

**NDWA Comments HB489 Maryland.docx.pdf**

Uploaded by: Alana Eichner

Position: FAV

# NATIONAL DOMESTIC WORKERS ALLIANCE

Thursday, February 23, 2023

Submitted via: <https://mgaleg.maryland.gov/mgawebsite/MyMGATracking/WitnessSignup>

## **Comments in support of HB489: Residential Service Agencies - Reimbursement - Personal Assistance Services**

The **National Domestic Workers Alliance (“NDWA”)** submits this testimony in support of HB489, Residential Service Agencies - Reimbursement - Personal Assistance Services.

The National Domestic Workers Alliance (NDWA)<sup>1</sup> is the nation’s leading voice for dignity and fairness for the millions of domestic workers in the United States.<sup>2</sup> Founded in 2007, the National Domestic Workers Alliance represents over 2.2 million domestic workers who work as nannies, home care workers, and house cleaners in private homes, providing essential care and supportive services to our children, aging parents, and loved ones with disabilities every day. NDWA reaches and engages over 300,000 domestic workers on a regular basis through our 63 affiliate organizations in 36 cities and 17 states (including Maryland), our local chapters in Atlanta, Durham, Philadelphia, San Jose, the DC, Maryland and Virginia metro area, and New York City, and our digital platforms. Domestic workers are overwhelmingly women, well over half are women of color, and more than a third are immigrants.<sup>3</sup> As of 2019, domestic workers are more likely than other workers to have been born outside the United States; one in five domestic workers is a foreign-born noncitizen.<sup>4</sup>

Domestic and care workers comprise a growing workforce that has been historically excluded from basic workplace protections, such as minimum wage, overtime, anti-discrimination protections, health and safety, and the right to organize. NDWA has led the movement both at the federal level and in several states to pass legislation to eliminate the exclusions. Unfortunately, the rampant misclassification in the domestic and home care industry undermines these efforts and enables employers to evade minimum wage, overtime, and other labor laws that domestic and home care workers have fought to secure.

---

<sup>1</sup> To learn more about NDWA, please visit [domesticworkers.org](https://domesticworkers.org).

<sup>2</sup> Linda Burnham & Nik Theodore, Home Economics: The Invisible and Unregulated World of Domestic Work, pp. 26-28, (2012), available at <https://www.domesticworkers.org/wp-content/uploads/2021/06/HomeEconomicsReport.pdf/>.

<sup>3</sup> Wolfe, J., Kandra, J., & Shierholz, H. (May 2020). *Domestic Workers Chartbook*. Economic Policy Institute. <https://www.epi.org/publication/domestic-workers-chartbook-a-comprehensive-look-at-the-demographics-wages-benefits-and-poverty-rates-of-the-professionals-who-care-for-our-family-members-and-clean-our-homes/>.

<sup>4</sup> Id.

In the home care workforce context alone, the workforce has more than doubled in size over the past 10 years from nearly 840,000 in 2007 to over two million in 2017.<sup>5</sup> As the baby-boom population ages and the elderly population grows, the demand for the services of health aides and personal care aides will continue to increase.<sup>6</sup> Yet the work is still not valued, receiving extremely low pay, no benefits and limited protections, and rampant misclassification only degrades the quality of the job further.

Many of our home care members across the country – including in Maryland – experience misclassification by the home care agencies that hire and dispatch them to do caregiving for people with disabilities or the elderly. During the pandemic, home care workers risked their lives every single day – their safety and health, and that of their families – to provide essential care. Despite being on the frontlines, home care workers misclassified as independent contractors were left without benefits or a safety net. And most home care workers in Maryland who provide care funded and paid through Maryland’s Medicaid waiver programs continue to receive shamefully low pay. In NDWA’s experience, these workers nearly always earn less than \$15 an hour, and often earn less than \$13 an hour.

Misclassification inflicts the most damage on workers of color and women, such as home care workers, who predominate in the low-paying jobs where independent contractor misclassification is common. All workers who are misclassified suffer from a lack of workplace protections, but women, people of color, and immigrants face unique barriers to economic security and disproportionately must accept low-wage, unsafe, and insecure working conditions.

HB489 takes an important step in the right direction. It will ensure that Medicaid funds only reimburse RSAs who classify home care workers as employees and thus, disincentivize RSAs from misclassifying the home care workers who work for them as independent contractors.

Medicaid-funded work is government-funded work. We should not neglect a workforce that is 90% women and mostly women of color – as it is in Maryland – and ignore poor job quality, low pay and misclassification that cuts workers from the social safety net and denies them benefits like workers’ compensation for this essential workforce. In fact, we should be paying *extra* attention to this workforce, especially on how they are being treated by home care agencies that pay them with the state funds. ***Maryland will never solve the home care workforce crisis – a growing shortage of these essential workers – until it ensures that home care jobs are quality jobs with benefits.***

Work should provide people with economic stability, safety, and the opportunity to contribute to their communities. It should be a place where workers are treated fairly and with respect. Home care workers deserve good jobs that enable them to provide for themselves and their families.

For these reasons, we wholeheartedly support HB489. Home care workers are essential, taking care of our families. It is time for us to start thinking about their needs and this bill is an important way to care for them.

---

<sup>5</sup> Stephen Campbell, U.S. Home Care Workers: Key Facts (2018), available at <https://phinational.org/resource/u-s-home-care-workers-key-facts-2018/>

<sup>6</sup> U.S. Bureau of Labor Statistics (BLS), Division of Occupational Employment Statistics (OES). 2018. May 2007 to May 2017 National Industry-Specific Occupational Employment and Wage Estimates. [https:// www.bls.gov/oes/current/oessrci.htm](https://www.bls.gov/oes/current/oessrci.htm).

For more information pertaining to our comments, I can be reached at: [alana@domesticworkers.org](mailto:alana@domesticworkers.org).

Sincerely,

Alana Eichner  
National Domestic Workers Alliance  
Co-Director of DMV Chapter

**HB489\_Marylanders for Patient Rights\_fav.pdf**

Uploaded by: Anna Palmisano

Position: FAV

## *Marylanders for Patient Rights*

---

### **MARYLANDERS FOR PATIENT RIGHTS REQUESTS A FAVORABLE REPORT ON HB489 Residential Service Agencies – Reimbursement -- Personal Assistance Services**

Marylanders for Patient Rights is a leading advocacy group for patients in our state. We strongly believe that HB489 is critically important to ensuring that we maintain and build a workforce of personal care aides that is so essential to Maryland patients as our population ages. We urge you to provide a favorable report.

The caregiver workforce continues to decline in alarming numbers, leaving many vulnerable patients without the help they need. It is very difficult for patients to have a revolving group of caregivers while those workers, understandably, seek better employment situations. That is why it is vital to ensure that this important workforce is treated fairly and attracts qualified and caring employees.

