



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

February 23, 2023

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401-1991

RE: HB 489 – Residential Service Agencies – Reimbursement – Personal Assistance Services – Letter of Information with Amendments

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of information with amendments 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.

MDH relies heavily on this group of providers to serve participants receiving long term services and supports in the community as an alternative to nursing home placement. MDH is responsible for determining the reimbursement rates for the services rendered by an RSA. MDH has consistently implemented the rate increases for Medicaid long term services and supports programs as required by HB 166/SB 280 – *Labor and Employment – Payment of Wages – Minimum Wage (Fight for Fifteen)*, Chapters 10 and 11 of the Acts of 2019. The Governor’s budget proposes to expedite the HB 166/SB 280 (2019) rate increases for FY25 and FY26. If approved, Medical Assistance reimbursement rates for personal assistance service providers will increase by 12% effective July 1, 2023.

While MDH sets RSA rates, it is not the co-employer or employer of individuals who work for the RSAs. MDH does not directly employ the individuals hired by the RSAs nor does MDH determine the wages or benefits the RSAs offer employees. MDH believes it will take RSAs at least two to three years to come into compliance with the HB 489 requirement to shift to billing for only those services delivered by employees. These providers face high staffing overturns, 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. MDH further notes that it has submitted a report to the General Assembly regarding SB 636 (Chapter 464 of the Acts of 2022), detailing MDH’s plans and the funding required to reduce the waitlists for the majority of its

waivers by 50% by FY 2028.¹ With waiver enrollment expected to grow substantially if these plans are funded, ensuring the RSA provider network remains stable is of critical importance.


There are currently 1,874 licensed RSAs in Maryland. HB 544 *Health Facilities – Residential Service Agencies – Reporting Requirement (Ch. 673 of the Acts of 2022)* required OHCQ to estimate new reporting requirements for the RSAs regarding their use of employees and independent contractors. 310 RSAs that receive Medicaid funds have completed the certification requirement to date. Of these respondents, 161 RSAs exclusively use personal care aides who are employees and 39 RSAs exclusively use personal care aides who are independent contractors. 104 of the 310 RSAs use at least one or more personal care aides who are an independent contractor. Overall, the 310 Medicaid-enrolled RSAs reported a total of 7,208 personal care aides out of which 5,625 are employees and 1,583 are independent contractors.

MDH further notes that there will be an indeterminate impact on operations to ensure RSAs that are out of compliance with the requirement to bill only for services provided by employees 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.

Given these considerations, MDH proposes to amend HB 489 to provide additional time to come into compliance with the bill's requirements. The new language will allow MDH to implement the requirement by October 1, 2025.

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 or (410) 260-3190.

Sincerely,



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

¹ Report required by SB 636 - MDH - Waiver Programs - Waitlist and Registry Reduction (End the Wait Act) [https://dlslibrary.state.md.us/publications/Exec/MDH/HG15-150\(b\)_2022.pdf](https://dlslibrary.state.md.us/publications/Exec/MDH/HG15-150(b)_2022.pdf)

AMENDMENTS TO HOUSE BILL 489

(First Reading File Bill)

On Page 1, in line 18, before “THE” add “BEGINNING OCTOBER 1, 2025.”.