

# SENATE BILL 384

J3, K3

1r2015  
CF 1r1993

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By: **Senator Kelley**

Introduced and read first time: January 15, 2021

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Facilities – Residential Service Agencies – Compliance With State Labor**  
3 **Laws**

4 FOR the purpose of requiring the Office of the Attorney General, in consultation with the  
5 Maryland Department of Health and the Maryland Department of Labor, to produce  
6 a guidance document concerning the application of certain laws to certain personal  
7 care aides; providing for the content and structure of the guidance report; requiring  
8 a residential agency to certify certain information through the signature of a certain  
9 individual to the Maryland Department of Health as a condition of obtaining or  
10 renewing a license to operate as a residential service agency; requiring the Secretary  
11 of Health to provide a certain document to each licensed residential service agency  
12 on a certain basis; requiring a certain residential service agency to report certain  
13 information to the Maryland Department of Health; defining a certain term; and  
14 generally relating to residential service agencies and compliance with State labor  
15 laws.

16 BY repealing and reenacting, with amendments,  
17 Article – Health – General  
18 Section 19–4A–01  
19 Annotated Code of Maryland  
20 (2019 Replacement Volume and 2020 Supplement)

21 BY adding to  
22 Article – Health – General  
23 Section 19–4A–11  
24 Annotated Code of Maryland  
25 (2019 Replacement Volume and 2020 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
27 That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Health – General**

2 19–4A–01.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) “Home health care” includes any of the following services:

5 (1) Audiology and speech pathology;

6 (2) Dietary and nutritional services;

7 (3) Drug services;

8 (4) Home health aide;

9 (5) Laboratory;

10 (6) Medical social services;

11 (7) Nursing;

12 (8) Occupational therapy;

13 (9) Physical therapy;

14 (10) Provision of invasive medical equipment; and

15 (11) Home medical equipment services.

16 (c) “Home medical equipment services” means the delivery, installation,  
17 maintenance, or replacement of, or instruction in the use of, medical equipment used by a  
18 sick or disabled individual to allow the individual to be maintained in a noninstitutional  
19 environment.20 (d) “Medical equipment” means technologically sophisticated medical devices  
21 including:

22 (1) Oxygen and oxygen delivery systems;

23 (2) Ventilators;

24 (3) Respiratory disease management devices;

25 (4) Electronic and computer driven wheelchairs and seating systems;

26 (5) Apnea monitors;

- 1 (6) Transcutaneous electrical nerve stimulator (T.E.N.S.) units;
- 2 (7) Low air loss cutaneous pressure management devices;
- 3 (8) Sequential compression devices;
- 4 (9) Neonatal home phototherapy devices;
- 5 (10) Feeding pumps; and
- 6 (11) Other similar equipment as defined in regulations established by the  
7 Secretary.

8 (e) **“PERSONAL CARE AIDE” MEANS AN INDIVIDUAL WHO PROVIDES**  
9 **PERSONAL CARE AS DEFINED IN § 19–301 OF THIS TITLE.**

10 (F) (1) “Residential service agency” means any person that is engaged in a  
11 nongovernmental business of employing or contracting with individuals to provide home  
12 health care for compensation to an unrelated sick or disabled individual in the residence of  
13 that individual.

14 (2) “Residential service agency” includes any agency that employs or  
15 contracts with individuals directly for hire as home health care providers.

16 (3) “Residential service agency” does not include:

17 (i) A home health agency that is licensed under the provisions of  
18 Subtitle 4 of this title;

19 (ii) A person required to be licensed as a home health agency under  
20 the provisions of Subtitle 4 of this title;

21 (iii) A home-based hospice care program that is licensed under the  
22 provisions of Subtitle 9 of this title;

23 (iv) A hospital that is licensed under the provisions of Subtitle 3 of  
24 this title;

25 (v) A related institution that is licensed under the provisions of  
26 Subtitle 3 of this title;

27 (vi) Personal care providers under the Medical Assistance Personal  
28 Care Program;

29 (vii) Any person practicing a health occupation that the person is  
30 authorized to practice under the Health Occupations Article;

1 (viii) A nursing referral service agency that is licensed under Subtitle  
2 4B of this title;

3 (ix) A group of persons licensed under the same title of the Health  
4 Occupations Article practicing as a business; or

5 (x) Residential rehabilitation services providers approved under  
6 regulations adopted by the State mental health authority.