Basically, HB489 will ensure that personal care aides who work under certain Medicaid programs are properly classified as employees, rather than as independent contractors. The current misclassification of thousands of these essential workers has created harm by cutting workers out of ready access to benefits and imposing a higher self-employment tax burden.

The bill would address the misclassification problem by requiring that the Maryland Department of Health only reimburse Residential Service Agencies for in-home personal care under certain Medicaid waiver programs if the personal care aides are properly classified as employees.

Personal care aides have been treated as marginalized workers for too long. Please provide a favorable report on HB489, and support Maryland caregivers and their patients.

Thank you,

*A C Palmisano*

Anna C. Palmisano, Ph.D  
Director, Marylanders for Patient Rights  
palmscience@verizon.net

# **HB489\_Maryland Center on Economic Policy\_FAV.pdf**

Uploaded by: Christopher Meyer

Position: FAV

# Fair Wage Act Provides Maryland Workers Relief Today and Security Tomorrow

## Position Statement in Support of House Bill 549

*Given before the House Economic Matters Committee*

The last several years have been an unusual and challenging time for Maryland's economy – and from inadequate safety protections to sharp price increases, low-wage workers have borne the brunt of it. The Maryland General Assembly took an important positive step in 2019 by putting the state on the path to a \$15 minimum wage, and has since enacted several more measures to benefit working families. But in the intervening four years, surging prices worldwide have increased the urgency of raising wages. A \$15 purchase made in 2019 would cost close to \$18 today. **The Maryland Center on Economic Policy supports House Bill 549 because it would strengthen wage protections today and protect them in the long term.**

The fact is, workers in Maryland cannot get by on low wages. Between housing, food, clothing, and other essentials, there is nowhere in Maryland where even a single adult, working full time and not caring for children, can afford a basic living standard on less than \$15 per hour.<sup>i</sup> Basic living expenses are higher still for workers supporting a family. The Fair Wage Act would make an important difference:<sup>ii</sup>

- House Bill 549 would **increase wages for about 175,000 workers** (7% of workers statewide) on October 1 of this year and **raise family incomes for 126,000 children**. On average, affected workers would see their wages increase by \$0.74 per hour, equivalent to \$1,070 per year.
- Altogether, Maryland workers would take home an additional \$47 million during the last three months of 2023, equivalent to \$187 million on an annual basis. Total wage gains would likely be substantial in future years as well.
- **The Fair Wage Act protects the value of the minimum wage in the long term.** Without inflation adjustment, the purchasing power of **the minimum wage will likely fall below its current value of \$13.25 per hour by mid-2028.**

A stronger minimum wage makes Maryland's economy more just and inclusive. Workers getting a raise under the Fair Wage Act include:

- 71,000 white workers (6% of white workers statewide)
- 64,000 Black workers (10%)
- 26,000 Latinx workers (11%)



- 7,600 Asian and Pacific Islander workers (6%)
- 6,100 workers belonging to other racial or ethnic groups (10%)<sup>iii</sup>
- 101,000 women (8%)
- 76,000 workers whose family income is less than double the federal poverty line (24%)

### Inflation Adjustment Provides Long-Term Security

The Fair Wage Act’s benefits are not limited to the next few years.

**One of the most crucial elements of House Bill 549 is the provision to adjust the**

**minimum wage for inflation** annually, beginning in July 2025. As has become all too clear in recent years, price increases can eat away at wage gains, especially when a perfect storm of global crises accelerates inflation.

Lacking scheduled inflation adjustments, our current wage law essentially bakes in gradually declining real wages over the long term, forcing workers to hope politicians will take action as they watch their standard of living decline. Under current law, the purchasing power of the minimum wage is likely to drop below its current value of \$13.25 per hour by mid-2028.<sup>iv</sup> **The Maryland Center on Economic Policy strongly urges lawmakers to maintain this provision in the bill.**

### Long-Lasting Benefits

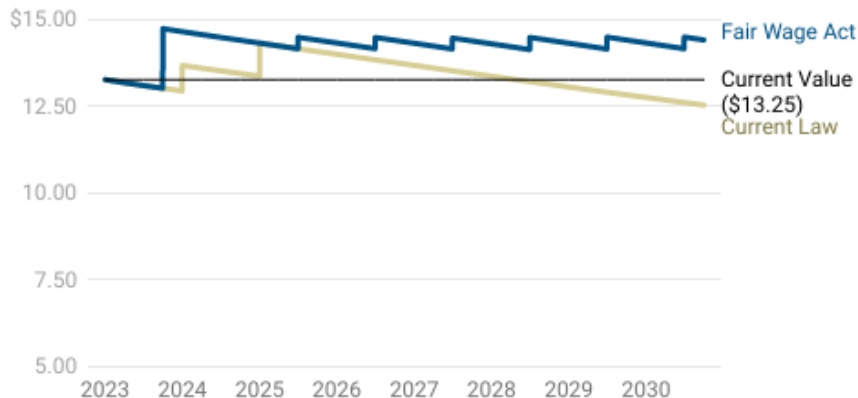
The Fair Wage Act would benefit Maryland families and children for decades to come. A large body of research shows that when families earn enough to afford the basics, the benefits ripple out to nearly every part of their lives. A 2013 systematic review of academic literature linked higher family incomes to:<sup>v</sup>

- Fewer families struggling to put food on the table
- Fewer underweight births and lower infant mortality
- Increased spending on children’s clothing, reading materials, and toys
- Fewer behavioral problems, less physical aggression, and less anxiety among children
- Improved academic and cognitive test results, and more years of schooling completed

Raising the wage floor is the right choice for Maryland’s economy. Increased pay for low-wage workers who live paycheck to paycheck translates almost immediately into higher spending, which means stronger sales at local businesses. Evidence also shows that higher wages reduce employee turnover, which means more experienced workers and lower hiring costs.<sup>vi</sup> Family-supporting wages make Maryland a more attractive place to live and work, which means a deeper talent pool for employers to draw from.

## Fair Wage Act Protects Workers' Long-Term Purchasing Power

Projected inflation-adjusted value of Maryland minimum wage under current law and Fair Wage Act, 2023–2030. Note truncated y-axis.



Values are in constant 2023-Q1 dollars. Assumes that the Washington regional consumer price index grows at the same rate as the index for all U.S. cities.

Chart: Maryland Center on Economic Policy • Source: Based on Congressional Budget Office May 2022 Economic Outlook, projected CPI-U • Created with Datawrapper

Despite dire predictions from minimum wage opponents, a robust body of credible research shows no significant link between the minimum wage and the number of jobs available.<sup>vii</sup> For example, a 2019 study described as “the most important work on the minimum wage in 25 years” examined 138 state minimum wage changes between 1979 and 2014. The study found no evidence of any reduction in the total number of jobs for low-wage workers and no evidence of reductions affecting subsets of the workforce such as workers without a college degree, workers of color, and young workers. Similarly, a 2016 meta-analysis of 37 studies on the minimum wage published since 2000 found “no support for the proposition that the minimum wage has had an important effect on U.S. employment.” The verdict is in: Raising the minimum wage works.

