State-Funded Home Care Agencies Must Follow Labor Law

Position Statement in Support of House Bill 39

Given before the Health and Government Operations Committee

Home care workers are a vital part of the social infrastructure that keeps Maryland going. These workers provide essential services to aging Marylanders and Marylanders with disabilities. They provide long-term care in the community, rather than in residential facilities, which brings many documented benefits. But today we are failing to ensure that home care jobs are good jobs, and the result is a severe and growing labor shortage in the industry. House Bill 39 would strengthen Maryland's home care workforce by requiring that the state reimburse Medicaid-funded home care agencies only if they properly classify their workers as employees as required under Maryland labor law. **For these reasons, the Maryland Center on Economic Policy supports House Bill 39.**

Maryland already has a serious shortage of home care and other direct care workers.[i] If current practices continue, this shortage will only grow in coming years as our state's population continues to age. Maryland's 65+ population grew by 18% from 2015 to 2021, while the 20–64 population increased by only 0.2%.[ii] By 2030, our 65+ population is projected to grow by another 29% as the 20–64 population slightly declines.[iii] We will be increasingly unable to meet the need for home care if we do not make the occupation significantly more attractive to workers.

The current shortage of home care workers is due in large part to paltry wages and dangerous working conditions.[iv] As of 2022, home health and personal care aides in Maryland typically took home only $15.26 per hour.[v] However, this statistic *overstates* home care workers' true earnings because of the too-common practice of private home care agencies misclassifying workers as independent contractors rather than employees.[vi] According to the Department of Legislative Services, Medicaid-funded home care agencies classify about 2,000 home care workers as independent contractors.[vii] **This misclassification violates federal and state labor law, strips workers of wage and hour protections, and shifts tax responsibilities from employers to workers.**

Because of the tax-shifting worker misclassification enables, a home care worker who is labeled an independent contractor can expect to take home the equivalent of only **$14.00 per hour** paid to an employee.[viii]

Home care agencies' refusal to abide by labor law disproportionately harms women of color, who constitute the bulk of this workforce:[ix]

- 84% of home care workers in Maryland are women.

- 60% of home care workers in Maryland are Black, and 74% are workers of color.

- 61% of home care workers in Maryland are women of color.

- 42% of home care workers in Maryland were born outside the United States.

Lawmakers have taken limited steps to combat misclassification and strengthen worker protections in recent years. These include requiring management at home care agencies to read and acknowledge a clear explanation of employee classification law and requiring agencies to report to the state the number of workers they label as independent contractors. These are meaningful steps in the right direction. House Bill 39 presents a more comprehensive solution, requiring the state to reimburse Medicaid-funded home care agencies only if they properly classify their workers as employees.

The Maryland Attorney General's guidance document for home care agencies makes clear why this requirement is appropriate:[x]

- While several areas of labor law use slightly different definitions of employment, common themes include the payment of hourly wages, managerial control over the way work is performed, and the relationship between the work performed and the employer's core business.

- Home care agencies typically pay hourly wages rather than a negotiated fee for service; agencies exercise significant control over workers' performance, such as by enforcing compliance with state rules for long-term care providers; and home care workers' jobs are *precisely* the core business of home care agencies.

Moreover, even if a few atypical cases may currently exist where independent contractor classification satisfies the letter of the law, requiring that Medicaid-funded home care agencies classify workers as employees advances several important policy goals:

- Most state and federal worker protection laws apply to employees. These include bedrock wage and hour law, the Healthy Working Families Act, and worker's compensation and unemployment insurance coverage. When agencies misclassify workers, they are denying them these basic protections. **An industry without basic worker protections cannot recruit and retain a robust workforce**, and the resulting labor shortage is already harming Marylanders.

- Because Medicaid is by far the largest home care payer, the state has substantial power to set norms in the industry. For this reason, the most likely outcome of House Bill 39 is to incentivize home care agencies to properly classify workers as employees and thereby **improve access to care**.

- How we invest our shared resources reflects what we value as a state. Our current practice creates low-quality jobs and asks the people who take them to provide some of the most important care work for Maryland communities. Investing our shared resources to create good jobs benefits all of us, strengthening our labor market and improving the quality of public services.

