryland communities. **Investing our shared resources to create good jobs benefits all of us**, strengthening our labor market and improving the quality of public services.

We should measure the health of our economy not simply by the number of dollars exchanged or the number of people who go to work each day, but by its ability to raise all families' standard of living. Strengthening protections to ensure workers are properly classified would directly benefit workers and would also reduce barriers to maintaining a sufficient home care workforce to provide essential supports to aging Marylanders and Marylanders with disabilities.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Finance Committee make a favorable report on Senate Bill 180.

Equity Impact Analysis: Senate Bill 180

Bill summary

Senate Bill 180 would require that the state reimburse Medicaid-funded home care agencies only if they classify their workers as employees.

Background

Researchers have documented a trend of private home care agencies classifying home care workers as independent contractors in spite of working conditions consistent with employment, such as significant managerial control.^{ix} This misclassification violates federal and state labor law, strips workers of wage and hour protections, and shifts tax responsibilities from employers to workers.

Maryland currently faces a shortage of long-term care workers. As the state's population continues to age in coming years, the needs for these services will grow significantly. Absent a substantial increase in the supply of long-term care workers, the shortage will become more severe.

Lawmakers in 2021 (Chapter 775) and 2022 (Chapters 673, 674) enacted laws strengthening communication between the state and home care agencies regarding employee classification. However, the laws do not strengthen the state's ability to enforce existing labor law.

Equity Implications

Senate Bill 180 would strengthen protections for home care workers who face dangerous working conditions, often take home low wages, and are disproportionately women of color. It would also benefit Marylanders with disabilities by increasing the long-term supply of workers available to provide necessary supports.

- 63% of home care workers in Maryland are Black, and 76% are workers of color.
- 80% of home care workers in Maryland are women, and 60% are women of color.
- 43% of home care workers in Maryland were born outside the United States.
- Home care workers in Maryland typically took home only \$14.08 per hour in 2021.^x For a misclassified worker, this is equivalent to \$12.91 paid to an employee.

Impact

Senate Bill 180 would likely **improve racial, gender, disability, and economic equity** in Maryland.

ⁱ “The Direct Services Workforce in Long-Term Services and Supports in Maryland and the District of Columbia,” PHI, 2018, <https://phinational.org/wp-content/uploads/2018/09/DSWorkers-Maryland-2018-PHI.pdf>

ⁱⁱ MDCEP analysis of U.S. Census Bureau Population Estimates and Maryland Department of Planning population projections.

ⁱⁱⁱ “The Direct Services Workforce,” 2018.

^{iv} May 2021 BLS Occupational Employment and Wage Statistics. Throughout this document, statistics about “home care workers” refer to home health aides and personal care aides.

^v Caitlin Connolly, “Independent Contractor Classification in Home Care,” National Employment Law Project, 2015, <https://www.nelp.org/publication/independent-contractor-classification-in-home-care/>

^{vi} Based on the misclassified worker paying the full 15.3% federal payroll tax and the properly classified worker paying only the employee side. This still overstates the equivalent wage as it does not account for the higher earnings base on which the misclassified worker pays income tax.

^{vii} MDCEP analysis of 2019–2021 IPUMS American Community Survey microdata.

^{viii} “Understanding How Maryland’s Employee Protection Laws Apply to Residential Service Agencies (RSAs) and Personal Care Aides (PCAs),” Maryland Office of the Attorney General, <https://health.maryland.gov/ohcq/docs/RSA-PCA%20Guidance%20Document.pdf>

^{ix} Connolly, 2015

^x Bureau of Labor Statistics, May 2021 Occupational Employment and Wage Statistics for Maryland

Testimony in support for Bill SB180.pdf

Uploaded by: Daniel Trosman

Position: FAV

Thank you for the opportunity to provide testimony in my support for Bill SB180. I hope some of you will share my sentiment that the job of caring for disabled or elderly is second only to parenthood. You are dealing with individuals who are often at their most vulnerable. The expectations include being compassionate, kind, selfless and often having endless patience.

Classified as contractors, these individuals are often not covered by such protections as workers compensation and unemployment insurance. They do not earn sick time or vacation time. They are not reimbursed for overtime or travel time -- all the coverage that is otherwise implied and mandated by law if you are hired and classified as a W-2 employee.

I am speaking from personal experience. For the past 15 years, I run and manage a Residential Service Agency. In 2019, our company successfully transitioned close to 400 Personal Care Aides working for us from contractor to W-2. The conversion did present new challenges, additional indirect cost and more compliance, but overall, it was an astounding success. As a result of reclassifying workers as employees from contractors, our company did not suffer from undue financial hardship. Our staff is overall happier as a result and that's crucial to the overall success of the business. Employee turnover is down. Our staff appreciates stability that comes having access to health benefits, sick time and retirement plan.

Personal Care Aides command utmost respect and admiration for the work that they do. This means they should have protections set in place to allow them concentrate on their work. Bill SB180 will afford them this opportunity.

Respectfully,

Daniel Trosman
Vice President
Absolute Home Health Care

SB0180_FAV_MNCHA_Res. Service Agencies - Reimburse

Uploaded by: Danna Kauffman

Position: FAV



Maryland-National Capital Homecare Association

Senate Bill 180: *Residential Service Agencies – Reimbursement – Personal Assistance Services*
Senate Finance Committee
February 9, 2023

Position: Support

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 180. Senate Bill 180 states that the State’s Medicaid program may only reimburse a residential service agency (RSA) for personal care services if the aide is classified as an employee rather than a 1099 independent contractor.

Requiring that workers within the Medicaid program be classified as employees is a critical step towards ensuring compliance with prevailing labor law standards and definitions of worker control. MNCHA believes that, for those RSAs that participate in the Medicaid program, Senate Bill 180 will bring worker standardization across the home care industry and will align the industry with worker classification standards and the Maryland Department of Health’s 2022 Guidance Document. By ensuring parity among all workers providing care through RSAs in the Medicaid program, the State can drive provider accountability and ensure that future reimbursement rate and worker wage increases are being utilized as intended. RSAs can then help preserve and protect the direct care workforce by supporting the rights of these workers to be paid fair wages, receive training and professional career pathing, and access employment benefits, such as paid leave and medical insurance. In addition, as the Centers for Medicare & Medicaid Services looks to implement quality assurance measures geared towards impacting social determinants of health among Medicaid beneficiaries, Maryland’s RSAs will need to implement robust training and supervisory methods to prepare their direct care workforce to deliver on these expanded quality initiatives, a need easier met by an “employed” workforce.

For these reasons, we urge a favorable vote on Senate Bill 180.

For More Information:

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PJC - SB180 - Fav - FINAL .pdf

Uploaded by: David Rodwin

Position: FAV



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SB 180: Residential Service Agencies – Reimbursement – Personal Assistance Services

Hearing of the Senate Finance Committee, February 9, 2023

Position: Favorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work. The PJC **supports SB 180**, which would ensure that home care workers who provide care under certain Medicaid programs are properly classified as employees and not misclassified as independent contractors.

Problem: Many of the personal care aides who provide in-home care under Medicaid programs are misclassified as independent contractors, denying them access to the social safety net and reducing job quality when Maryland faces a shortage of these important workers.