## **A Minimum Wage that Leaves No One Behind**

It is beyond debate that House Bill 549 represents a major step forward for Maryland workers, families, and communities. **Lawmakers should build on this foundation by extending full minimum wage protections to the workers current law leaves behind:**

**Agricultural Workers:** When Congress established the federal minimum wage in 1938, lawmakers specifically denied protections to agricultural workers, one of many New Deal compromises demanded by racist Southern Democrats.<sup>viii</sup> While the demographics of agricultural workers have changed, their work remains vital to Maryland communities and our economy. It is past time to correct this historical injustice and grant agricultural workers minimum wage protection. Including agricultural workers in the minimum wage increase would benefit another 1,200 workers and 950 additional children.

**Tipped Workers:** Because of a similar New Deal-era bargain, employers are required to pay tipped workers in Maryland a subminimum wage of only \$3.63 per hour. Because tipped workers cannot rely on a stable, decent wage, they are often at the mercy of customers for adequate pay. While sexual harassment occurs across all industries, it is more prevalent in the accommodation and food services industry, where women represent a majority of workers often in low-paying jobs subject to the tipped subminimum wage.<sup>ix</sup> By applying the minimum wage uniformly, we can guarantee tipped workers receive equal treatment and are paid fairly for their work.

Guaranteeing the full minimum wage to tipped workers would **increase wages for an additional 47,900 workers** and increase family incomes for 27,900 additional children. It would also raise tipped workers’ pay by **\$130 million** in the last three months of 2023 alone, **more than tripling the dollar impact** of House Bill 549 as introduced.

**Young Workers:** Despite its other benefits, the 2019 minimum wage bill *weakened* protections for certain young workers. Youth workers’ earnings may serve as a lifeline for many struggling families who rely on extra income to stay afloat, especially during difficult economic times. Guaranteeing the full minimum wage for young workers would enable them to help keep their families afloat, contribute to their education, and build economic security for the future.

**For these reasons, the Maryland Center on Economic Policy respectfully requests that the House Economic Matters Committee make a favorable report on House Bill 549.**

## Equity Impact Analysis: House Bill 549

### *Bill summary*

The core provisions of House Bill 549 concern the state minimum wage:

- The bill increases the minimum wage for covered workers at all employers to \$15 per hour effective October 1, 2023.
- This does not repeal or alter exemptions or reductions to the minimum wage for agricultural workers, tipped workers, or youth workers.
- The bill establishes annual inflation adjustment to the minimum wage beginning in July 2025, capped at 5% per year.
- The bill permanently empowers the Board of Public Works to cancel scheduled inflation increases under certain circumstances and repeals a provision of current law limiting the Board’s current power to a single cancellation.

Similar to past minimum wage bills, House Bill 549 mandates increased appropriations for certain health care and social service provider rates to cover providers’ increased wage costs.

### *Background*

Chapters 10 and 11 of 2019 put Maryland on a path toward a \$15 minimum wage for most workers by 2025, with the wage floor for small employers reaching \$15 in 2026.

Maryland’s minimum wage law is modeled after federal wage and hour law. When Congress enacted the federal employment law framework in the 1930s, New Deal proponents made concessions to win the votes of Southern Democrats, generally denying protections to workers in disproportionately Black industries and occupations or weakening these protections. Some, but not all, of these exemptions remain on the books at the federal level and in Maryland.

### *Equity Implications*

Structural barriers built into our economy through policy have disproportionately kept Black workers, other workers of color, women, and workers in other marginalized groups out of high-paying jobs. As a result, increasing the minimum wage generally delivers particularly large benefits to workers in these groups. Table 1 provides examples, with notable impacts highlighted.

	<b>All Workers</b>		<b>Workers with Wage Increase</b>			<b>Total Wage Increase Oct.–Dec. 2023</b>	
	<b># 1,000s</b>	<b>% of Total</b>	<b># 1,000s</b>	<b>% of Total</b>	<b>% of Group</b>	<b>\$ Millions</b>	<b>% of Total</b>
<b>Total</b>	2,396	100%	175	100%	7.3%	\$47	100%
<b>Gender</b>							
Men	1,203	50%	74	42%	6.1%	\$20	42%
Women	1,194	50%	101	<b>58%</b>	8%	<b>\$27</b>	<b>58%</b>

**Table 1. Distributional Analysis of House Bill 549**

	All Workers		Workers with Wage Increase			Total Wage Increase Oct.–Dec. 2023	
	# 1,000s	% of Total	# 1,000s	% of Total	% of Group	\$ Millions	% of Total
<b>Race &amp; Ethnicity</b>							
White	1,286	54%	71	41%	5.5%	\$17	37%
Black	638	27%	64	<b>37%</b>	10.0%	\$18	<b>39%</b>
Latinx	244	10%	26	<b>15%</b>	10.8%	\$8	<b>16%</b>
Asian/Pacific Islander	166	7%	8	4%	4.6%	\$2	4%
All Others	63	3%	6	3%	9.7%	\$2	4%
<b>Workers of Color Total</b>	<b>1,111</b>	<b>46%</b>	<b>104</b>	<b>59%</b>	<b>9.3%</b>	<b>\$29</b>	<b>63%</b>
<b>Family Income</b>							
< \$25,000	162	7%	46	26%	<b>28.4%</b>	\$13	28%
\$25,000 to \$49,999	329	14%	27	15%	8.2%	\$7	15%
\$50,000 to \$74,999	356	15%	24	13%	6.6%	\$6	13%
\$75,000 to \$99,999	329	14%	19	11%	5.7%	\$5	11%
\$100,000 to \$149,999	518	22%	26	15%	5.1%	\$7	15%
\$150,000+	687	29%	26	15%	3.8%	\$7	14%
<b>Poverty Status</b> Family income % of federal poverty line							
< 100%	103	4%	40	<b>23%</b>	<b>39.0%</b>	\$12	<b>26%</b>
100 to 199%	211	9%	36	<b>20%</b>	16.9%	\$9	<b>19%</b>
< 200% Combined	314	13%	76	<b>43%</b>	24.2%	\$21	<b>45%</b>

Source: Economic Policy Institute analysis of Current Population Survey–Outgoing Rotation Group data.

Notes:

Census data currently require respondents to identify themselves as either male or female, precluding impact estimates for workers of other gender identities.

