

HOUSE BILL 652

J3, K3

11r1993
CF SB 384

By: **Delegate Qi**

Introduced and read first time: January 22, 2021

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2021

CHAPTER _____

1 AN ACT concerning

2 **Health Facilities – Residential Service Agencies – Guidance and Reporting**

3 FOR the purpose of requiring the Office of the Attorney General, in consultation with the
4 Maryland Department of Health and the Maryland Department of Labor, to produce
5 a guidance document concerning the application of certain laws to certain personal
6 care aides; providing for the content and structure of the guidance report; requiring
7 a residential agency to certify certain information on a certain form and through the
8 signature of a certain individual to the Maryland Department of Health as a
9 condition of obtaining ~~or renewing a~~ an initial license to operate as a residential
10 service agency and with certain frequency thereafter; requiring that a certain form
11 developed by the Maryland Department of Health include a certain checkbox;
12 requiring the Secretary of Health to provide a certain document to each licensed
13 residential service agency on a certain basis; ~~requiring a certain residential service~~
14 ~~agency to report certain information to the Maryland Department of Health;~~
15 requiring the Maryland Department of Labor and the Maryland Department of
16 Health to submit certain reports to certain committees of the General Assembly on
17 or before a certain date; defining a certain term; and generally relating to guidance
18 and reporting for residential service agencies.

19 BY repealing and reenacting, with amendments,
20 Article – Health – General
21 Section 19–4A–01
22 Annotated Code of Maryland
23 (2019 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – Health – General
3 Section 19–4A–11
4 Annotated Code of Maryland
5 (2019 Replacement Volume and 2020 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That the Laws of Maryland read as follows:

8 **Article – Health – General**

9 19–4A–01.

10 (a) In this subtitle the following words have the meanings indicated.

11 (b) “Home health care” includes any of the following services:

12 (1) Audiology and speech pathology;

13 (2) Dietary and nutritional services;

14 (3) Drug services;

15 (4) Home health aid;

16 (5) Laboratory;

17 (6) Medical social services;

18 (7) Nursing;

19 (8) Occupational therapy;

20 (9) Physical therapy;

21 (10) Provision of invasive medical equipment; and

22 (11) Home medical equipment services.

23 (c) “Home medical equipment services” means the delivery, installation,
24 maintenance, or replacement of, or instruction in the use of, medical equipment used by a
25 sick or disabled individual to allow the individual to be maintained in a noninstitutional
26 environment.

27 (d) “Medical equipment” means technologically sophisticated medical devices
28 including:

- 1 (1) Oxygen and oxygen delivery systems;
- 2 (2) Ventilators;
- 3 (3) Respiratory disease management devices;
- 4 (4) Electronic and computer driven wheelchairs and seating systems;
- 5 (5) Apnea monitors;
- 6 (6) Transcutaneous electrical nerve stimulator (T.E.N.S.) units;
- 7 (7) Low air loss cutaneous pressure management devices;
- 8 (8) Sequential compression devices;
- 9 (9) Neonatal home phototherapy devices;
- 10 (10) Feeding pumps; and
- 11 (11) Other similar equipment as defined in regulations established by the
12 Secretary.

13 (e) **“PERSONAL CARE AIDE” MEANS AN INDIVIDUAL WHO PROVIDES**
14 **PERSONAL CARE AS DEFINED IN § 19–301 OF THIS TITLE.**

15 **(F)** (1) “Residential service agency” means any person that is engaged in a
16 nongovernmental business of employing or contracting with individuals to provide home
17 health care for compensation to an unrelated sick or disabled individual in the residence of
18 that individual.

19 (2) “Residential service agency” includes any agency that employs or
20 contracts with individuals directly for hire as home health care providers.

21 (3) “Residential service agency” does not include:

22 (i) A home health agency that is licensed under the provisions of
23 Subtitle 4 of this title;

24 (ii) A person required to be licensed as a home health agency under
25 the provisions of Subtitle 4 of this title;

26 (iii) A home–based hospice care program that is licensed under the
27 provisions of Subtitle 9 of this title;

28 (iv) A hospital that is licensed under the provisions of Subtitle 3 of
29 this title;

- 1 (v) A related institution that is licensed under the provisions of
2 Subtitle 3 of this title;
- 3 (vi) Personal care providers under the Medical Assistance Personal
4 Care Program;
- 5 (vii) Any person practicing a health occupation that the person is
6 authorized to practice under the Health Occupations Article;
- 7 (viii) A nursing referral service agency that is licensed under Subtitle
8 4B of this title;
- 9 (ix) A group of persons licensed under the same title of the Health
10 Occupations Article practicing as a business; or
- 11 (x) Residential rehabilitation services providers approved under
12 regulations adopted by the State mental health authority.

