

# NATIONAL DOMESTIC WORKERS ALLIANCE

## Comments in Support of HB39/SB197 Homecare Worker Rights Act of 2024 Residential Service Agencies – Reimbursement – Personal Assistance Services

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*Submitted via:*

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

The National Domestic Workers Alliance (“NDWA”) submits this testimony in support of HB39/SB197, **Homecare Worker Rights Act of 2024**.

NDWA is the leading voice for the estimated 2.2 million domestic workers who work as direct care workers, nannies, and house cleaners in private homes providing essential care and supportive services to children, aging adults, and family members with disabilities every day. Founded in 2007, NDWA works to raise wages and strengthen industry standards to ensure that domestic and direct care workers achieve economic security and protection, respect, and dignity in the workplace. NDWA reaches and engages over 400,000 domestic workers on a regular basis through our 68 affiliate organizations in 50 cities and 19 states, our state and local chapters in the DMV (Washington D.C., Virginia & Maryland), North Carolina, Georgia, New York, Houston (TX), San Jose (CA), and Philadelphia (PA) through our digital platforms. While the National Domestic Workers Alliance is a national organization, our DMV chapter is a locally operated, membership-based organization covering the geographical area of Washington DC, Maryland, and Virginia and is staffed by several local organizers.

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 numerous states to pass legislation to eliminate the exclusions. Unfortunately, the rampant misclassification in the 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.

NDWA supports this bill to specifically protect direct care workers employed by agencies in the home care industry who are regularly misclassified as independent contractors and subsequently denied their critical workplace rights, including the right to overtime, earned sick leave as well as coverage under worker's compensation, and unemployment insurance. These workers already earning poverty level wages are also forced to pay their employers' share of taxes for social security and medicare. Until 2016, a number of home care workers were unable to avail themselves of basic rights under the federal Fair Labor Standards Act (FLSA), due to the "companionship exemption," which was applied to a majority of home care work. When the federal Department of Labor (DOL) narrowed the exemption, home care workers significantly won the right to overtime. However, many home care agencies have chosen to misclassify their home workers as independent contractors in order to continue to avoid paying them overtime and for all hours worked, including travel time. In 2022, the US Department of Labor determined that the the Maryland agency "A Plus Personal Home Care" had misclassified 193 workers and denied overtime wages, ordering payment of \$1.13 million in back wages and damages<sup>1</sup>.

More than 750 Residential Service Agencies provide care for beneficiaries of Medicaid's Home and Community Based Programs and are paid through public funds. Because of the structure of Maryland's Medicaid program, all personal care aides this bill covers are already employees under the law. Residential Service Agencies are necessarily employers of personal care aides; they set their pay, enforce their schedules, and ensure they comply with Medicaid rules. Despite being illegal, the problem of misclassification persists. Enforcement authorities such as the U.S. Department of Labor and the Maryland Office of the Attorney General do not have adequate resources to bring the industry into compliance through litigation – and most workers do not know their rights. This bill would prevent misclassification by providing that RSAs will only be reimbursed for in-home personal care under certain Medicaid programs if those who do the work are classified as employees. It is a simple solution to a serious problem. Maryland must ensure that residential services agencies receiving public dollars are abiding by tax and labor laws and this measure would protect the direct care workforce from exploitation.

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<sup>1</sup> US DOL News Release, "US Department Of Labor Seeking Maryland Home Healthcare Workers Who May Be Owed Back Wages, Damages In \$1.13m Recovery," available at: <https://www.dol.gov/newsroom/releases/whd/whd20221110-1>

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. Domestic and direct care workers have for too long been excluded from core workplace protections, which stems from the racist and sexist devaluing of household and caregiving work. Misclassification is another tool for employers to utilize to evade the critical benefits they need to provide a sense of dignity on the job.

**For these reasons, the National Domestic Workers Alliance (NDWA) fully supports HB39/SB197 Homecare Worker Rights Act of 2024.**

Sincerely,

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