

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO.
(410) 576-6584

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TO: The Honorable Joseline Peña-Melnyk
Chair, Health & Government Operations Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: HB 489 - Residential Service Agencies – Reimbursement – Personal Assistance Services – **Support**

The Office of Attorney General writes to express its support for House Bill 489, and its guiding principle of protecting the rights of employees. Delegate Lewis' bill would permit the Maryland Department of Health to reimburse a residential service agency (RSA) for personal assistance services only if the RSA classifies its personal care aides (PCAs) as employees. RSAs sometimes classify PCAs as independent contractors, rather than employees. The Office of the Attorney General previously released guidance on the matter, explaining that this worker misclassification is illegal.¹

Misclassification hurts both PCAs and RSAs. Misclassifying a PCA as an independent contractor rather than employee denies the PCA important legal protections, such as sick leave, worker's compensation, unemployment benefits, over-time pay, and travel-time pay.² Illegal misclassification can also hurt RSAs with costly investigation and litigation by the Maryland Department of Labor or the misclassified PCA, and the potential payment of back taxes or penalties.³ For these reasons, the Office of the Attorney General supports legislation that seeks to ensure PCAs that are employees of RSAs are appropriately classified as such.

¹ MD. OFF. OF THE ATT'Y GEN., GUIDANCE MEMORANDUM: UNDERSTANDING HOW MARYLAND'S EMPLOYEE PROTECTION LAWS APPLY TO RESIDENTIAL SERVICE AGENCIES (RSAs) AND PERSONAL CARE AIDES (PCAs), available at <https://health.maryland.gov/ohcq/docs/RSA-PCA%20Guidance%20Document.pdf#search=employee%20classification>.

² *Id.*

³ *Id.*

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

For all of the foregoing reasons, the Office of the Attorney General supports House Bill 489 and urges a favorable report.

cc: Committee Members