All racial groups exclude Latinx workers. Latinx workers may belong to any racial group. "All others" includes American Indian/Alaska Native workers, multiracial workers, and workers belonging to racial groups not specified in census data. Small sample size precludes reporting impacts for these groups individually. Note that this group is particularly heterogeneous, and the aggregate estimate does not necessarily represent the experiences of individual subgroups.

Part-time workers are those who usually work less than 20 hours per week. Mid-time workers usually work 20 to 34 hours per week.

Full-time workers are those who usually work 35 or more hours per week.

All dollar figures are in 2022 dollars.

## Impact

House Bill 549 would likely **improve racial, gender, and economic equity** in Maryland. Lawmakers can increase the bill’s positive impact by repealing exceptions for agricultural workers, tipped workers, and youth workers.

<sup>i</sup> Based on the Economic Policy Institute Family Budget Calculator, adjusted for inflation by MDCEP.

<sup>ii</sup> Throughout this document, impact estimates for House Bill 549 are based on Economic Policy Institute analysis of Current Population Survey–Outgoing Rotation Group data. Detailed report forthcoming from MDCEP.

<sup>iii</sup> Including but not limited to American Indian/Alaska Native workers and multiracial workers. Data limitations prevent reporting estimates for individual groups. Note that this category is particularly heterogeneous and aggregate estimates do not necessarily reflect the experiences of individual subgroups.

<sup>iv</sup> Based on MDCEP analysis of the Congressional Budget Office May 2022 Economic Outlook.

<sup>v</sup> Kerris Cooper and Kitty Stewart, “Does Money Affect Children’s Outcomes? A Systematic Review,” Joseph Rowntree Foundation, October 2013, <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/money-children-outcomes-full.pdf>

---

The systematic review methodology involves defining in advance how researchers will identify relevant studies, as well as quality control measures to ensure that only studies with credible methodologies are included. This methodology protects against researchers cherry-picking studies that support their viewpoint.

<sup>vi</sup> Arindrajit Dube, T. William Lester, and Michael Reich, “Minimum Wage Shocks, Employment Flows and Labor Frictions,” IRLE Working Paper #149-13, 2014, <http://irle.berkeley.edu/files/2013/Minimum-Wage-Shocks-Employment-Flows-and-Labor-Market-Frictions.pdf>.

<sup>vii</sup> David Cooper, “Raising the Federal Minimum Wage to \$15 by 2024 Would Lift Pay for Nearly 40 Million Workers,” Economic Policy Institute, 2019, <https://www.epi.org/publication/raising-the-federal-minimum-wage-to-15-by-2024-would-lift-pay-for-nearly-40-million-workers/>

<sup>viii</sup> Juan F. Perea, “The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act,” 72 *Ohio State Law Journal* 95, 2011, <https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>

<sup>ix</sup> Jocelyn Frye, “Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers,” Center for American Progress, November 2017, <https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/>

**PJC - HB489 - Fav - Finance - with guidance.pdf**

Uploaded by: David Rodwin

Position: FAV



David Rodwin, Attorney  
Public Justice Center  
201 North Charles Street, Suite 1200  
Baltimore, Maryland 21201  
410-625-9409, ext. 249  
rodwind@publicjustice.org

---

## HB 489: Residential Service Agencies – Reimbursement – Personal Assistance Services

Hearing of the Senate Finance Committee, March 29, 2023

### Position: Favorable

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce workers' right to an honest day's pay for an honest day's work. The PJC **supports HB 489**, which would ensure that home care workers who provide care under certain Medicaid programs are properly classified as employees – not misclassified as independent contractors.

**Note: The amended version of HB 489 now before you delays the implementation date until October 1, 2024, in accordance with the request of the Maryland Department of Health.**

**Problem: Many of the personal care aides who provide in-home care under Medicaid programs are misclassified as independent contractors, denying them access to the social safety net and reducing job quality when Maryland faces a shortage of these important workers.**

- Between 20,000 and 30,000 personal care aides work under Medicaid programs operated by the Maryland Department of Health's Office of Long Term Services and Supports,<sup>1</sup> which this bill concerns.
- Despite enforcement by the U.S. Department of Labor and a clear [guidance document](#) produced by the Office of the Attorney General,<sup>2</sup> many home care agencies (called "residential service agencies" – RSAs – by the Health Code) that employ personal care aides under these programs wrongly call the workers independent contractors. This widespread misclassification – *which is already illegal* – hurts everyone:
  - *It hurts workers* by worsening job quality, cutting them out of the social safety net (making it harder for them to get benefits like sick days and workers' compensation) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund.
  - *It hurts consumers* by disincentivizing RSAs from providing training to their workers, by shrinking the size of the workforce so many Marylanders depend on, and by increasing worker turnover, which – given the intimate nature of the work – can be traumatizing.
  - *It hurts law-abiding RSAs* that face unfair competition from other RSAs that choose to save money by shirking their obligations as workers' employers.
  - *It hurts the State of Maryland* by depriving it of employment tax revenue for things like the unemployment insurance trust fund – revenue Maryland and its workers depend on.

---

<sup>1</sup> These programs include the Home and Community-Based Options Waiver, Community First Choice, Community Personal Assistance Services, Increased Community Services, Program of All-Inclusive Care for the Elderly, Medical Day Care Services, and Model Waiver for Medically Fragile Children. HB 489 does not apply to any programs operated under the Developmental Disabilities Administration.

<sup>2</sup> This guidance resulted from the passage of 2021's SB 384, sponsored by then-Chair Delores Kelley. A copy of the guidance document is attached to this testimony.

*Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.*

### **HB 489's Solution:**

- HB 489 would fix the problem by providing that the Maryland Department of Health only reimburse RSAs for in-home personal care provided under certain Medicaid waiver programs if the aides who do the work are classified as employees. It is a simple solution to a problem that has long eluded one.
- HB 489 does not assign a label to any employment relationship. Rather, it exercises Maryland's authority to decide what kinds of jobs public money should support. Maryland has long used this authority in other contexts, as shown by Maryland's Prevailing Wage Law (for public works contracts) and Living Wage Law (for certain state contracts for services). Maryland's home care workers are just as important as construction workers and also deserve the state's attention.
- Aside from Maryland's clear authority to decide what kinds of jobs it wants public dollars to support, the workers covered by this bill are employees under the law, not independent contractors: RSAs set their pay rates, enforce state rules and regulations, track their time, and often impose a variety of other controls over the terms and conditions of their work.
- HB 489 will level the playing field for law-abiding home care agencies, professionalize a marginalized workforce, improve quality of care, and ensure that public dollars are not used to violate the law.
- Last year's SB600 – codified at § 19-4A-11(c) of the Health code – already provides the Maryland Department of Health with the information it needs to ensure compliance with this year's HB 489.