- Between 20,000 and 30,000 personal care aides work under Medicaid programs operated by the Maryland Department of Health's Office of Long Term Services and Supports,¹ which this bill concerns.
- Despite enforcement by the U.S. Department of Labor and a clear [guidance document](#) produced by the Office of the Attorney General,² many home care agencies (called "residential service agencies" – RSAs – by Maryland's Health Code) that employ personal care aides under these programs wrongly call the workers independent contractors. The widespread misclassification of these workers hurts everyone:
 - *It hurts workers* by worsening job quality, cutting them out of the social safety net (making it harder for them to get benefits like sick days and workers' compensation) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund.
 - *It hurts consumers* by disincentivizing RSAs from providing training to their workers, by shrinking the size of the workforce so many Marylanders depend on, and by increasing worker turnover, which – given the intimate nature of the work – can be traumatizing.
 - *It hurts law-abiding RSAs* that face unfair competition from other RSAs that choose to save money by shirking their obligations as workers' employers.
 - *It hurts the State of Maryland* by depriving it of employment tax revenue for things like the unemployment insurance trust fund – revenue Maryland and its workers depend on.

SB 180's Solution:

- SB 180 would fix the problem by providing that the Maryland Department of Health only reimburse RSAs for in-home personal care provided under certain Medicaid waiver programs if the aides who do the work are classified as employees. It is a simple solution to a problem that has long eluded one.

¹ These programs include the Home and Community-Based Options Waiver, Community First Choice, Community Personal Assistance Services, Increased Community Services, Program of All-Inclusive Care for the Elderly, Medical Day Care Services, and Model Waiver for Medically Fragile Children. SB 180 does not apply to any programs operated under the Developmental Disabilities Administration.

² This guidance resulted from the passage of 2021's SB 384, sponsored by then-Chair Delores Kelley.

- SB 180 does not assign a label to any employment relationship. Rather, it exercises Maryland's authority to decide what kinds of jobs public money should support. Maryland has long used this authority in other contexts, as shown by Maryland's Prevailing Wage Law (for public works contracts) and Living Wage Law (for certain state contracts for services). Maryland's home care workers are just as important as construction workers and also deserve the state's attention.
- Aside from Maryland's clear authority to decide what kinds of jobs it wants public dollars to support, the workers covered by this bill are employees under the law, not independent contractors: RSAs set their pay rates, enforce state rules and regulations, track their time, and often impose a variety of other controls over the terms and conditions of their work.
- SB 180 will level the playing field for law-abiding home care agencies, professionalize a marginalized workforce, improve quality of care, and ensure that public dollars are not used to violate the law.
- Last year's SB600 – codified at § 19-4A-11(c) of the Health code – already provides the Maryland Department of Health with the information it needs to ensure compliance with this year's SB 180.

Improving the quality of personal care jobs is a *race equity* issue and a *gender equity* issue.

- About 90% of Maryland's personal care aides are women and about 70% are Black.
- When these workers are misclassified as independent contractors, it hurts them, their families, and their communities.

For the foregoing reasons, the PJC **SUPPORTS SB 180** and urges a **FAVORABLE** report. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.

SB 180 - Residential Service Agencies - Reimburse

Uploaded by: Donna Edwards

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

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Donna S. Edwards

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**SB 180 - Residential Service Agencies - Reimbursement - Personal Assistance Services
Senate Finance Committee
February 9, 2023**

SUPPORT

**Donna S. Edwards
President**

Maryland State and DC AFL-CIO

Madame Chair and members of the Committee, thank you for the opportunity to submit testimony in support of SB 180. My name is Donna S. Edwards, and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of Maryland's 300,000 union members, I offer the following comments.

SB 180 prohibits the Maryland Department of Health from reimbursing a residential service agency for home health care services unless the care was provided by workers classified as employees and not independent contractors. The home health care industry is rampant with mistreatment and misclassification. SB 180 helps discourage bad behavior by limiting the potential fraudulent business opportunities for bad actors that cost the state thousands of dollars.

In November 2022, the U.S. Department of Labor (DOL) announced it had reached a settlement against A Plus Personal Home Care, based in Pikesville, Maryland. The DOL announced that the residential service agency had stolen overtime wages from over 193 home healthcare workers by illegally categorizing them as independent contractors. DOL was able to recover over \$1.13 million in stolen wages, but is having difficulty locating all of the impacted workers that may be entitled to backpay. The Economic Policy Institute published a report that found some consulting firms, like Contractor Management Services, specialize in advising residential service agencies on how to reclassify their workers as independent contractors. Stories like this are far too common in the industry and only state intervention can help root out these bad actors

The Internal Revenue Service is very clear on the differences between an employee and independent contractor, stating, "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 does not apply to the home health care industry where residential service agencies still maintain a large degree of control over when and how their employees carry out their tasks. Employers are committing payroll fraud by misclassifying their workers as independent contractors, denying the state its share of unemployment insurance, state and local taxes, and workers compensation.

The State of Maryland must stop rewarding companies that are misclassifying their workers and defrauding the public. We urge the committee to issue a favorable report for SB 180.

SB180_FAV_AlzheimersAssociationMD.pdf

Uploaded by: Eric Colchamiro

Position: FAV

Testimony of the Alzheimer's Association Greater Maryland and National Capital Area Chapters
SB 180 - Residential Service Agencies - Reimbursement - Personal Assistance Services
Position: Favorable

Chair Griffith and Vice Chair Klausmeier,

The Alzheimer's Association – representing the over 110,000 Marylanders with Alzheimer's and other forms of dementia, along with their caregivers – is here today in strong support of Senate Bill 180, which authorizes the Maryland Department of Health to reimburse a residential service agency for personal assistance services only if the personal assistance services are provided by an individual classified as an employee.

Alzheimer's, the most common form of dementia, is a disease that gets progressively worse over time. It is typically characterized by three stages. In the early stage, symptoms include trouble with planning, coming up with the right word or name, or having difficulty performing tasks at work or in social settings. In the moderate stage, people with dementia can start to withdraw, or often feel moody. They have trouble getting dressed. And as it progresses to the late stage, people can have difficulty communicating and eating, and require around the clock care. It becomes an extraordinary challenge for dementia caregivers, which wears on their mental and physical health. And at some point, frankly, it becomes too much for just them – and they require a home health aide to assist with their loved ones.

These aides, what we often call the direct care workforce, are an essential part of our care eco-system. Yet there are too many home care agencies, which employ them, who refer to them as “independent contractors”. And that hurts everyone. It cuts the workers out of benefits. It discourages people to stay in this essential workforce. And it disadvantages the many honest residential service agencies—who provide their workers a living wage and benefits—by allowing their competitors to cut costs, and make more money, on the back of this essential workforce.

This bill provides a fair solution to help this problem. And it is necessary; to help people living with Alzheimer's and dementia, to help this workforce, and to help elevate the quality of care provided. I urge a favorable report.

2023-02-09 SB 180 (Support).pdf

Uploaded by: Hannibal Kemerer

Position: FAV

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

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February 9, 2023

TO: The Honorable Melony Griffith
Chair, Finance Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB 180 – Residential Service Agencies – Reimbursement – Personal
Assistance Services – **Support**

The Office of Attorney General writes to express its support for Senate Bill 180, and its guiding principle of protecting the rights of employees. Senator Beidle's bill would permit the Maryland Department of Health to reimburse a residential service agency (RSA) for personal assistance services only if the RSA classifies its personal care aides (PCAs) as employees. RSAs sometimes classify PCAs as independent contractors, rather than employees. The Office of the Attorney General previously released guidance on the matter, explaining that this worker misclassification is illegal.¹

Misclassification hurts both PCAs and RSAs. Misclassifying a PCA as an independent contractor rather than employee denies the PCA important legal protections, such as sick leave, worker's compensation, unemployment benefits, over-time pay, and travel-time pay.² Illegal misclassification can also hurt RSAs with costly investigation and litigation by the Maryland Department of Labor or the misclassified PCA, and the potential payment of back taxes or penalties.³ For these reasons, the Office of the Attorney General supports legislation that seeks to ensure PCAs that are employees of RSAs are appropriately classified as such.

