Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 489 (Delegate R. Lewis)
Health and Government Operations Finance

Residential Service Agencies - Reimbursement - Personal Assistance Services

This bill specifies that the Maryland Department of Health (MDH) may reimburse a residential service agency (RSA) for personal assistance services only if the services are provided by an individual classified as an employee. **The bill takes effect October 1, 2024.**

Fiscal Summary

State Effect: Any impact on Medicaid expenditures (50% general funds, 50% federal funds) under the bill is indeterminate, as discussed below. Federal fund revenues increase or decrease accordingly.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: An RSA is an agency that employs or contracts with individuals to provide at least one home health care service for compensation to an unrelated sick or disabled individual. Some RSAs have nurses that provide skilled care and certified caregivers that provide assistance with activities of daily living. Other RSAs provide physical therapy, occupational therapy, or speech therapy, or durable medical equipment. RSAs are licensed by the Office of Health Care Quality (OHCQ) in MDH. As of January 2023, there were 1,874 licensed RSAs in Maryland.

Chapters 775 and 776 of 2021 required the Office of the Attorney General, in consultation with MDH and the Maryland Department of Labor to produce (and annually update) a guidance document concerning the application of employee protection laws to the use of personal care aides (PCAs) by RSAs. Per the document, RSAs sometimes wrongly classify PCAs as independent contractors rather than employees. This practice is illegal worker misclassification that can lead to costly investigations and lawsuits as well as severe tax consequences for RSAs. Misclassification also hurts PCAs by denying them important legal protections including unemployment benefits, workers' compensation, sick leave, and the right to overtime pay and travel time pay.

The Acts also require, as a condition of obtaining an initial license and every three years thereafter, that an RSA certify to MDH that an individual with authority over the RSA's pay or employment practices (1) has read and understood the guidance document and (2) will comply with the relevant requirements of the Labor and Employment Article.

Furthermore, the Acts require MDH to develop a form that includes a checkbox for each RSA receiving Medicaid reimbursement for the provision of home care or similar services by a PCA to indicate whether the RSA uses PCAs designated as independent contractors. This form is available on the OHCQ website and can be submitted electronically.

State Fiscal Effect: Currently, 758 RSAs enrolled in Medicaid provide personal assistance services, primarily to individuals receiving community long-term services and supports as an alternative to nursing home placement. In fiscal 2021, MDH reimbursed RSAs $402.1 million for personal assistance services provided to 14,562 Medicaid participants.

To date, 310 RSAs that receive Medicaid reimbursement have reported to OHCQ whether the RSA uses PCAs designated as independent contractors. Overall, the 310 Medicaid-enrolled RSAs reported employing a total of 7,208 PCAs, of which 5,625 are employees and 1,583 are independent contractors.

Under the bill, Medicaid will likely only reimburse an RSA for personal assistance services if the RSA is staffed exclusively with employees. Verifying that every claim was provided by an individual classified as an employee would be too administratively burdensome. MDH presumes that it likely takes RSAs at least two to three years to shift to a 100% employee model. Thus, there will be an indeterminate impact on Medicaid operations beginning in fiscal 2025 (and possibly through fiscal 2027 or even 2028) to ensure RSAs that are not a 100% employee model 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.

To the extent implementation of the bill leads to an insufficient supply of Medicaid-enrolled RSAs, MDH expenditures (50% general funds, 50% federal funds) decrease in the near term (likely fiscal 2025 and possibly through fiscal 2027 or even 2028) as a result of service disruptions for personal assistance services provided to Medicaid participants. Should Medicaid participants not receive needed personal assistance services in a timely manner, Medicaid expenditures (50% general funds, 50% federal funds) may increase for other Medicaid services beginning in fiscal 2025 (and possibly through fiscal 2027 or even 2028) until a sufficient supply of compliant RSAs is available. The exact impact on expenditures cannot be reliably estimated at this time.

Small Business Effect: RSAs that participate in Medicaid, many of which are small businesses, incur additional costs to ensure that all PCAs are employees rather than independent contractors. Those RSAs that fail to comply with the bill will be disenrolled as Medicaid providers and no longer eligible for Medicaid reimbursement.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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