

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

## Testimony in Support of House Bill 39

### Residential Service Agencies - Reimbursement - Personal Assistance Services (Homecare Worker Rights Act of 2024)

TO: Hon. Joseline A. Pena-Melnyk, Chair, and Members of the House Health and Government Operations Committee

FROM: Job Opportunities Task Force

DATE: January 24, 2024

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-wage workers and job seekers in Maryland. **JOTF supports House Bill 39, which would end the illegal misclassification of home care workers as independent contractors under certain Medicaid home care programs, improve the quality of home care jobs, and help address Maryland’s home care workforce crisis at no cost to the State of Maryland.**

The Homecare Worker Rights Act of 2024 will ensure that personal care aides who work for home care agencies under certain Medicaid programs are properly classified as employees and not illegally misclassified as independent contractors. Last session, the prior bill passed out of the Health and Government Operations Committee with a favorable report and passed 3<sup>rd</sup> reading within the House.

Combatting the misclassification of employees as independent contractors is a priority for Governor Moore, Comptroller Lierman, and Attorney General Brown. Legitimate independent contractors have their own businesses, while employees do not. Calling an employee an “independent contractor” to avoid paying employment taxes and providing employee benefits like sick leave is both a misclassification and workplace fraud. Governor Moore himself has stated that, “Workplace fraud deprives workers of basic protections such as rights to minimum wage and overtime pay, health insurance coverage, and access to unemployment benefits. Businesses may also be put at a disadvantage when competitors misclassify workers. As a result, required taxes may be unpaid, which lowers state revenue and impacts funding to pay for critical public services... (Ending misclassification is) an important step toward a more equitable, competitive, and prosperous economy that lifts all Marylanders.”

When personal care aides are misclassified as independent contractors, it is both illegal and harmful. If a worker’s pay rate and schedule are set by an employer, and the employer can control how the work is done, that worker is an employee. Because of the structure of Maryland’s Medicaid program, all personal care aides this bill covers are already employees under the law: RSAs set their pay, enforce their schedules, and ensure they comply with Medicaid rules. Misclassification hurts Maryland’s personal care aides, those they care for, and law-abiding RSAs. These workers are not tax experts: they earn about \$15/hour and do the jobs available to them. When they are misclassified, they are cut out of the social safety net and lose protections like sick leave, workers’ compensation, health insurance, and more – and they face a higher “self-employment” tax when they should be getting a tax refund. Misclassification also hurts those they

# JOTF JOB OPPORTUNITIES TASK FORCE

## *Advocating better skills, jobs, and incomes*

care for by shrinking the size of the workforce. And it hurts law-abiding RSAs by forcing them to compete on an uneven playing field with RSAs that save money by misclassifying their workers.

Despite already being illegal, the problem persists. More than 550 RSAs currently provide care through these Medicaid programs. Despite enforcement by the U.S. Department of Labor and guidance from the Maryland Office of the Attorney General, many RSAs still misclassify personal care aides as independent contractors. State and federal labor agencies do not have the resources bring so many RSAs to court, and most workers do not know their rights. HB 39 would fix this issue 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.

Despite the simplicity, this bill is crafted in a way that does not create unintended consequences. The bill does *not* prevent a home care worker from working as an independent contractor. Rather, it provides that if certain Medicaid programs are funding the work, the worker must be properly classified as an employee as the law requires. The bill's scope is limited. It does not apply to care paid out of pocket, by long-term care insurance, or under the Developmental Disabilities Administration. Most of the affected workers are already classified as employees. The fiscal note on 2023's SB 180/HB 489 included data showing that of the RSAs that have reported information to the Department of Health, nearly 80% of Medicaid-funded personal care aides are already classified as employees. The bill would not destabilize the industry – it would get the industry all the way to where it needs to be. MDH already has the classification data it needs to measure compliance. 2022's SB 600 / HB 544 – codified at § 19-4A-11(c) of the Health code – already provides the Maryland Department of Health with the information on worker classification that the Department needs to ensure compliance. There is extraordinarily broad agreement that HB39 is the best way to tackle the problem.

Most Maryland home care agencies support the bill because it would eliminate unfair competition. The Maryland Department of Health supports the bill. Last session, MDH filed a letter of interest making clear that its only initial objection was an early effective date, but the agency supported the bill once its effective date was extended by a year. This year's bill reflects that agreement, and is the same bill MDH supported. There is very broad support for the bill from other stakeholders. Supporters include consumer groups like AARP and Disability Rights Maryland, worker groups like 1199SEIU and the National Domestic Worker Alliance, legal experts like the National Women's Law Center and Women's Law Center of Maryland, and numerous home care agencies.

Improving home care job quality is a race equity issue and a gender equity issue. Maryland's home care workers are mostly Black women. About 90% are women and about 70% are Black. This majority women-of-color workforce deserves employee protections. The bill will decrease worker turnover and increase retention. The turnover rate for home care workers ranges between 60% and 80%. This extremely high turnover is traumatizing for those who rely on home care because of the intimacy of the work, involving help with bathing, toileting, dressing, etc. Home care workers and RSAs alike say employee status reduces turnover. Multiple home care workers testified in written and oral testimony on that point. Home care agencies also testified that transitioning from an independent contractor model to an employee model decreases turnover and does not cause workers to leave home care.

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

**For these reasons, JOTF supports House Bill 39 and urges a favorable report.**

**For more information, contact:**

Kam Bridges / Senior Public Policy Advocate / [Kam@jotf.org](mailto:Kam@jotf.org)