¹ MD. OFF. OF THE ATT'Y GEN., GUIDANCE MEMORANDUM: UNDERSTANDING HOW MARYLAND'S EMPLOYEE PROTECTION LAWS APPLY TO RESIDENTIAL SERVICE AGENCIES (RSAs) AND PERSONAL CARE AIDES (PCAs), available at <https://health.maryland.gov/ohcq/docs/RSA-PCA%20Guidance%20Document.pdf#search=employee%20classification>.

² *Id.*

³ *Id.*

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

For all of the foregoing reasons, the Office of the Attorney General supports Senate Bill 180 and urges a favorable report.

cc: Committee Members

SB 180 CIL testimony 2-9-23.pdf

Uploaded by: Hindley Williams

Position: FAV



SB180: Residential Service Agencies - Reimbursement - Personal Assistance Services

Testimony of Maryland Centers for Independent Living

SUPPORT

Senate Finance Committee February 9, 2023

The seven Centers for Independent Living (CIL) were established by federal law and work to ensure the civil rights and quality services of people with disabilities in Maryland. Centers for Independent Living are nonprofit disability resource and advocacy organizations located throughout Maryland operated by and for people with disabilities. CIL staff and Boards are at least 51% people with disabilities. We are part of a nationwide network which provides Information and Referral, Advocacy, Peer Support, Independent Living Skills training, and Transition Services.

Many, many of us depend on personal assistance services to support our activities of daily living and to live safely and fully in our communities. We know our personal care assistants (PCAs) well. And we know how essential they are to our well-being. We depend on a strong PCA workforce.

The shortage of PCAs has been acutely felt in our community. When we have been left without PCAs, we have been left to struggle. Sometimes we have been left unable to transfer our bodies from a wheelchair into our beds or to our washrooms. We have been left unable to get our meals and even our medicines. PCAs offer care for us in the most personal and intimate manner. They may assist us to shop or attend community functions. During the pandemic PCAs have been essential workers.

We depend on PCAs and how they show up for us. They have our support for receiving the job benefits they deserve. A stronger work force, with better protections is better for all of us.

Thank you for your consideration and anticipated support.

Contact:

Hindley Williams, Program Manager
The IMAGE Center of Maryland
(443) 320-4008
Hwilliams@imagecenter.org

Sarah Basehart, Executive Director
Independence Now
240-898-2183
sbasehart@innow.org

SB0180 FAV JOTF Testimony - Misclassification of W

Uploaded by: Ioana Stoica

Position: FAV



Advocating better skills, jobs, and incomes

**TESTIMONY IN SUPPORT OF SENATE BILL 0180:
Residential Service Agencies - Reimbursement - Personal Assistance Services**

TO: Chair Melony Griffith and Members of the Senate Finance Committee

FROM: Ioana Stoica, Policy Advocate

DATE: Wednesday, February 8, 2023

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-wage workers and job seekers in Maryland. **JOTF strongly supports Senate Bill 0180 as a means of protecting healthcare workers as well as businesses that correctly classify workers and that are at an unfair disadvantage when competing with businesses that do not.**

When workers are misclassified as independent contractors, they are not entitled to overtime time, job-protected family or medical leave, worker's compensation, and unemployment insurance. These workers are also not covered by anti-retaliation protections, and they are subject to a much higher tax burden than individuals who are correctly classified as employees. SB0180 would ensure that ALL 20,000 personal care aides who work under certain Medicaid programs are properly classified as employees and not misclassified as independent contractors, and by doing so, would provide these workers with security, stability, and the ability to better provide and be there for their families.

Worker misclassification is a racial, gender, and economic justice issue: about 90% of Maryland's personal care aides are women and about 70% are black. All of these aides are low-income workers, and research shows that they are paid significantly less on average than workers who are correctly classified. These individuals are stuck in a separate and unequal economy where they are underpaid, put in harm's way on the job, and left to fend for themselves.

Not only is misclassification a problem for workers, it poses issues for businesses that follow proper classification procedures, and introduces large losses to state and local coffers. According to the National Employment Law Projects, when workers are incorrectly classified as independent contractors, billions of dollars of payroll are never reported to state and municipal governments, resulting in lost revenue that translates into fewer services provided for low-income residents.

Correct classification of workers is sound fiscal policy and helps families, businesses, and our state. And, this bill would *not mandate* specific classifications – it would leave this decision up to employers. SB 0180 would simply *incentivize* correct classification, which the state Maryland has already done via the Prevailing Wage Law (for public works contracts) and the Living Wage Law (for certain state contracts for services).

For these reasons, we urge a favorable report on Senate Bill 0180.

For more information, contact:

Ioana Stoica / Policy Advocate / ioana@jotf.org / 240-643-0059

NWLC testimony - MD SB180 (2.9.23).pdf

Uploaded by: Julie Vogtman

Position: FAV



11 DUPONT CIRCLE NW
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WASHINGTON, DC 20036
202-588-5180
NWLC.ORG

SB 180: Residential Service Agencies – Reimbursement – Personal Assistance Services

Senate Finance Committee | February 9, 2023

Position: SUPPORT

The National Women’s Law Center (NWLC) submits this testimony in strong support of SB 180, which will better ensure that Maryland’s Medicaid dollars support residential service employers who recognize that personal care aides—most of whom are women, disproportionately women of color—are employees who deserve all the benefits and protections of Maryland’s labor and employment laws. In so doing, SB 180 will also curb abusive misclassification practices that are particularly prevalent in the home care industry and improve home care services for families throughout the state.

Since 1972, NWLC has fought for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. NWLC advocates for improvement and enforcement of our nation’s employment and civil rights laws, with a particular focus on the needs of LGBTQI+ people, women of color, and women with low incomes and their families. Ensuring that working people who are in fact employees under our employment laws are entitled to a minimum wage, overtime pay, and other rights and protections associated with employee status is a critical way to advance higher wages and better working conditions, benefiting the communities we serve.

Misclassification harms workers, their families, and the families they serve.

As Maryland’s Office of the Attorney General and the Department of Labor have explained, “[i]n general, independent contractors are in business for themselves, while employees are not.”¹ Maryland’s labor and employment laws define “employees” broadly,² and it is clear that personal care aides working for residential service agencies should fall within that definition because they do not operate their own businesses; instead, the agency pays them an hourly rate to perform specific duties for the agency’s clients.³ But misclassification persists: home care employers often view classifying their workers as independent contractors as a strategy to achieve “attractive financial returns,” notwithstanding numerous court decisions affirming that home care workers are employees.⁴

Classification as an independent contractor requires workers to forego not only minimum wage and overtime protections, but also rights to important benefits, including paid sick days, travel time compensation, unemployment insurance, and workers’ compensation under Maryland laws as well as employer-provided health insurance, retirement contributions, and more.⁵ Misclassified home care

¹ MD Office of the Attorney General, MD Dep’t of Labor & MD Dep’t of Health, *Understanding How Maryland’s Employee Protection Laws Apply to Residential Service Agencies (RSAs) and Personal Care Aides (PCAs)*, [RSA-PCA Guidance Document.pdf \(maryland.gov\)](#).

² *Id.*

³ David J. Rodwin, *Independent Contractor Misclassification Is Making Everything Worse: The Experience of Home Care Workers in Maryland*, 14 ST. LOUIS U.J. HEALTH L. & POL’Y 47, 49-50 (2020), <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1249&context=jhlp>.

