



DEPARTMENT OF HEALTH

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

January 24, 2024

The Honorable Joseline A. Peña-Melnyk
Chair, Health and Government Operations Committee
241 House Office Building
Annapolis, Maryland 21401

RE: HB 189 - Maryland Medical Assistance Program - Provider Agencies and Personal Care Aides - Reimbursement and Wage Reports (Homecare Workers Employment Act of 2024) - Letter of Support with Amendments

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support for House Bill (HB) 189 – *Maryland Medical Assistance Program – Provider Agencies and Personal Care Aides – Reimbursement and Wage Reports (Homecare Workers Employment Act of 2024)*. While MDH supports HB 189’s requirements related to wage reports, we strongly request certain amendments to the bill’s provisions regarding submission of regular reports reviewing cost reports by residential service agency providers (RSAs).

Currently, Maryland Medicaid has 920 Medicaid enrolled RSAs providing personal assistance services. In FY 2022, MDH reimbursed RSAs \$394,351,407 for personal assistance services provided to 14,230 Medicaid participants. MDH is responsible for determining the overall reimbursement rates for the personal assistance services rendered by RSAs.

While MDH sets reimbursement rates for the services rendered by Medicaid providers, it does not have any role in setting wages or benefits paid to their employees. Enforcement of laws that protect worker’s rights would fall outside the scope of MDH’s authority and would be subject to oversight by other state and federal agencies.

MDH supports the bill’s requirement for personal assistance services provider agencies to submit annual reports related to the wage rates of personal care aids beginning September 1, 2025. This bill currently requires the reports to be submitted to the Maryland Department of Labor. MDH notes that our agency does not have the expertise to review these reports.

Beginning September 30, 2026, the bill requires MDH to submit reports regarding reimbursement rates for personal assistance services provider agencies reimbursed by Maryland Medicaid every two years to the Senate Finance Committee and the House Health and the Government Operations Committee. To support these reports, MDH must conduct cost-based studies and other research. MDH estimates submission of these reports will have a fiscal impact

of \$700,000 in total funds (\$350,000 general funds, \$350,000 federal funds) per reporting cycle to support contractual costs.

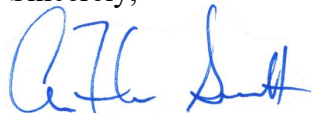
MDH requests amendments to remove provisions regarding development of a plan to close any differential gap in reimbursement rates, as well as calculations regarding the adjustment to reimbursement rates needed to increase wages and benefits to personal care aides to at least 150% of the state minimum wage.

On January 10, 2024, the US Department of Labor published a final rule, Employee or Independent Contractor Classification Under the Fair Labor Standards Act, effective March 11, 2024, revising the Department's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA).¹ This rule is expected to impact provider agencies for home and community based services (HCBS). Further, under a rule proposed by the Centers for Medicare and Medicaid Services (CMS) on May 5, 2023, at least 80% of Medicaid payments for certain HCBS services would be required to be spent on compensation for direct care workers.² In short, federal action will require a percentage of payments to be paid directly to workers. Therefore, MDH advises waiting on expected federal changes to be implemented, rather than implementing a state requirement this year that may not align with upcoming federal requirements.

Further, MDH has consistently implemented rate increases for Medicaid long term services and supports programs as required by legislation and the Governor's budget from FY 2017 through FY 2024. Most recently, this includes a 12% increase in FY 2023 and an 8% increase in FY 2024. MDH believes initial cost reports should be completed prior to the establishment of thresholds for potential rate increases.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs at sarah.case-herron@maryland.gov or (410) 260-3190.

Sincerely,



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

¹ <https://www.federalregister.gov/documents/2024/01/10/2024-00067/employee-or-independent-contractor-classification-under-the-fair-labor-standards-act>

² <https://www.federalregister.gov/documents/2023/05/03/2023-08959/medicaid-program-ensuring-access-to-medicaid-services>

In the House Health and Government Operations Committee:

AMENDMENTS TO HOUSE BILL 189
(First Reading File Bill)

On Page 4, strike lines 4 through 10, inclusive.