

Dear Senators,

The proposed bill banning the use of 1099 contractors, presents some concerning issues, for CFC/CO Medicaid reimbursed RSA companies. It would add an additional burden to the family live in caregiver, who in my estimation outnumber all other caregivers in this state. Those that live where they work are expected to provide both formal and informal care hours. In other words, gratuitous care, free care, because according to Mark Leeds, “we don’t want to pay them for anything they might do for free.” Show me where employees work for free? It seems that this is a mistake that could lead to much more caregiver shortages for our already underserved community.

While there is complete agreement that those who do not live where they work are employees providing PAS, the same cannot be said for the live in caregiver. IRS Notice 2014-7 makes it clear that the live in caregivers Medicaid payment for difficulty of care is not taxable. While there may be some gray area as to FICA taxes, in most cases if the caregiver is a spouse, grandparent or parent there is not in these situations. Even if a POS calls for 12 hours of care per day that is the cut off. There are 168 hours in a week and many live in caregivers provide all those hours. Much like the EVV exemption for Live in caregivers could not the same apply here? It is understood that this bill looks to create jobs and treat employees fairly. Again, no argument. But don’t punish live in caregivers in the same brush stroke. If a parent is caring for their severely disabled child 84 hours per week, this bill would send them out looking for a job. What it misses, is if their child needs that much care a regular PAS will take a long time to train, CPR and simple first aid won’t get it. In most cases the parent ends up losing their job, due to a shortage of trained caregivers who sometimes just don’t show up or inflict harm upon the participant. It seems that the passage of this bill, could lead to exponentially even more caregiver shortages for our already underserved and vulnerable community, especially since COVID.

RSA's have been in business providing care for the elderly and disabled Medicaid recipients, many since the union was disbanded in 2015. They have seen many trends in employment laws over the years. There have been many that ignored such laws and misclassified workers on a regular basis. Casting a wide net and banning all use of 1099 contractors is unfair to the RSA's that have tried to make sure all caregivers and their clients, be it live in or W-2 followed state and federal regulations. Providing workers comp, unemployment compensation and all paid taxes to W-2 Employees. Banning 1099, controlling the time clock that is EVV or ISAS, makes the RSA more of an FSA all controlled by MDH and not the RSA owner.

With very low Medicaid reimbursements it is hard to be profitable already. If we are forced to meet CMS 80-20, as well as re-classify all our caregivers as a W2, there will be very few RSA's, MDH will be the employer once again. Especially, in light of the fact that, these programs have not been able to create a self-directed program in the last decade, leading many participants to be misclassified and in the wrong program altogether. The ability to use 1099 is embedded in the Community First Choice (CFC), Community Options (CO) and Community Personal Assistance (CPAS) programs especially for those who are live in caregivers.

The homecare industry is already struggling with caregiver retention and low reimbursement. Taking away the ability to use 1099 would greatly affect all.

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