### **Improving the quality of personal care jobs is a *race equity* issue and a *gender equity* issue.**

- About 90% of Maryland's personal care aides are women and about 70% are Black.
- When these workers are misclassified as independent contractors, it hurts them, their families, and their communities.

For the foregoing reasons, the PJC **SUPPORTS HB 489** and urges a **FAVORABLE** report. Should you have any questions, please contact David Rodwin at [rodwind@publicjustice.org](mailto:rodwind@publicjustice.org) or 410-625-9409 ext. 249.





## Understanding how Maryland’s employee protection laws apply to residential service agencies (RSAs) and personal care aides (PCAs)

Maryland’s RSAs sometimes wrongly classify PCAs (that is, anyone paid to provide personal care services) as independent contractors rather than employees.<sup>1</sup> When this happens, it is called *worker misclassification* and it is illegal. Pursuant to Health General §19-4A-11, this guidance document explains (1) some differences between employees and independent contractors in the context of personal care, (2) worker misclassification and how it can cost RSAs money and hurt PCAs, and (3) some steps RSAs can take to ensure that their classification policies comply with Maryland’s Labor and Employment Code.

### 1. What is the difference between “employees” and “independent contractors”?

- **There are two kinds of workers under Maryland’s employment laws: employees and independent contractors.** In general, independent contractors are in business for themselves, while employees are not. If an RSA pays a PCA an hourly wage to perform personal care and oversees the PCA’s work, the worker should usually be classified as an employee. A worker can sometimes be an “employee” under one law and an “independent contractor” under another, because different laws have different purposes and define these terms differently. Even if the IRS has accepted the classification of PCAs as independent contractors, you should not assume that a court would reach the same conclusion under Maryland’s employee protection laws, which are humanitarian statutes designed to broadly protect workers and are therefore more favorable to employees.
- **Maryland’s wage laws and sick leave law—including the Wage and Hour Law, Wage Payment and Collection Law, and Healthy Working Families Act—have a very broad definition of employee.** Most workers are employees, not independent contractors, under these laws. A worker’s status as an employee cannot be changed by a contract or other document (like an “independent contractor agreement”) that labels the worker as an independent contractor. To determine a worker’s proper classification, courts consider factors related to whether workers are in business for themselves. When the employer exercises, or has the right to exercise, direction and control over the performance of an individual’s work, the worker is an employee and not an independent contractor. The Maryland Labor and Employment Code defines the term “employ” broadly as “to engage an individual to work,” and expressly includes “allowing an individual to work” and “instructing an individual to be present at a work site.”

---

<sup>1</sup> Maryland law defines “personal care” as “a service that an individual normally would perform personally, but for which the individual needs help from another because of advanced age, infirmity, or physical or mental limitation.” Md. Code Ann., Health – Gen. Article § 19-301(n)(1). Personal care includes help in walking, getting in and out of bed, bathing, dressing, feeding, and general supervision and help in daily living. *Id.* § 19-301(n)(2)(i)-(vi).

- Applying these factors to RSAs and PCAs, (1) RSAs typically have authority to set and enforce conduct policies, including policies designed to ensure that workers comply with the Maryland Department of Health’s rules for Medicaid providers; (2) RSAs typically pay PCAs an hourly wage, which means that PCAs have no opportunity for profit or loss dependent on any managerial skill; (3) PCAs typically do not invest in their own equipment and cannot hire others to do the work instead of them; (4) personal care does not require advanced certifications and does not involve business-like skill; (5) PCAs typically have a working relationship with RSAs that is at least several months long; and (6) RSAs are typically in the business of providing personal care. Therefore, PCAs are more likely to be RSAs’ employees than independent contractors within the meaning of Maryland’s wage and sick leave laws. In cases where PCAs recruit their own clients, that fact alone does not make them independent contractors if factors otherwise suggest the existence of an employment relationship.
- **Maryland’s unemployment insurance law also has a broad definition of employee.** Under this law, a PCA is presumed to be an employee, not an independent contractor, unless the RSA can satisfy a test called the “ABC test.” Applying this test to RSAs and PCAs, (1) RSAs typically have the ability to control or direct PCAs’ work, (2) PCAs do not customarily have their own business, and (3) although the work is typically performed in individuals’ homes, personal care is typically the type of work that RSAs perform. Therefore, PCAs are more likely to be employees than independent contractors within the meaning of Maryland’s unemployment insurance law. For illustrations of how Maryland’s unemployment insurance law applies to workers like PCAs, see the [Code of Maryland Regulations \(COMAR\) 09.32.01.18-3](#).
- **Maryland’s workers’ compensation law also defines employee broadly.** Under this law, a worker is presumed to be an employee unless the employer can show that the worker is an independent contractor under the “common law” test. Applying this test to RSAs and PCAs, (1) RSAs typically have the power to hire PCAs, (2) RSAs typically pay wages to PCAs, (3) RSAs typically have the power to fire PCAs, (4) RSAs typically have the power to control PCAs’ conduct, and (5) personal care is typically part of the regular business of RSAs. Therefore, in the context of RSAs, PCAs are more likely to be employees than independent contractors within the meaning of Maryland’s workers’ compensation law.

## 2. How can misclassification of PCAs as independent contractors hurt RSAs and PCAs?

- **Misclassification hurts RSAs because it is illegal and can lead to costly investigations and lawsuits.** The Maryland Department of Labor or U.S. Department of Labor may investigate, require payment of unpaid wages and money damages to workers, and even get a court order requiring the RSA to change its classification and compensation practices. In addition, PCAs may sue an RSA for unpaid wages that they should have been paid as employees. PCAs may bring these cases individually or, in some circumstances, as class actions on behalf of other workers. A court may order the RSA to pay workers damages up to three times the wages they should have been paid. An RSA held liable under Maryland’s Wage and Hour Law and Maryland’s Wage Payment and Collection Law may also be

responsible for the attorneys' fees of PCAs who sue them. Under these laws, individual owners of a corporation (including an RSA) may also be held personally liable for unpaid wages and attorneys' fees, putting their personal assets at risk.

- **Misclassification can also have severe tax consequences for RSAs.** If the Maryland State Department of Assessments and Taxation (SDAT) or U.S. Internal Revenue Service (IRS) finds that an RSA has failed to pay employment taxes for PCAs who should have been classified as employees, SDAT and/or the IRS may require that the RSA pay tens of thousands of dollars—or more—in back taxes and penalties.
- **Misclassification also hurts PCAs by denying them important legal protections.** These include unemployment benefits, workers' compensation, sick leave, and the right to overtime pay (for hours worked beyond 40 in a workweek) and travel-time pay (for time spent traveling from one client's home to another client's home).