13 **19-4A-11.**

14 (A) (1) ON OR BEFORE DECEMBER 30, 2021, THE OFFICE OF THE
15 ATTORNEY GENERAL, IN CONSULTATION WITH THE DEPARTMENT AND THE
16 MARYLAND DEPARTMENT OF LABOR, SHALL PRODUCE A GUIDANCE DOCUMENT
17 CONCERNING THE APPLICATION OF EMPLOYEE PROTECTION LAWS IN THE LABOR
18 AND EMPLOYMENT ARTICLE, TO THE ~~EMPLOYMENT~~ USE OF PERSONAL CARE AIDES
19 ~~EMPLOYED~~ BY RESIDENTIAL SERVICE AGENCIES.

20 (2) THE GUIDANCE DOCUMENT REQUIRED UNDER PARAGRAPH (1) OF
21 THIS SUBSECTION SHALL:

22 (I) DESCRIBE WITH SPECIFIC REFERENCE TO THE
23 RESIDENTIAL SERVICE CARE INDUSTRY:

24 1. RELEVANT DEFINITIONS OF “EMPLOY”, “EMPLOYEE”,
25 “EMPLOYER”, AND “INDEPENDENT CONTRACTOR”;

26 2. THE CONCEPT OF INDEPENDENT CONTRACTOR
27 MISCLASSIFICATION AND THE POTENTIAL FOR LEGAL LIABILITY INCLUDING
28 MONETARY DAMAGES FOR EMPLOYEES; AND

29 3. STEPS A RESIDENTIAL SERVICE AGENCY MAY TAKE TO
30 ENSURE COMPLIANCE WITH THE LABOR AND EMPLOYMENT ARTICLE;

1 (II) BE THREE PAGES OR FEWER AND, TO THE EXTENT
2 FEASIBLE, WRITTEN IN PLAIN LANGUAGE; AND

3 (III) BE REVISED AND UPDATED ON AN ANNUAL BASIS.

4 (B) (1) AS A CONDITION OF OBTAINING ~~OR RENEWING A~~ AN INITIAL
5 LICENSE FROM THE DEPARTMENT TO OPERATE AS A RESIDENTIAL SERVICE AGENCY
6 AND EVERY 3 YEARS THEREAFTER, A RESIDENTIAL SERVICE AGENCY SHALL
7 CERTIFY TO THE DEPARTMENT, ON A FORM DEVELOPED BY THE DEPARTMENT AND
8 THROUGH THE SIGNATURE OF AN INDIVIDUAL WITH AUTHORITY OVER THE
9 RESIDENTIAL SERVICE AGENCY'S PAY OR EMPLOYMENT PRACTICES, THAT:

10 (I) THE INDIVIDUAL HAS READ AND UNDERSTOOD THE
11 GUIDANCE DOCUMENT PRODUCED UNDER SUBSECTION (A) OF THIS SECTION; AND

12 (II) THE RESIDENTIAL SERVICE AGENCY WILL COMPLY WITH
13 THE RELEVANT REQUIREMENTS OF THE LABOR AND EMPLOYMENT ARTICLE.

14 (2) ON AN ANNUAL BASIS, THE SECRETARY SHALL PROVIDE THE
15 MOST CURRENT VERSION OF THE GUIDANCE DOCUMENT TO EACH LICENSED
16 RESIDENTIAL SERVICE AGENCY.

17 (3) A FORM DEVELOPED BY THE DEPARTMENT FOR USE UNDER
18 PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE A CHECKBOX BY WHICH A
19 RESIDENTIAL SERVICE AGENCY THAT RECEIVES MEDICAID REIMBURSEMENT FOR
20 THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A PERSONAL CARE AIDE
21 SHALL INDICATE WHETHER THE RESIDENTIAL SERVICE AGENCY USES PERSONAL
22 CARE AIDES DESIGNATED AS INDEPENDENT CONTRACTORS.

23 ~~(C) EACH RESIDENTIAL SERVICE AGENCY RECEIVING MEDICAID~~
24 ~~REIMBURSEMENT FOR THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A~~
25 ~~PERSONAL CARE AIDE SHALL REPORT TO THE DEPARTMENT THE FOLLOWING:~~

26 ~~(1) WHETHER THE RESIDENTIAL SERVICE AGENCY HAS CLASSIFIED~~
27 ~~THE PERSONAL CARE AIDE AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR;~~
28 ~~AND~~

29 ~~(2) THE HOURLY PAY RATE OF THE PERSONAL CARE AIDE.~~

30 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before November 1,
31 2021, the following reports shall be submitted to the Senate Finance Committee and the
32 House Health and Government Operations Committee, in accordance with § 2-1257 of the
33 State Government Article:

1 (1) The Maryland Department of Labor shall report on the strategies
2 undertaken by the Commissioner of Labor and Industry to educate residential service
3 agencies, as well as workers, on understanding the laws governing the classification of
4 independent contractors and employees, including the different tests used by State agencies
5 in determining whether a worker is an independent contractor or an employee; and

6 (2) The Maryland Department of Health shall report on the steps taken to
7 bring the rates for personal care aides in-line with the cost of delivering services as shown
8 inadequate in the report issued by the Maryland Department of Health in accordance with
9 Chapter 798 of 2018 and on turnover of personal care aides under the Maryland Medical
10 Assistance Program.

11 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 ~~October~~ July 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.