We should measure the health of our economy not simply by the number of dollars exchanged or the number of people who go to work each day, but by its ability to raise all families' standard of living. Strengthening protections to ensure workers are properly classified would directly benefit workers and would also reduce barriers to maintaining a sufficient home care workforce to provide essential supports to aging Marylanders and Marylanders with disabilities.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Health and Government Operations Committee make a favorable report on House Bill 39.

Equity Impact Analysis: House Bill 39

Bill summary

House Bill 39 would require that the state reimburse Medicaid-funded home care agencies only if they classify their workers as employees.

Background

Researchers have documented a trend of private home care agencies classifying home care workers as independent contractors in spite of working conditions consistent with employment, such as significant managerial control.[xi] According to the Department of Legislative Services, Medicaid-funded home care agencies classify about 2,000 home care workers as independent contractors.[xii] This misclassification violates federal and state labor law, strips workers of wage and hour protections, and shifts tax responsibilities from employers to workers.

Maryland currently faces a shortage of long-term care workers.[xiii] As the state's population continues to age in coming years, the needs for these services will grow significantly. Absent a substantial increase in the supply of long-term care workers, the shortage will become more severe.

Lawmakers in 2021 (Chapter 775) and 2022 (Chapters 673, 674) enacted laws strengthening communication between the state and home care agencies regarding employee classification. However, the laws do not strengthen the state's ability to enforce existing labor law.

Equity Implications

House Bill 498 would strengthen protections for home care workers who face dangerous working conditions, often take home low wages, and are disproportionately women of color.[xiv] It would also benefit Marylanders with disabilities by increasing the long-term supply of workers available to provide necessary supports.

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- 61% of home care workers in Maryland are women of color.

- 42% of home care workers in Maryland were born outside the United States.

- Home health and personal care aides in Maryland typically took home only $15.26 per hour in 2022.[xv] For a misclassified worker, this is equivalent to $14.00 paid to an employee.

Impact

House Bill 39 would likely **improve racial, gender, disability, and economic equity** in Maryland.

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[i] "The Direct Services Workforce in Long-Term Services and Supports in Maryland and the District of Columbia," PHI, 2018, https://phinational.org/wp-content/uploads/2018/09/DSWorkers-Maryland-2018-PHI.pdf
Christopher Meyer, "Budgeting for Opportunity Case Study: A Racial Equity Analysis of Medicaid-Funded Home- and Community-Based Services," Maryland Center on Economic Policy, 2023, https://www.mdeconomy.org/budgeting-for-opportunity-case-study/

[ii] MDCEP analysis of U.S. Census Bureau Population Estimates.

[iii] MDCEP analysis of U.S. Census Bureau Population Estimates and Maryland Department of Planning population projections.

[iv] "The Direct Services Workforce," 2018; Meyer, 2023.

[v] May 2021 BLS Occupational Employment and Wage Statistics. Throughout this document, statistics about "home care workers" refer to home health aides and personal care aides.

[vi] Caitlin Connolly, "Independent Contractor Classification in Home Care," National Employment Law Project, 2015, https://www.nelp.org/publication/independent-contractor-classification-in-home-care/

[vii] Senate Bill 197 Fiscal and Policy Note, https://mgaleg.maryland.gov/2024RS/fnotes/bil_0007/sb0197.pdf

[viii] Calculated based on the 12.4% total Social Security tax and the 2.9% total Medicare tax, with the misclassified worker paying the full tax and the properly classified worker paying only the employee side. This does not take income tax into account – doing so would make the true equivalent wage even lower.

[ix] MDCEP analysis of 2017–2021 IPUMS American Community Survey microdata. See Meyer, 2023.

[x] "Understanding How Maryland's Employee Protection Laws Apply to Residential Service Agencies (RSAs) and Personal Care Aides (PCAs)," Maryland Office of the Attorney General, https://health.maryland.gov/ohcq/docs/RSA-PCA%20Guidance%20Document.pdf

[xi] Connolly, 2015

[xii] Senate Bill 197 Fiscal and Policy Note, https://mgaleg.maryland.gov/2024RS/fnotes/bil_0007/sb0197.pdf

[xiii] "The Direct Services Workforce," 2018.

[xiv] "The Direct Services Workforce," 2018.

[xv] Bureau of Labor Statistics, May 2021 Occupational Employment and Wage Statistics for Maryland