



Private Care Association

Position: OPPOSES the *Homecare Workers Rights Act of 2024*, H.B. 39

January 19, 2024

The Private Care Association (“PCA”)¹ opposes the *Homecare Workers Rights Act of 2024*, H.B. 39, because it would eliminate any consumer choice for those consumers whose home-care is reimbursed by a state-funded home-care program. The bill also would deny self-employed home-care providers access to consumers under such programs. Finally, the bill would exacerbate the risk of a caregiver shortage for consumers who rely on such programs to meet their home-care needs.

I. Background

The State of Maryland offers a license to only two types of entities that are permitted to contract with self-employed providers of home care, namely, a residential service agency² (“RSA”) and a nursing referral service agency³ (“NRSA”). State-funded home-care programs currently contract with RSAs – but deem NRSA *ineligible* to participate in such programs. It follows that the only licensed entity through which a self-employed home-care provider can gain access to consumers whose home care is reimbursed by a state-funded home-care program is an RSA.

An RSA that participates in a state-funded home-care program and contracts with self-employed home-care providers can function as a caregiver registry. Accordingly, in Maryland, an RSA is the only licensure option available to a caregiver registry seeking to participate in a state-funded home-care program. Such an RSA facilitates the matching of self-employed home-care providers with home-care recipients, based on their respective objective preferences. These arrangements offer consumers access to consumer directed home care (discussed below).

¹ PCA, www.privatecare.org, is a national association representing caregiver registries. The PCA, since 1977, has been the voice of caregiver registries and consumer directed home care. PCA's membership consists of caregiver registries that refer self-employed care providers who can provide companion care, homemaker services, and nursing services in a client's home. PCA members facilitate consumer directed home care, which is based on the idea of consumer choice in home care, where consumers can make decisions and manage their home-care arrangement based on their own specific needs and preferences.

² “Residential service agency” means:

(i) An individual, partnership, firm, association, corporation, or other entity of any kind that is engaged in a nongovernmental business of employing or contracting with individuals to provide at least one home health care service for compensation to an unrelated sick or disabled individual in the residence of that individual; or
(ii) An agency that employs or contracts with individuals directly for hire as home health care providers. Md. Code Ann., Health-Gen. § 19-4A-01(f).

³ “Nursing referral service agency” means one or more individuals engaged in the business of screening and referring, directly or in accordance with contractual arrangements that may include independent contractors, licensed health professionals or care providers to clients for the provision of nursing services, home health aid services, or other home health care services at the request of the client. Md. Code Ann., Health-Gen. § 19-4B-01(h).

H.B. 39 would require any RSA that participates in a state-funded home-care program to classify all home-care providers who provide services in connection with that program as employees of the RSA. The practical consequence of this requirement would be to ban caregiver registries from state-funded home-care programs and deny access to such programs to self-employed home-care providers.

PCA opposes H.B. 39 for the following reasons.

II. The Bill Contradicts Federal CMCS Policy

The bill's de facto banning of caregiver registries from state-funded home-care programs – which would include Medicaid programs – flatly contradicts a December 12, 2023, *CMCS Informational Bulletin*⁴ issued by the Center for Medicaid and CHIP Services that *encourages* states to utilize caregiver registries. It states, in pertinent part:

The Center for Medicaid and CHIP Services (CMCS) is issuing this Informational Bulletin to remind states and stakeholders that the use of worker management platforms, often called registries, is an important strategy for ensuring that individuals receiving Medicaid-covered home and community-based services (HCBS) have awareness of and access to qualified workers who deliver services. Importantly, the use of these registries does not require CMCS approval.

CMCS's endorsement of the use of registries in such programs reflects decades of history and experience of registries participating in state Medicaid programs throughout the nation – with very positive outcomes. The enactment of H.B. 39 would create a law that precludes Maryland from complying with the federal government policy set forth in the *CMCS Informational Bulletin*.

III. The Bill Would Eliminate Consumer Choice Under State-Funded Programs

H.B. 39 would deny consumers who rely on a state-funded program for access to home care any choice between agency directed home care (under which a third-party agency manages a home-care arrangement and provides the care with its staff of caregivers) and consumer directed home care (under which a consumer self-manages the consumer's own home-care arrangement and selects the independent care providers who will provide the care).

If the bill were enacted, the only choice available to consumers under such programs would be the agency directed model. Multiple studies have found that many consumers strongly prefer the consumer directed option, so they can ensure that their home-care arrangement operates in the manner that best meets their individual circumstances and they can ensure continuity of care by care providers they select. For example, professors at UCLA who studied these two different home-care delivery models published a paper reporting the following findings:

On average, [*agency-directed* model] recipients have relatively little say about who their providers are, since the agency makes worker assignments. More [*agency-*

⁴ Available at, https://www.medicaid.gov/sites/default/files/2023-12/cib12122023_0.pdf.

directed model] users experience worker turnover and schedule changes, because agencies rotate workers to create scheduling efficiencies....