⁴ *Independent Contractor Misclassification in Home Care*, NELP 1-3 (May 2015), <https://s27147.pcdn.co/wp-content/uploads/Home-Care-Misclassification-Fact-Sheet.pdf>.

⁵ See *id.* See also, e.g., Sarah Leberstein & Catherine Ruckelshaus, *Independent Contractor vs. Employee: Why Independent Contractor Misclassification Matters and What We Can Do to Stop It*, NELP 3 (May 2016), <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf>.

workers are thus deprived of the benefits and protections they are due under labor and employment laws, without additional compensation or autonomy in exchange.⁶

It is no coincidence that corporate misclassification is rampant in low-paid, labor-intensive industries in which women and people of color are overrepresented,⁷ with home care being a prime example. Black women, Latinas, and other women of color make up the majority of personal care aides and other home care workers⁸—and they often are forced to work long hours at poverty-level wages, typically hovering around \$14 per hour.⁹ Many must hold multiple jobs in order to support their own families while providing critical in-home support for clients. Nearly half (46%) of home care workers in Maryland rely on means-tested public assistance.¹⁰

At the individual level, misclassification costs workers thousands of dollars a year,¹¹ causing stress and hardship for many personal care aides and their families. And in the aggregate, these inequities exacerbate and perpetuate the racial and gender wage and wealth gaps that persist in Maryland and across the country. Moreover, the poor quality of home care jobs contributes to high turnover and an ongoing shortage of workers in the field¹²—making it even harder for Maryland’s older adults and people with disabilities to secure the care they need.

SB 180 can help improve job quality and reduce misclassification, especially for women and people of color, and ensure that state Medicaid dollars are well spent.

Maryland has long sought to ensure that businesses receiving state money create decent jobs, as shown by Maryland’s Prevailing Wage and Living Wage Laws. This legislature has also demonstrated a commitment to reducing race- and gender-based disparities and building an economy that works for all Marylanders. Enacting SB 180 will achieve all of these objectives, benefiting workers, consumers, and the state.

SB 180 will help combat abusive employer misclassification practices and ensure that more personal care aides are correctly classified as employees, with the benefits and protections that status provides—which will particularly benefit the women of color who hold the majority of the affected jobs. And taxpayer dollars will go to support better quality home care jobs—and better quality care—for Maryland residents. **For all of these reasons, we urge the Committee to pass SB 180, and respectfully request a favorable report.**

* * *

Please do not hesitate to contact Julie Vogtman at jvogtman@nwlc.org if you have questions or require additional information. Thank you for your consideration.

⁶ See, e.g., 87 Fed. Reg. 62,268 (Oct. 13, 2022) (citing 2017 Contingent Worker Supplement data indicating that independent contractors are more likely than employees to report earning less than the federal minimum wage and to work overtime hours).

⁷ Charlotte S. Alexander, *Misclassification and Antidiscrimination: An Empirical Analysis*, 101 MINN. L. REV. 907, 924 (2017) (finding that “seven of the eight high misclassification occupations were held disproportionately by women and/or workers of color”).

⁸ *Direct Care Workers in the United States*, PHI 6 (Sept. 6, 2022), <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-3/>.

⁹ PHI, *Workforce Data Center*, <https://www.phinational.org/policy-research/workforce-data-center/#states=24&var=Wage+Trends> (last visited Feb. 8, 2023).

¹⁰ Rodwin, *supra* note 4, at 54.

¹¹ See *id.* at 52.

¹² See, e.g., Elizabeth Shwe, *Home Care for Older Adults Increased During COVID, but Direct Care Workers Remain Hard to Find*, MARYLAND MATTERS (Oct. 7, 2021), <https://www.marylandmatters.org/2021/10/07/home-care-for-older-adults-increased-during-covid-but-direct-care-workers-remain-hard-to-find/>.

SB 180.pdf

Uploaded by: Loraine Arikat

Position: FAV



Testimony in support of SB 180

Residential Service Agencies – Reimbursement – Personal Assistance Services

To Chair Griffith and members of the Finance Committee:

My name is Ricarra Jones, and I am the Political Director of 1199SEIU United Healthcare Workers East. We are the largest healthcare workers union in the nation – representing 10,000 healthcare workers in long-term care facilities and hospitals across Maryland. We are proud members of the Caring Across Maryland coalition supporting SB 180 Home Care Worker Misclassification. In order to protect our most vulnerable direct care workers, SB 180 ensures that the Department of Health only reimburses residential service agencies that are classifying their workers as employees. We urge the Committee to issue a favorable report.

1199 SEIU represents workers within long-term care facilities. Many of our members interact with home care aides who help some residents in the facilities. Home care workers are an important part of the patient care team. Given the high demand of home care workers, addressing deeply entrenched retention issues is imperative. Worker misclassification strips workers from the full entitlement of just compensation and benefits. Patient quality of care is negatively impacted by high turnover when home care workers are misclassified.

The widespread misclassification of these workers hurts everyone:

- It hurts workers by worsening job quality, cutting them out of the social safety net (making it harder for them to get benefits like workers' compensation when they're injured) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund.
- It hurts consumers by shrinking the size of the workforce they depend on for their independence and increasing worker turnover, which –given the intimate nature of the work –can be traumatizing.
- It hurts law-abiding RSAs that face unfair competition from RSAs that save money by shirking their obligations as workers' employers.
- It hurts the State of Maryland by depriving the unemployment insurance trust fund (among other things) of critical revenue that Maryland and its workers depend on.

1199 SEIU believes that care work is essential work. Families across Maryland rely on home care workers for basic needs. For those reasons and more, we urge a favorable report on SB 180.

In unity,

Ricarra Jones

Political Director, 1199 SEIU

Ricarra.jones@1199.org

NASW Maryland - 2023 SB 180 FAV - Home Care Worker

Uploaded by: Mary Beth DeMartino

Position: FAV

Senate Finance Committee

Senate Bill 180: Residential Service Agencies - Reimbursement - Personal Assistance Services

February 9, 2023

*****SUPPORT*****

The Maryland Chapter of the National Association of Social Workers supports Senate Bill 180 Residential Service Agencies - Reimbursement - Personal Assistance Services. As social workers, we are in favor of this bill because it strengthens the workforce that cares for vulnerable older adults and persons with disabilities. This bill will ensure that personal care aides who work under certain Medicaid programs are properly classified as employees and not misclassified as independent contractors. It will authorize the Maryland Department of Health to reimburse a residential service agency for personal assistance services only if the personal assistance services are provided by an individual classified as an employee, guaranteeing fair and equitable wages and benefits, such as worker compensation and lower tax rates for these invaluable workers who administer care for some of our most vulnerable citizens.

Most personal care aides are employed less than full time, have hours that change frequently, and do not receive health benefits, worker's compensation, or paid leave due to their classification as independent contractors. Under Maryland's Medicaid program, between 15,000 and 20,000 personal care aides provide care under programs operated by the Office of Long-Term Services and Supports. By classifying personal care aides as independent contractors, it worsens job quality by removing the social safety net (making it harder for them to get benefits like workers' compensation when they're injured) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund. It hurts consumers by shrinking the size of the workforce they depend on for their independence and increasing worker turnover, which – given the intimate nature of the work – can be traumatizing to care recipients. Classifying personal care aides as independent contractors hurts law-abiding RSAs that face unfair competition from RSAs that save money by shirking their obligations as workers' employers.