### 3. What steps can an RSA take to ensure it follows Maryland's employee protection laws?

- **Do: Talk to a lawyer.** Employment law can be complicated. Lawyers who practice employment law can help ensure that your RSA follows Maryland law. While it may cost money to ask a lawyer about your RSA's worker classification policies, a labor investigation or a lawsuit could cost far more.
- **Do:** Visit the Maryland Department of Labor's [website](#) for guidance and to learn about various outreach programs offered by the Department to employers.
- **Do not: Assume something is legal just because others do it.** People sometimes assume a business practice is legal just because other businesses do it. Some rely on advice from friends when establishing their business's worker classification policies. But this can be dangerous, especially in industries where legal violations are common. And in Maryland, "industry practice" is not a defense to a suit for unpaid wages.
- **Do not:** Assume that if you employ a PCA on a salary basis that you don't have to pay overtime pay. PCAs are entitled to overtime wages.
- **Do: Take action to correct your RSA's employment classification policies if you believe they may be incorrect.** Changing the classification of your RSA's PCAs from independent contractors to employees does not mean you will automatically be subjected to lawsuits or liability. The best way to protect your business—and your own assets—is to make sure your RSA follows the law.

# **HB489 Sponsor Testimony March 29.pdf**

Uploaded by: Delegate Robbyn Lewis

Position: FAV

**ROBBYN LEWIS**  
*Legislative District 46*  
Baltimore City



The Maryland House of Delegates  
6 Bladen Street, Room 424  
Annapolis, Maryland 21401  
410-841-3772 · 301-858-3772  
800-492-7122 Ext. 3772  
Robbyn.Lewis@house.state.md.us

Health and Government Operations  
Committee

*Subcommittees*

Health Occupations and Long Term Care

Public Health and Minority  
Health Disparities

*House Chair*

Joint Committee on Program Open Space  
and Agricultural Land Preservation

**THE MARYLAND HOUSE OF DELEGATES**  
ANNAPOLIS, MARYLAND 21401

**Testimony in Support of HB489 - Residential Service Agencies - Reimbursement -  
Personal Assistance Services**

March 29, 2023

Thank you Chair Melony Griffith, Vice Chair Katherine Klausmeier, and members of the Finance Committee. I am Delegate Robbyn Lewis, testifying today on behalf of HB489, which prevents the misclassification of personal care aides as independent contractors. This is a healthcare workers' rights bill. I hope you will support it.

Residential Service Agencies (RSAs) are businesses that employ or contract individuals to provide home health care. RSAs employ personal care aides, also known as home care workers, to assist older adults and people with disabilities with activities of daily living. Their care protects the dignity of many elders and folks with special needs. Home care workers are crucial to the health of our ageing population, they should be compensated and afforded the social safety net and protections all healthcare workers deserve.

Misclassification of home care workers harms patients by reducing the size of the available workforce and decreasing their access to quality home care. It negatively impacts agencies that properly classify their personnel, leaving them to compete with unfair competitors who avoid basic obligations to their workers.

House Bill 489 addresses these problems by authorizing the Maryland Department of Health to reimburse RSAs for in-home care provided under certain Medicaid programs, if the aides are

classified as employees. This will prevent misclassification before it occurs, and it will tackle Maryland's health care workforce shortage by strengthening this much needed cadre of care.

This bill does not apply to programs under the Developmental Disabilities Administration, nor the private sector. It only applies to Medicaid home care provided under the Department of Health's Office of Long Term Services and Supports.

Working with the Maryland Department of Health and stakeholders, I am confident HB489 as presented will ensure home care workers can comfortably continue providing quality in-home care. Thank you for your consideration. I ask for your favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "Robbyn Lewis". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Delegate Robbyn Lewis  
District 46, Baltimore City

# HB489 Support.pdf

Uploaded by: Hindley Williams

Position: FAV



## **HB489: Residential Service Agencies - Reimbursement - Personal Assistance Services**

Testimony of Maryland Centers for Independent Living

### **SUPPORT**

Senate Finance Committee, March 29, 2023

The seven Centers for Independent Living (CIL) were established by federal law and work to ensure the civil rights and quality services of people with disabilities in Maryland. Centers for Independent Living are nonprofit disability resource and advocacy organizations located throughout Maryland operated by and for people with disabilities. CIL staff and Boards are at least 51% people with disabilities. We are part of a nationwide network which provides Information and Referral, Advocacy, Peer Support, Independent Living Skills training, and Transition Services.

Many, many of us depend on personal assistance services to support our activities of daily living and to live safely and fully in our communities. We know our personal care assistants (PCAs) well. And we know how essential they are to our well-being. We depend on a strong PCA workforce.

The shortage of PCAs has been acutely felt in our community. When we have been left without PCAs, we have been left to struggle. Sometimes we have been left unable to transfer our bodies from a wheelchair into our beds or to our washrooms. We have been left unable to get our meals and even our medicines. PCAs offer care for us in the most personal and intimate manner. They may assist us to shop or attend community functions. During the pandemic PCAs have been essential workers.

We depend on PCAs and how they show up for us. They have our support for receiving the job benefits they deserve. A stronger work force, with better protections is better for all of us.

Thank you for your consideration and anticipated support.

Contact:

Hindley Williams, Program Manager  
The IMAGE Center of Maryland  
(443) 320-4008  
Hwilliams@imagecenter.org

Sarah Basehart, Executive Director  
Independence Now  
240-898-2183  
sbasehart@innow.org





# **NASW Maryland - 2023 HB 489 FAV - Home Care Worker**

Uploaded by: Judith Schagrin

Position: FAV

## Senate Finance Committee

### House Bill 489: Residential Service Agencies - Reimbursement - Personal Assistance Services

March 29, 2023

\*\*\*SUPPORT\*\*\*

The Maryland Chapter of the National Association of Social Workers supports House Bill 489 Residential Service Agencies - Reimbursement - Personal Assistance Services. As social workers, we are in favor of this bill because it strengthens the workforce that cares for vulnerable older adults and persons with disabilities. This bill will ensure that personal care aides who work under certain Medicaid programs are properly classified as employees and not misclassified as independent contractors. It will authorize the Maryland Department of Health to reimburse a residential service agency for personal assistance services only if the personal assistance services are provided by an individual classified as an employee, guaranteeing fair and equitable wages and benefits, such as worker compensation and lower tax rates for these invaluable workers who administer care for some of our most vulnerable citizens.

Most personal care aides are employed less than full time, have hours that change frequently, and do not receive health benefits, worker's compensation, or paid leave due to their classification as independent contractors. Under Maryland's Medicaid program, between 15,000 and 20,000 personal care aides provide care under programs operated by the Office of Long-Term Services and Supports. By classifying personal care aides as independent contractors, it worsens job quality by removing the social safety net (making it harder for them to get benefits like workers' compensation when they're injured) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund. It hurts consumers by shrinking the size of the workforce they depend on for their independence and increasing worker turnover, which – given the intimate nature of the work – can be traumatizing to care recipients. Classifying personal care aides as independent contractors hurts law-abiding RSAs that face unfair competition from RSAs that save money by shirking their obligations as workers' employers.

