
BILL NO: House Bill 489
TITLE: Residential Service Agencies - Reimbursement - Personal Assistance Services
COMMITTEE: Health & Government Operations
HEARING DATE: February 23, 2023
POSITION: **SUPPORT**

House Bill 489 seeks to address the illegal practice of misclassification of employees of residential service agencies as independent contractors rather than employees. Misclassification of employees denies those workers of benefits they are entitled to under the law, including overtime pay, minimum wage, and workers' compensation. It also leads to substantial losses to the state, of funds that should have been paid into unemployment insurance and workers' compensation funds¹.

This is particularly troubling as women continue to be disproportionately represented within the care service industry. Black women, in particular, are more widely represented, yet they are concentrated in the most dangerous and lowest wage jobs. Women of color are also more likely to be misclassified as independent contractors, particularly in residential care facilities, nursing facilities, and home health providers². Thus it is critical that Maryland address this practice. HB489 does so by requiring the Maryland Department of Health only reimburse residential service agencies for in-home personal care provided under certain Medicaid waiver programs *if the aides who do the work are classified as employees*.

The truth is, residential care workers are just not operating as independent contractors. They do not set their own schedules, hours, or wages. Nor do they utilize their own tools, maintain control of where or how they work, or any of the other factors the IRS considers when determining independent contractor status³. Instead, care workers perform work that is an integral part of the residential service agency, and therefore must be categorized as employees. Yet, because they are often amongst the most vulnerable workers, they are frequently misclassified without their knowledge and in violation of the law.

This bill 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. As such, the Women's Law Center of Maryland urges a favorable report on House Bill 489.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

¹ <https://blog.dol.gov/2021/05/06/the-true-cost-of-misclassification>

² <https://www.dol.gov/newsroom/releases/whd/whd20221116>

³ <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>