Currently, older Marylanders and those with disabilities rely on personal care aides to administer bedside and personal care, to perform housekeeping duties, and to transport them to physicians' offices or other locations. Assistance with these tasks allows care recipients to remain in their homes rather than having to enter institutional care. Most of these individuals would prefer to remain in their local community, where they can maintain vital social

connections with family, friends, and neighbors. Furthermore, living in the community is less costly for the state of Maryland.

Requiring the classification of personal care aides as employees would make these jobs more appealing, grant equity in pay and benefits, and increase safety for both personal care aides and older adults. This requirement would lead to a more secure workforce and more consistent care for community-dwelling older Marylanders and those with disabilities.

We ask that you give a favorable report on Senate Bill 180.

Respectfully,

Mary Beth DeMartino, LCSW
Executive Director, NASW-MD

SB180-MattAuman-HomeCentris-FAV

Uploaded by: Matthew Auman

Position: FAV

Kraft, Tammy

Subject: FW: FW: SB 180 Hearing
Attachments: RSA-PCA Guidance Document.pdf

From: Matt Auman <matt.auman@homecentris.com>
Sent: Friday, February 10, 2023 10:48 AM
To: Beidle, Pamela Senator <Pamela.Beidle@senate.state.md.us>
Subject: SB 180 Hearing

Senator Beidle,

I am writing to thank you for sponsoring SB 180. I was in the audience at the hearing yesterday and my name was invoked a few times. As an introduction, I am the CEO of HomeCentris Healthcare, Maryland's largest provider of Medicaid home care services. I am also on the board of MNCHA, Maryland's home care trade association. We are strongly supporting this bill as Danna Kaufmann testified.

This bill is so important for many reasons that were discussed yesterday. Most importantly, it would level the competitive playing field for all of Maryland's RSA, it would allow for better training of caregivers, it would ensure employee protections to a class of caregivers that is not benefitting from them now, and it will increase revenue to Maryland as payroll taxes will be collected more reliably.

I do not agree with the lone dissenting witness yesterday that converting from a 1099 model to a W2 model would be administratively burdensome. In 2018, we made this same conversion to a W2 model for nearly 1,300 caregivers in approximately six months. Most RSAs have 10-50 caregivers which would not pose a large burden. I also do not agree with him regarding the legality of the 1099 model. As the Maryland DOL, Attorney General, and Department of Health wrote in the attached Guidance Document, a 1099 model is a misclassification of workers and "illegal." See attached. Unfortunately, this Guidance Document has done nothing to move RSA providers to adopt a W2 model and that is why attaching Medicaid reimbursement to compliance, as SB 180 does, is necessary.

If there is anything I can do to help support this bill with your fellow committee members, please let me know. I would be happy to meet with them and discuss the bill in detail.

Thank you.

Matthew Auman – CEO

HomeCentris Healthcare, LLC

10 Crossroads Drive, Suite 110

Owings Mills, MD 21117

410-486-5330 x118 (phone)

410-486-5331 (fax)





Understanding how Maryland's employee protection laws apply to residential service agencies (RSAs) and personal care aides (PCAs)

Maryland's RSAs sometimes wrongly classify PCAs (that is, anyone paid to provide personal care services) as independent contractors rather than employees.¹ When this happens, it is called *worker misclassification* and it is illegal. This guidance document explains (1) some differences between employees and independent contractors in the context of personal care, (2) worker misclassification and how it can cost RSAs money and hurt PCAs, and (3) some steps RSAs can take to ensure that their classification policies comply with Maryland's Labor and Employment Code.

1. What is the difference between "employees" and "independent contractors"?

- **There are two kinds of workers under Maryland's employment laws: employees and independent contractors.** In general, independent contractors are in business for themselves, while employees are not. If an RSA pays a PCA an hourly wage to perform personal care and oversees the PCA's work, the worker should usually be classified as an employee. A worker can sometimes be an "employee" under one law and an "independent contractor" under another, because different laws have different purposes and define these terms differently. Even if the IRS has accepted the classification of PCAs as independent contractors, you should not assume that a court would reach the same conclusion under Maryland's employee protection laws, which are humanitarian statutes designed to broadly protect workers and are therefore more favorable to employees.
- **Maryland's wage laws and sick leave law—including the Wage and Hour Law, Wage Payment and Collection Law, and Healthy Working Families Act—have a very broad definition of employee.** Most workers are employees, not independent contractors, under these laws. A worker's status as an employee cannot be changed by a contract or other document (like an "independent contractor agreement") that labels the worker as an independent contractor. To determine a worker's proper classification, courts consider factors related to whether workers are in business for themselves. When the employer exercises, or has the right to exercise, direction and control over the performance of an individual's work, the worker is an employee and not an independent contractor. The Maryland Labor and Employment Code defines the term "employ" broadly as "to engage an

¹ Maryland law defines "personal care" as "a service that an individual normally would perform personally, but for which the individual needs help from another because of advanced age, infirmity, or physical or mental limitation." Md. Code Ann., Health – Gen. Article § 19-301(n)(1). Personal care includes help in walking, getting in and out of bed, bathing, dressing, feeding, and general supervision and help in daily living. *Id.* § 19-301(n)(2)(i)-(vi).



individual to work,” and expressly includes “allowing an individual to work” and “instructing an individual to be present at a work site.”

- Applying these factors to RSAs and PCAs, (1) RSAs typically have authority to set and enforce conduct policies, including policies designed to ensure that workers comply with the Maryland Department of Health’s rules for Medicaid providers; (2) RSAs typically pay PCAs an hourly wage, which means that PCAs have no opportunity for profit or loss dependent on any managerial skill; (3) PCAs typically do not invest in their own equipment and cannot hire others to do the work instead of them; (4) personal care does not require advanced certifications and does not involve business-like skill; (5) PCAs typically have a working relationship with RSAs that is at least several months long; and (6) RSAs are typically in the business of providing personal care. Therefore, PCAs are more likely to be RSAs’ employees than independent contractors within the meaning of Maryland’s wage and sick leave laws. In cases where PCAs recruit their own clients, that fact alone does not make them independent contractors if factors otherwise suggest the existence of an employment relationship.
- **Maryland’s unemployment insurance law also has a broad definition of employee.** Under this law, a PCA is presumed to be an employee, not an independent contractor, unless the RSA can satisfy a test called the “ABC test.” Applying this test to RSAs and PCAs, (1) RSAs typically have the ability to control or direct PCAs’ work, (2) PCAs do not customarily have their own business, and (3) although the work is typically performed in individuals’ homes, personal care is typically the type of work that RSAs perform. Therefore, PCAs are more likely to be employees than independent contractors within the meaning of Maryland’s unemployment insurance law. For illustrations of how Maryland’s unemployment insurance law applies to workers like PCAs, see the [Code of Maryland Regulations \(COMAR\) 09.32.01.18-3](#).
- **Maryland’s workers’ compensation law also defines employee broadly.** Under this law, a worker is presumed to be an employee unless the employer can show that the worker is an independent contractor under the “common law” test. Applying this test to RSAs and PCAs, (1) RSAs typically have the power to hire PCAs, (2) RSAs typically pay wages to PCAs, (3) RSAs typically have the power to fire PCAs, (4) RSAs typically have the power to control PCAs’ conduct, and (5) personal care is typically part of the regular business of RSAs. Therefore, in the context of RSAs, PCAs are more likely to be employees than independent contractors within the meaning of Maryland’s workers’ compensation law.