Currently, older Marylanders and those with disabilities rely on personal care aides to administer bedside and personal care, to perform housekeeping duties, and to transport them to physicians' offices or other locations. Assistance with these tasks allows care recipients to remain in their homes rather than having to enter institutional care. Most of these individuals would prefer to remain in their local community, where they can maintain vital social

connections with family, friends, and neighbors. Furthermore, living in the community is less costly for the state of Maryland.

Requiring the classification of personal care aides as employees would make these jobs more appealing, grant equity in pay and benefits, and increase safety for both personal care aides and older adults. This requirement would lead to a more secure workforce and more consistent care for community-dwelling older Marylanders and those with disabilities.

We ask that you give a favorable report on House Bill 489.

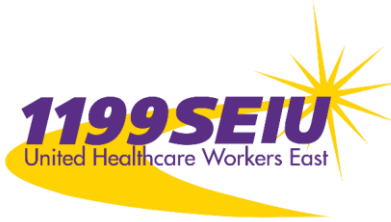
Respectfully,

Mary Beth DeMartino, LCSW  
Executive Director, NASW-MD

**HB 489 - Senate - 1199 SEIU.pdf**

Uploaded by: Loraine Arikat

Position: FAV



## **Testimony in support of HB 489**

**Senate Finance Committee – March 29<sup>th</sup>, 2023**

### **Residential Service Agencies – Reimbursement – Personal Assistance Services**

To Chair Griffith and members of the Senate Finance Committee:

My name is Ricarra Jones, and I am the Political Director of 1199SEIU United Healthcare Workers East. We are the largest healthcare workers union in the nation – representing 10,000 healthcare workers in long-term care facilities and hospitals across Maryland. We are proud members of the Caring Across Maryland coalition supporting HB 489 Home Care Worker Misclassification. In order to protect our most vulnerable direct care workers, HB 489 ensures that the Department of Health only reimburses residential service agencies that are classifying their workers as employees. We urge the Committee to issue a favorable report.

1199 SEIU represents workers within long-term care facilities. Many of our members interact with home care aides who help some residents in the facilities. Home care workers are an important part of the patient care team. Given the high demand of home care workers, addressing deeply entrenched retention issues is imperative. Worker misclassification strips workers from the full entitlement of just compensation and benefits. Patient quality of care is negatively impacted by high turnover when home care workers are misclassified.

The widespread misclassification of these workers hurts everyone:

- It hurts workers by worsening job quality, cutting them out of the social safety net (making it harder for them to get benefits like workers' compensation when they're injured) and imposing on them a higher "self-employment" tax burden when they should be getting a tax refund.
- It hurts consumers by shrinking the size of the workforce they depend on for their independence and increasing worker turnover, which –given the intimate nature of the work –can be traumatizing.
- It hurts law-abiding RSAs that face unfair competition from RSAs that save money by shirking their obligations as workers' employers.
- It hurts the State of Maryland by depriving the unemployment insurance trust fund (among other things) of critical revenue that Maryland and its workers depend on.

1199 SEIU believes that care work is essential work. Our public dollars should be going to law-abiding home care agencies not those who undercut essential staff. This bill will help to strengthen our long-term care workforce. For those reasons and more, we urge a favorable report on HB 489.

In unity,

Ricarra Jones

Political Director, 1199 SEIU

[Ricarra.jones@1199.org](mailto:Ricarra.jones@1199.org)

# **HB 489-Senate Finance-Home Care Workers Testimony.**

Uploaded by: Loraine Arikat

Position: FAV

**Testimony: HB 489**

**Residential Service Agencies – Reimbursement – Personal Assistance Services**

**Hearing for Senate Finance Committee**

**March 29<sup>th</sup>, 2023**

**Position: FAVORABLE**

Dear Chair Griffith and members of the Senate Finance Committee:

My name is Vivian Boone. I live in Baltimore City and I have been a home care worker for 35 years. I enjoy the work I do because I have heart for those in need. However, home care workers need more support and protection.

Home care worker misclassification means that instead of being employees with full entitlement of a minimum wage and protections, we are classified as independent contractors. Many of us do not even know that we are misclassified until we start sharing our experiences of not getting paid overtime or for the time we spend commuting between homes. Because of low pay and poor benefits, many of my colleagues leave the field for more stable, less stressful jobs. By preventing worker misclassification, this legislation would reduce turnover and improve the quality of care.

I work hard for my money, but I am not getting what I work for. It hurts me, my family, my home. I work to pay my bills but when my agency misclassifies me. I work weekly to pay for my monthly bills and I still can't meet it. It's hard to make ends meet when we are not compensated justly.

This is a widespread issue, and it needs to be prevented. The state's public dollars are being used by agencies who are breaking the law and undercutting their staff.

Our governor, Wes Moore, said that no one will get left behind. Home care workers continue to be left behind because of lack of state oversight. We call on this committee and the Department of Health to stand with home care workers. I respectfully urge a favorable report on HB 489.

Sincerely,

Vivian Boone

[Vivian.boone@yahoo.com](mailto:Vivian.boone@yahoo.com)



**Testimony: HB 489**

**Residential Service Agencies – Reimbursement – Personal Assistance Services**

**Hearing for Senate Finance Committee**

**March 29<sup>th</sup>, 2023**

**Position: FAVORABLE**

To Dear Chair Griffith and members of the Senate Finance Committee:

My name is Cynthia Neely. I live in Baltimore City and I have been a home care worker for 2 years. I enjoy the work I do because I have seen how elderly people need support and many families do not want to put their loved one in a nursing home. I lost my job during COVID, and I knew I would be filling a great need in the state for home care work. However, home care workers need more support and protection. I urge the Committee to issue a favorable report on HB 489 which would prevent home care work misclassification.

Home care worker misclassification means that instead of being employees with full entitlement of a minimum wage and protections, we are classified as independent contractors. Many of us do not even know that we are misclassified until we start sharing our experiences of not getting paid overtime or for the time we spend commuting between homes. Because of low pay and poor benefits, many of my colleagues leave the field for a more stable, less stressful jobs. By preventing worker misclassification, this legislation would reduce turnover and improve quality of care.

I have a co-worker who is filing an 1099 form instead of a W2. who are not getting the full benefits of being an employee. This is a widespread issue and it needs to be prevented. Because I don't have a car, I am taking transit which is often unreliable or catching Ubers. Our agencies do not accommodate us for commute time. Sometimes, paying for Ubers costs me a days' worth of pay. The state's public dollars are being used by agencies who are breaking the law and undercutting their staff.