In the [*consumer-directed* model], the match between recipient and worker is done as the recipient makes hiring decisions. On average, recipients have more choice in naming their provider... [*Consumer directed* model] workers have longer tenures in the job... [and] may be better trained to work with a given recipient and may acquire skills better tailored to the needs of that client.⁵

The home-care experience – for those consumers who prefer the consumer directed home-care option – would necessarily suffer if H.B. 39 were enacted.

IV. The Bill Would Unfairly Discriminate Against Legitimate Self-Employed Providers of Home Care

Individual home-care providers who choose to offer their services as self-employed independent contractors – so they can enjoy the flexibility of choosing their own clients, negotiating their own pay rates, and working hours that fit their schedule – would be denied access to consumers whose home-care is reimbursed by a state-funded home-care program if H.B. 39 were enacted.

While the bill is titled “Homecare Worker Rights Act of 2024,” the bill actually would *deny* rights to those home-care providers who choose to offer their services as self-employed independent contractors. Today self-employed home-care providers who contract with a licensed NRSA to gain access to private pay clients, or obtain such clients through other means, e.g., by referral or through internet-based platforms, have the right to concurrently contract with a licensed RSA to gain access to clients who participate in state-funded home-care programs. H.B. 39 would *deny* these independent care providers the right to provide home care to consumers whose care is paid for by a state-funded program.

There is no discernible basis for discriminating against these home-care providers – solely because they choose to offer their services as self-employed independent contractors. PCA opposes worker misclassification, but H.B. 39 would unfairly disadvantage those independent home-care providers who choose to work as legitimate self-employed care providers.

⁵ Benjamin, Mathias, and Franke, *Comparing Consumer-directed and Agency Models for Providing Supportive Services at Home*, Vol. 35 Part II, 351, 361 *Health Services Research No. 1 Selected Papers From the Association for Health Services Research Annual Meeting* (April 2000), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1089106/>. See also Applebaum and Mahoney, *Expanding Self Direction and Its Impact on Quality*, Public Policy & Aging Report (Jan. 2016), available at [\(PDF\) Expanding Self Direction and Its Impact on Quality \(researchgate.net\)](#) “In the early days of self-direction, there was a concern that the absence of outside provider agencies would result in a greater potential for fraud, abuse, and poor quality care. To the contrary, the early experience indicated that consumers will choose quality when they have the opportunity to do so. Choice should be thought of as an activity that enhances quality, not a liability to assuring it.”

V. **The Bill Would Exacerbate the Risk of a Caregiver Shortage for Consumers Who Rely on State-Funded Home Care**

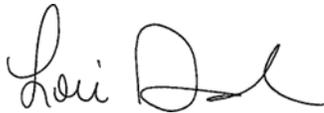
At a time when concern has been expressed about a caregiver shortage,⁶ H.B. 39 would exacerbate this risk for consumers who rely on state-funded home-care programs in Maryland to meet their home-care needs.

The bill would potentially result in self-employed home-care providers severing their relationship with licensed RSAs and ceasing to provide care for consumers whose home-care is reimbursed by a state-funded home-care. These independent care providers could instead focus their business solely on private pay clients or clients with long-term care insurance, which they could find on their own or by contracting with an NRSA. Worse, they could choose to leave home care entirely and seek work in other industries that are more tolerant of an individual's right to work independently.

VI. **Conclusion**

For the foregoing reasons, PCA respectfully submits that H.B. 39 would be harmful to consumers and harmful to self-employed home-care providers who currently participate in state-funded home-care programs, and that the bill would potentially exacerbate the risk of a caregiver shortage for consumers who rely on such state-funded programs to meet their home-care needs. Accordingly, PCA urges a "NO" vote on H.B. 39.

Respectfully submitted,



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⁶ See, e.g., Marchese, *The Caregiver Shortage: Which States Are Doing Best?* (Jun. 19, 2023) available at <https://www.asbestos.com/support/caregivers/shortage-by-state/>. The report identifies Maryland as a problematic state with fewer than 10 caregivers per 1,000 people. To provide a perspective relative to nearby jurisdictions, the report found that Pennsylvania has 21.1 caregivers per 1,000 people and the District of Columbia has 20.7 caregivers per 1,000 people. The report suggests that Maryland is already vulnerable in this area.