2. How can misclassification of PCAs as independent contractors hurt RSAs and PCAs?

- **Misclassification hurts RSAs because it is illegal and can lead to costly investigations and lawsuits.** The Maryland Department of Labor or U.S. Department of Labor may investigate, require payment of unpaid wages and money damages to workers, and even get a court order requiring the RSA to change its classification and compensation practices. In addition, PCAs may sue an RSA for unpaid wages that they should have been paid as employees. PCAs may bring these cases individually or, in some circumstances, as class actions on behalf of other workers. A court may order the RSA to pay workers damages up to three times the wages they should have been paid. An RSA held liable under Maryland's Wage and Hour Law and Maryland's Wage Payment and Collection Law may also be responsible for the attorneys' fees of PCAs who sue them. Under these laws, individual owners of a corporation (including an RSA) may also be held personally liable for unpaid wages and attorneys' fees, putting their personal assets at risk.
- **Misclassification can also have severe tax consequences for RSAs.** If the Maryland State Department of Assessments and Taxation (SDAT) or U.S. Internal Revenue Service (IRS) finds that an RSA has failed to pay employment taxes for PCAs who should have been classified as employees, SDAT and/or the IRS may require that the RSA pay tens of thousands of dollars—or more—in back taxes and penalties.
- **Misclassification also hurts PCAs by denying them important legal protections.** These include unemployment benefits, workers' compensation, sick leave, and the right to overtime pay (for hours worked beyond 40 in a workweek) and travel-time pay (for time spent traveling from one client's home to another client's home).

3. What steps can an RSA take to ensure it follows Maryland's employee protection laws?

- **Do: Talk to a lawyer.** Employment law can be complicated. Lawyers who practice employment law can help ensure that your RSA follows Maryland law. While it may cost money to ask a lawyer about your RSA's worker classification policies, a labor investigation or a lawsuit could cost far more.
- **Do: Visit the Maryland Department of Labor's [website](#) for guidance and to learn about various outreach programs offered by the Department to employers.**



- **Do not: Assume something is legal just because others do it.** People sometimes assume a business practice is legal just because other businesses do it. Some rely on advice from friends when establishing their business's worker classification policies. But this can be dangerous, especially in industries where legal violations are common. And in Maryland, "industry practice" is not a defense to a suit for unpaid wages.
- **Do not:** Assume that if you employ a PCA on a salary basis that you don't have to pay overtime pay. PCAs are entitled to overtime wages.
- **Do: Take action to correct your RSA's employment classification policies if you believe they may be incorrect.** Changing the classification of your RSA's PCAs from independent contractors to employees does not mean you will automatically be subjected to lawsuits or liability. The best way to protect your business—and your own assets—is to make sure your RSA follows the law.



CERTIFICATION

To obtain an initial license from the Maryland Department of Health to operate as an RSA and every 3 years thereafter, an individual with authority over the RSA's pay or employment practices must complete the following certification.

I, _____ [print your name], certify that (1) I have read and understood the above guidance and (2) _____ [name of RSA] will comply with the Maryland Labor and Employment Code's requirements concerning the classification of employees.

If the RSA receives payments from the Maryland Department of Health for the provision of home care, personal care, or similar services through any Medicaid program (CFC, CO, CPAS, ICS, CP, or similar): I certify that _____ [name of RSA] does / does not [check one box] use personal care aides who have been classified as independent contractors.

Signature of individual with authority
over RSA's pay or employment practices

Date

SB 180 - WLCMD - FAV.pdf

Uploaded by: Michelle Siri

Position: FAV

BILL NO: Senate Bill 180
TITLE: Residential Service Agencies - Reimbursement - Personal Assistance Services
COMMITTEE: Finance
HEARING DATE: February 9, 2023
POSITION: **SUPPORT**

Senate Bill 180 seeks to address the illegal practice of misclassification of employees of residential service agencies as independent contractors rather than employees. Misclassification of employees denies those workers of benefits they are entitled to under the law, including overtime pay, minimum wage, and workers' compensation. It also leads to substantial losses to the state, of funds that should have been paid into unemployment insurance and workers' compensation funds¹.

This is particularly troubling as women continue to be disproportionately represented within the care service industry. Black women, in particular, are more widely represented, yet they are concentrated in the most dangerous and lowest wage jobs. Women of color are also more likely to be misclassified as independent contractors, particularly in residential care facilities, nursing facilities, and home health providers². Thus it is critical that Maryland address this practice. SB180 does so by requiring the Maryland Department of Health only reimburse residential service agencies for in-home personal care provided under certain Medicaid waiver programs *if the aides who do the work are classified as employees*.

The truth is, residential care workers are just not operating as independent contractors. They do not set their own schedules, hours, or wages. Nor do they utilize their own tools, maintain control of where or how they work, or any of the other factors the IRS considers when determining independent contractor status³. Instead, care workers perform work that is an integral part of the residential service agency, and therefore must be categorized as employees. Yet, because they are often amongst the most vulnerable workers, they are frequently misclassified without their knowledge and in violation of the law.

This bill will level the playing field for law-abiding home care agencies, professionalize a marginalized workforce, improve quality of care, and ensure that public dollars are not used to violate the law. As such, the Women's Law Center of Maryland urges a favorable report on Senate Bill 180.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

¹ <https://blog.dol.gov/2021/05/06/the-true-cost-of-misclassification>

² <https://www.dol.gov/newsroom/releases/whd/whd20221116>

³ <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>

SB180 Personal Assistance Services.pdf

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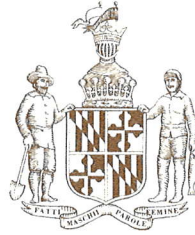
Position: FAV

PAMELA G. BEIDLE
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 9, 2023

SB180

Residential Service Agencies – Reimbursement – Personal Assistance Services

Good afternoon, Chair Griffith, Vice Chair Klausmeier and Members of the Finance Committee;

Thank you for the opportunity to present SB 180, Residential Service Agencies – Reimbursement – Personal Assistance Services. Personal care aides, also called home care workers, provide care and support to older adults and people with disabilities so they can stay in their homes and communities. They help with things like bathing, toileting, and cooking. Many of us on this committee have relied on personal care aides to help our loved ones. These workers not only provide care – they often become like family to those they serve.

Most of the home care provided in Maryland is paid for by Medicaid. This creates an opportunity to ensure that workers paid with state money have jobs that they want to stay in, and that they would recommend to their friends. But unfortunately, job quality is often poor, and Maryland is facing a home care workforce crisis. As a result, we do not have nearly enough personal care aides to meet our growing need, and Marylanders are suffering.

SB180 would help improve home care job quality and professionalize the workforce. The bill does this by preventing the misclassification of personal care aides as independent contractors. Misclassification of these workers as independent contractors hurts everyone:

- It hurts workers by worsening job quality, cutting them out of the social safety net and imposing on them a higher “self-employment” tax burden when they should be getting a tax refund.
- It hurts people who depend on care by shrinking the size of the workforce they depend on for their independence and increasing worker turnover.
- It hurts law-abiding home care agencies that face unfair competition from agencies that save money by avoiding their obligations as employers.
- It hurts the State of Maryland by depriving the unemployment insurance trust fund of revenue that Maryland and its workers depend on.

SB180 would fix the problem by providing that the Maryland Department of Health only reimburse RSAs for in-home personal care provided under certain Medicaid programs if the aides who do the work are classified as employees. It prevents the problem before it occurs, so we don't have to keep playing catch-up. These workers are employees under the law, not independent contractors:

- home care agencies set their pay rates,
- enforce state rules and regulations,
- track their time, and
- impose other controls over the terms and conditions of the work.

This is a rare bill that brings together the whole gamut of stakeholders – businesses, workers, older adults, people with disabilities, think tanks, and others. I want to emphasize that it is a pro-business bill because it will level the playing field for businesses that follow the law. That is why some of Maryland's leading home care agencies support it.