There are a lot of bad actors among home care agencies that continue to illegally misclassify their workers and it's time we held them accountable. I respectfully urge a favorable report on HB 489.

Sincerely,

Cynthia Neely

[Crneely410@gmail.com](mailto:Crneely410@gmail.com)

**Testimony: HB 489**

**Residential Service Agencies – Reimbursement – Personal Assistance Services**

**Hearing for Senate Finance Committee**

**March 29<sup>th</sup>, 2023**

**Position: FAVORABLE**

To Dear Chair Griffith and members of the Senate Finance Committee:

My name is Jennifer Gibson. I live in Charles County and I have been a home care worker for 15 years serving clients in Baltimore and Montgomery County. I enjoy the work I do because I am passionate about caring for others. I was privileged to have loving elders that taught me to care for others. However, home care workers need more support and protection. I urge the Committee to issue a favorable report on HB 489 which would prevent home care work misclassification.

Home care worker misclassification means that instead of being employees with full entitlement of a minimum wage and protections, we are classified as independent contractors. Many of us do not even know that we are misclassified until we start sharing our experiences of not getting paid overtime or for the time we spend commuting between homes. I learned quickly that I have to advocate for myself against these residential service agencies. Home care workers are so needed in this state – without us everything would fall apart. I have worked for three different agencies and all of them are the same because they use our labor but with little pay and benefits.

Because of low pay and poor benefits, many of my colleagues leave the field for a more stable, less stressful jobs. By preventing worker misclassification, this legislation would reduce turnover and improve quality of care.

Aiding and assisting someone in their most vulnerable state is important work. If agencies valued this work they would not treat us with such disrespect. At first, I did not know that I was being misclassified. I had no clue that the agency was underpaying me. If it wasn't for 1199 SEIU and Public Justice Center, I would not have known that this was illegal. This is a widespread issue and it needs to be prevented. The state's public dollars are being used by agencies who are breaking the law and undercutting their staff.

There are a lot of bad actors among home care agencies that continue to illegally misclassify their workers and it's time we held them accountable. I respectfully urge a favorable report on HB 489.

Sincerely,

Jennifer Gibson

[Jagibsn@gmail.com](mailto:Jagibsn@gmail.com)

**2 - HB 489 (3rd) - FIN - MDH - LOSAA.docx.pdf**

Uploaded by: State of Maryland (MD)

Position: FAV



## DEPARTMENT OF HEALTH

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

March 29, 2023

The Honorable Melony Griffith  
Chair, Senate Finance Committee  
3 East Miller Senate Office Building  
Annapolis, MD 21401-1991

**RE: HB 489 (3rd) – Residential Service Agencies – Reimbursement – Personal Assistance Services – Letter of Support as Amended**

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support as amended for House Bill (HB) 489 – Residential Service Agencies – Reimbursement – Personal Assistance Services. HB 489 requires MDH to reimburse a Residential Service Agency (RSA) for personal assistance services only when they are provided by an individual classified as an employee of the RSA. Currently, Maryland Medicaid has 758 Medicaid enrolled RSAs providing personal assistance services. In Fiscal Year (FY) 2021, MDH reimbursed RSAs \$402,087,076 for personal assistance services provided to 14,562 Medicaid participants.

HB 489 has been amended to delay the implementation date to October 1, 2024. The additional time will allow RSAs to come into compliance with the bill's requirement to shift to billing for only those services delivered by employees. These providers face high staffing turnovers, which are likely to be exacerbated if independent contractors cannot be used. Allowing for a phase-in period will help mitigate the potential impact on Medicaid's RSA provider network and Medical Assistance participants' ability to access services.

If you would like to discuss this further, please do not hesitate to contact Megan Peters, Acting Director of Governmental Affairs at [megan.peters@maryland.gov](mailto:megan.peters@maryland.gov) or (410) 260-3190.

Sincerely,

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

# **HB 489 Crossover RSA\_Reimbursement\_Personal Assist**

Uploaded by: Tammy Bresnahan

Position: FAV



One Park Place | Suite 475 | Annapolis, MD 21401-3475  
1-866-542-8163 | Fax: 410-837-0269  
aarp.org/md | md@aarp.org | twitter: @aarpm  
facebook.com/aarpm

**HB 489 Crossover RSA - Reimbursement - Personal Assistance Services**  
**Senate Finance Committee**  
**FAVORABLE**  
**March 29, 2023**

Good afternoon, Chair Griffith and members of the Senate Finance Committee. My name Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP Maryland is a proud member of the Caring Across Maryland coalition supporting a package of bills to bolster quality of care in long term care settings. We would like to thank you for the opportunity to speak in support with amendments of HB 489 Residential Service Agencies-Reimbursement-Personal Assistance Services as amended by the House. We thank Delegate Lewis for sponsoring this critical piece of legislation.

HB 489 authorizes the Maryland Department of Health to reimburse a residential service agency for personal assistance services only if the personal assistance services are provided by an individual classified as an employee. This is a consumer-friendly policy for many reasons. As one example, employees receive more frequent and better-quality training from their employers than independent contractors receive. As another, employees are included in Maryland's employment-based safety net protections – including sick and safe leave – while independent contractors are not. When personal care workers are unable to take a paid sick day, they are more likely to come to work while sick, putting the client at risk.

Personal care workers who work for Maryland residential service agencies provide the bulk of paid long-term care. These paraprofessional workers hold a variety of job titles, including personal care assistants, home care aides, home health aides, and certified nursing assistants (CNAs). They work in diverse settings, including private homes, adult day centers, assisted living residences and other residential care settings, and nursing homes. More than a million direct care workers in the U.S. work at jobs that may include:

- assisting with personal care activities, such as bathing, dressing, toileting, transferring, and eating;
- providing comfort and companionship;
- observing and reporting changes in a client's condition;
- preparing meals and housekeeping;
- providing oversight for people with cognitive and mental impairments; and
- administering medications and measuring vital signs.

Although the majority of personal care workers find their jobs intrinsically rewarding, they are often low paid with limited or no benefits, high workloads, unsafe working conditions, inadequate training, a lack of respect from supervisors, lack of control over their jobs, and few opportunities for advancement, all of which contribute to high turnover.

To a large extent, the challenges facing the personal care workforce reflect nationwide realities. The workforce is comprised almost entirely of historically marginalized workers—including women, people of color, and/or immigrants—who face significant obstacles in education and employment. Despite the demands of the job and the unequivocal importance of their contributions, these workers still struggle to make a livable wage and achieve economic stability. HB 489 will ensure that personal care aides who work under Medicaid reimbursement programs are properly classified as employees and not misclassified as independent contractors.

For these reasons we respectfully ask the Committee for a favorable report on HB 489. For questions, please contact me at [tbresnahan@aarp.org](mailto:tbresnahan@aarp.org) or by calling 410-302-8451.