7 **19-4A-11.**

8 (A) (1) ON OR BEFORE DECEMBER 30, 2021, THE OFFICE OF THE  
9 ATTORNEY GENERAL, IN CONSULTATION WITH THE DEPARTMENT AND THE  
10 MARYLAND DEPARTMENT OF LABOR, SHALL PRODUCE A GUIDANCE DOCUMENT  
11 CONCERNING THE APPLICATION OF EMPLOYEE PROTECTION LAWS IN THE LABOR  
12 AND EMPLOYMENT ARTICLE, TO THE EMPLOYMENT OF PERSONAL CARE AIDES  
13 EMPLOYED BY RESIDENTIAL SERVICE AGENCIES.

14 (2) THE GUIDANCE DOCUMENT REQUIRED UNDER PARAGRAPH (1) OF  
15 THIS SUBSECTION SHALL:

16 (I) DESCRIBE WITH SPECIFIC REFERENCE TO THE  
17 RESIDENTIAL SERVICE CARE INDUSTRY:

18 1. RELEVANT DEFINITIONS OF “EMPLOY”, “EMPLOYEE”,  
19 “EMPLOYER”, AND “INDEPENDENT CONTRACTOR”;

20 2. THE CONCEPT OF INDEPENDENT CONTRACTOR  
21 MISCLASSIFICATION AND THE POTENTIAL FOR LEGAL LIABILITY INCLUDING  
22 MONETARY DAMAGES FOR EMPLOYEES; AND

23 3. STEPS A RESIDENTIAL SERVICE AGENCY MAY TAKE TO  
24 ENSURE COMPLIANCE WITH THE LABOR AND EMPLOYMENT ARTICLE;

25 (II) BE THREE PAGES OR FEWER AND, TO THE EXTENT  
26 FEASIBLE, WRITTEN IN PLAIN LANGUAGE; AND

27 (III) BE REVISED AND UPDATED ON AN ANNUAL BASIS.

28 (B) (1) AS A CONDITION OF OBTAINING OR RENEWING A LICENSE FROM  
29 THE DEPARTMENT TO OPERATE AS A RESIDENTIAL SERVICE AGENCY, A  
30 RESIDENTIAL SERVICE AGENCY SHALL CERTIFY TO THE DEPARTMENT, THROUGH  
31 THE SIGNATURE OF AN INDIVIDUAL WITH AUTHORITY OVER THE RESIDENTIAL

1 SERVICE AGENCY'S PAY OR EMPLOYMENT PRACTICES, THAT:

2 (I) THE INDIVIDUAL HAS READ AND UNDERSTOOD THE  
3 GUIDANCE DOCUMENT PRODUCED UNDER SUBSECTION (A) OF THIS SECTION; AND

4 (II) THE RESIDENTIAL SERVICE AGENCY WILL COMPLY WITH  
5 THE RELEVANT REQUIREMENTS OF THE LABOR AND EMPLOYMENT ARTICLE.

6 (2) ON AN ANNUAL BASIS, THE SECRETARY SHALL PROVIDE THE  
7 MOST CURRENT VERSION OF THE GUIDANCE DOCUMENT TO EACH LICENSED  
8 RESIDENTIAL SERVICE AGENCY.

9 (C) EACH RESIDENTIAL SERVICE AGENCY RECEIVING MEDICAID  
10 REIMBURSEMENT FOR THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A  
11 PERSONAL CARE AIDE SHALL REPORT TO THE DEPARTMENT THE FOLLOWING:

12 (1) WHETHER THE RESIDENTIAL SERVICE AGENCY HAS CLASSIFIED  
13 THE PERSONAL CARE AIDE AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR;  
14 AND

15 (2) THE HOURLY PAY RATE OF THE PERSONAL CARE AIDE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2021.