This bill does not apply to programs under the Developmental Disabilities Administration, and it does not apply to the private sector – to care that people pay for on their own or with insurance. It only applies to care provided under the Department of Health's Office of Long Term Services and Supports.

With that, I'll turn it to Dave Rodwin of the Public Justice Center, who will speak more about the bill and why it's needed now.

Thank you for your attention, I respectfully request a favorable report.

Maryland 2023 NELP Testimony on SB 180_FAVORABLE.p

Uploaded by: Sally Dworak-Fisher

Position: FAV

Testimony of Sally Dworak-Fisher

National Employment Law Project

Support for Residential Service Agencies – Reimbursement – Personal Assistant Services (SB 180)

Hearing before the Senate Finance Committee

February 9, 2023

Sally Dworak-Fisher
Senior Staff Attorney

National Employment Law Project
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The National Employment Law Project (NELP) is a 50-year-old non-profit, non-partisan research and advocacy organization specializing in employment policy. We partner with federal, state, and local lawmakers and local stakeholder groups on a wide range of workforce issues. Across the country, our staff is recognized as policy experts in areas such as unemployment insurance, wage and hour enforcement, minimum wage, and workplace protections for low-wage workers. NELP's work includes a focus on combatting misclassification of employees as independent contractors. **NELP supports SB 180 as a sensible solution to a serious problem.**

Independent contractor misclassification degrades working conditions, hurts law-abiding businesses, and depletes government coffers. Independent contractors run their own businesses and have the power to make investment decisions, set prices, and decide how and to whom to market themselves. Yet too many businesses mislabel their employees as independent contractors. Why? Because misclassifying employees as independent contractors helps the bottom line; this “payroll fraud” enables businesses to pocket up to 40% of payroll costs by avoiding employee-related taxes.¹ It also shifts business costs to workers and degrades working conditions. Misclassified employees lose minimum wage and overtime protections, workers’ compensation coverage, unemployment insurance, and the right to form a union and bargain collectively. They are also doubly penalized tax-wise, losing access to refunds for low-income employees while gaining significant tax burdens as supposedly “self-employed” business owners.

Law-abiding businesses and government coffers suffer too. As the United States Treasury Inspector General found, the practice “plac[es] honest employers and businesses at a competitive disadvantage.”² Cheating businesses pressure others to shed labor costs, creating a “race to the bottom” where following suit is necessary to remain competitive.³

State coffers also suffer as businesses avoid paying payroll taxes that fund social insurance programs. Conservative estimates suggest that the federal and state governments lose billions of dollars per year in unreported payroll taxes and unemployment insurance contributions.⁴

Misclassification is prevalent in occupations where workers of color are overrepresented, including direct care services. Misclassification is especially prevalent in labor-intensive, low-paid occupations, and where the work is performed in isolation, such as the in-home work that personal care aides provide.⁵ It is also strikingly racialized, occurring disproportionately in occupations in which people of color, including Black, Latinx, and Asian workers, are

¹ Françoise Carré, *(In)Dependent Contractor*, ECON. POL’Y INST. at 5 (Jun. 8, 2015), <https://files.epi.org/pdf/87595.pdf>. See also *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, NAT’L EMP. L. PROJECT at 5 (Oct. 2020), <https://s27147.pcdn.co/wp-content/uploads/Independent-Contractor-Misclassification-Imposes-Huge-Costs-Workers-Federal-State-Treasuries-Update-October-2020.pdf>.

² Treasury Inspector General for Tax Administration, *Additional Actions Are Needed to Make the Worker Misclassification Initiative with the Department of Labor a Success* at 1 (2018-IC-R002: Feb. 20, 2018), <https://www.tigta.gov/sites/default/files/reports/2022-02/2018IER002fr.pdf>.

³ See David Weil, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* 139-41 (2017).

⁴ *Misclassification Huge Costs*, *supra* n. 14, at 2-3. See also Carré, *supra* n. 23, at 2.

⁵ See Carré, *supra* n. 1 at 6, *Huge Costs*, *supra* n. 1 at 4.

overrepresented, including the home care and personal care fields.⁶ Thus, workers of color are disproportionately denied bedrock workplace protections and benefits through misclassification, which exacerbates income inequality and economic insecurity for Black and brown communities.

Personal Care Aides providing care under the Medicaid programs affected by SB 180 are employees of Residential Service Agencies (RSAs). Independent contractors are business owners. They have the power to make decisions about how to increase profits, whether or when to risk a loss, what prices to charge and how to market the business; they negotiate work terms at arms-length. Personal care aides who provide care under Medicaid programs operated by the Maryland Department of Health’s Office of Long Term Services and Supports are *not* independent contractors to the RSAs. They perform care work integral to the RSA’s mission under terms and conditions set by the RSA. RSAs set pay rates, assign and monitor the work, track the amount of time worked, enforce compliance with Medicaid rules, and issue pay. Personal care aides are unquestionably employees of the RSAs.

SB 180 is a good government solution. Maryland has an interest in ensuring that Medicaid waiver monies—half of which are state dollars and half of which are federal—are properly spent on providing care, not misappropriated to support violations of the law. SB 180 promotes this interest. If passed, it will proactively prevent misclassification by ensuring that personal care aides are properly classified as employees by the RSAs that employ them. This is a common sense, good-government strategy to reduce misclassification and help ensure that RSAs comply with state employment law—an improvement that will level the playing field for RSAs while benefiting personal care workers the consumers for whom they care.

For these reasons, NELP supports SB 180 and urges a FAVORABLE report.

⁶ NELP analysis of March 2022 Current Population Survey Annual Social and Economic Supplement microdata. For underlying data, see *CPS Annual Social and Economic Supplement*, U.S. Census Bureau, <https://data.census.gov/mdat/#/search?ds=CPSASEC2022> (on file with author). See also PHI, *Direct Care Worker Disparities, Key Trends and Challenges* (Feb. 22, 2022), <https://www.phinational.org/resource/direct-care-worker-disparities-key-trends-and-challenges/> (women of color comprise majority of direct care workforce).

SB 180 Residential Service Agencies Reimbursement

Uploaded by: Tammy Bresnahan

Position: FAV



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SB 180 Residential Service Agencies - Reimbursement - Personal Assistance Services
Senate Finance Committee
FAVORABLE
February 9, 2023

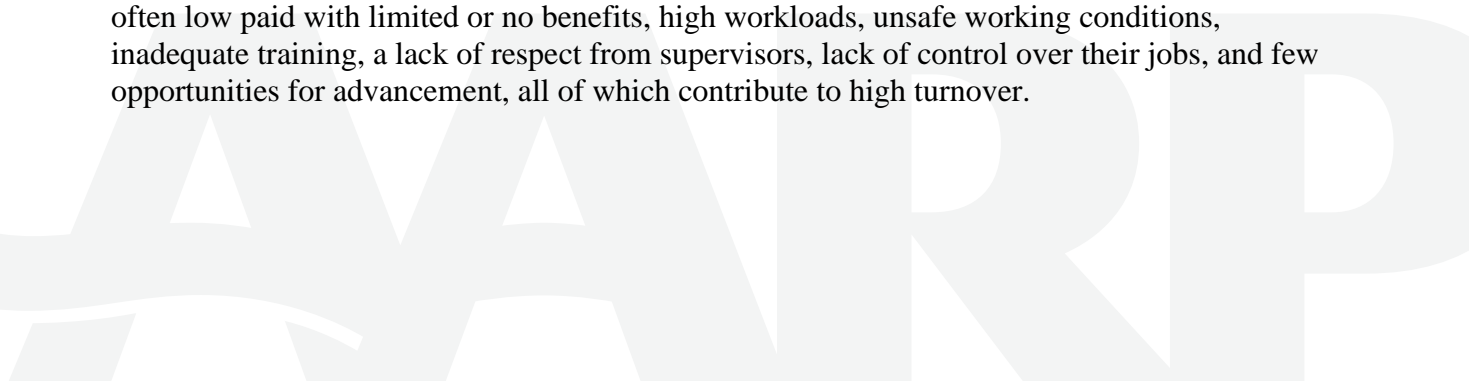
Good afternoon Chair Griffith and members of the Senate Finance Committee. My name Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP Maryland is a proud member of the Caring Across Maryland coalition supporting a package of bills to bolster quality of care in long term care settings. We would like to thank you for the opportunity to speak in support with amendments of SB 180 Residential Service Agencies-Reimbursement-Personal Assistance Services.

SB 180 authorizes the Maryland Department of Health to reimburse a residential service agency for personal assistance services only if the personal assistance services are provided by an individual classified as an employee. This is a consumer-friendly policy for many reasons. As one example, employees receive more frequent and better-quality training from their employers than independent contractors receive. As another, employees are included in Maryland's employment-based safety net protections – including sick and safe leave – while independent contractors are not. When personal care workers are unable to take a paid sick day, they are more likely to come to work while sick, putting the client at risk.

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.

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 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 180 will ensure that personal care aides who work under Medicaid reimbursement programs are properly classified as employees and not misclassified as independent contractors.

For these reasons we respectfully ask the Committee for a favorable report on SB 180. For questions, please contact Tammy Bresnahan tbresnahan@aar.org or by calling 410-302-8451.

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Position: UNF

CIRCLE OF FRIENDS, LLC
17830 NEW HAMPSHIRE RD SUITE 302 ASHTON, MD 20861
PHONE: (301)260-0338
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2/7/2023

To whom it may concern,

Dear Sir/Madam,

I wanted to take a few moments and express our opposition to SB180

We have been in business providing care for the elderly Medicaid recipients 2002 and have seen many trends in employment laws over the years. Currently, we are seeing a push from 1099 to W-2 employment model. We strongly believe this is a mistake that could lead to much lower caregiver shortages for our already underserved community.

There are more than 1200 RSA agencies in Maryland more than 50 % of Maryland's RSA still use 1099 contractors as caregivers. That's potentially 600 smaller agencies that would be negatively affected by these sudden changes. The ability to use 1099 is embedded in the Community First Choice (CFC), Community Options (CO) and Community Personal Assistance (CPAS) programs.

This transition would be overwhelming, burdensome, and will negatively affect senior home care for years to come. Home care industry is already struggling with caregiver retention and low reimbursement. Taking away ability to use 1099 would greatly affect so many companies.

In our experience, caregivers work for more than one agency at the same time, making this type of worker a good case for 1099 contractor.

The state of Maryland, through Medicaid programs creates, sets the hours for each individual client making this a dual employment situation. Its's another case for a 1099 model.

Caregivers prefer to work as 1099 and come to most agencies specifically because of 1099. They prefer to have control over schedule, the number of hours they work, client selection, location as well as financial reasons.

We are legal just audited and have been affirmed in 2022 by FDOL and MDOL.

Sincerely,

Alex Petukhov
Circle of Friends, LLC
President, Managing Partner
alex@cofllc.com

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DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Acting Secretary

February 9, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 180 – Residential Service Agencies – Reimbursement – Personal Assistance Services – Letter of Information with Amendments

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information with amendments for Senate Bill (SB) 180 – Residential Service Agencies – Reimbursement – Personal Assistance Services. SB 180 requires MDH to reimburse a Residential Service Agency (RSA) for personal assistance services only when they are provided by an individual classified as an employee of the RSA. Currently, Maryland Medicaid has 758 Medicaid enrolled RSAs providing personal assistance services. In Fiscal Year (FY) 2021, MDH reimbursed RSAs \$402,087,076 for personal assistance services provided to 14,562 Medicaid participants.

MDH relies heavily on this group of providers to serve participants receiving long term services and supports in the community as an alternative to nursing home placement. MDH is responsible for determining the reimbursement rates for the services rendered by an RSA. MDH has consistently implemented the rate increases for Medicaid long term services and supports programs as required by HB 166/SB 280 – *Labor and Employment – Payment of Wages – Minimum Wage (Fight for Fifteen)*, Chapters 10 and 11 of the Acts of 2019. The Governor’s budget proposes to expedite the HB 166/SB 280 (2019) rate increases for FY25 and FY26. If approved, Medical Assistance reimbursement rates for personal assistance service providers will increase by 12% effective July 1, 2023.

While MDH sets RSA rates, it is not the co-employer or employer of individuals who work for the RSAs. MDH does not directly employ the individuals hired by the RSAs nor does MDH determine the wages or benefits the RSAs offer employees. MDH believes it will take RSAs at least two to three years to come into compliance with the SB 180 requirement to shift to billing for only those services delivered by employees. These providers face high staffing overturns, which are likely to be exacerbated if independent contractors cannot be used. Allowing for a phase in period will help mitigate the potential impact on Medicaid’s RSA provider network and Medical Assistance participants’ ability to access services. MDH further notes that it has submitted a report to the General Assembly regarding SB 636 (Chapter 464 of the Acts of 2022), detailing MDH’s plans and the funding required to reduce the waitlists for the majority of its

waivers by 50% by FY 2028.¹ With waiver enrollment expected to grow substantially if these plans are funded, ensuring the RSA provider network remains stable is of critical importance.

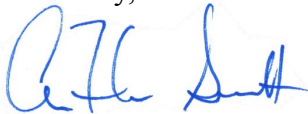
There are currently 1,874 licensed RSAs in Maryland. HB 544 *Health Facilities – Residential Service Agencies – Reporting Requirement (Ch. 673 of the Acts of 2022)* required OHCQ to estimate new reporting requirements for the RSAs regarding their use of employees and independent contractors. 310 RSAs that receive Medicaid funds have completed the certification requirement to date. Of these respondents, 161 RSAs exclusively use personal care aides who are employees and 39 RSAs exclusively use personal care aides who are independent contractors. 104 of the 310 RSAs use at least one or more personal care aides who are an independent contractor. Overall, the 310 Medicaid-enrolled RSAs reported a total of 7,208 personal care aides out of which 5,625 are employees and 1,583 are independent contractors.

MDH further notes that there will be an indeterminate impact on operations to ensure RSAs that are out of compliance with the requirement to bill only for services provided by employees are disenrolled as Medicaid providers. To the extent RSAs' status in this regard changes frequently, re-enrolling and revalidating providers will enhance this burden and cost.

Given these considerations, MDH proposes to amend SB 180 to provide additional time to come into compliance with the bill's requirements. The new language will allow MDH to implement the requirement by October 1, 2025.

If you would like to discuss this further, please do not hesitate to contact Megan Peters, Acting Director of Governmental Affairs at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,



Laura Herrera Scott, M.D., M.P.H.
Acting Secretary

¹ Report required by SB 636 - MDH - Waiver Programs - Waitlist and Registry Reduction (End the Wait Act) [https://dlslibrary.state.md.us/publications/Exec/MDH/HG15-150\(b\)_2022.pdf](https://dlslibrary.state.md.us/publications/Exec/MDH/HG15-150(b)_2022.pdf)

AMENDMENTS TO SENATE BILL 180

(First Reading File Bill)

On Page 1, in line 18, before “THE” add “BEGINNING OCTOBER 1, 2025.”.