

SENATE BILL 384

J3, K3

(11r2015)

ENROLLED BILL

— Finance/Health and Government Operations —

Introduced by **Senator Kelley**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Health Facilities – Residential Service Agencies – ~~Compliance With State Labor~~**
3 **~~Laws~~ Guidance and Reporting**

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

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.

Italics indicate opposite chamber/conference committee amendments.



1 requiring the Maryland Department of Labor and the Maryland Department of
2 Health to submit certain reports to certain committees of the General Assembly on or
3 before a certain date; defining a certain term; and generally relating to residential
4 service agencies and compliance with State labor laws.

5 BY repealing and reenacting, with amendments,
6 Article – Health – General
7 Section 19–4A–01
8 Annotated Code of Maryland
9 (2019 Replacement Volume and 2020 Supplement)

10 BY adding to
11 Article – Health – General
12 Section 19–4A–11
13 Annotated Code of Maryland
14 (2019 Replacement Volume and 2020 Supplement)

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

17 **Article – Health – General**

18 19–4A–01.

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

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

21 (1) Audiology and speech pathology;

22 (2) Dietary and nutritional services;

23 (3) Drug services;

24 (4) Home health aide;

25 (5) Laboratory;

26 (6) Medical social services;

27 (7) Nursing;

28 (8) Occupational therapy;

29 (9) Physical therapy;

30 (10) Provision of invasive medical equipment; and

1 (11) Home medical equipment services.

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

6 (d) “Medical equipment” means technologically sophisticated medical devices
7 including:

8 (1) Oxygen and oxygen delivery systems;

9 (2) Ventilators;

10 (3) Respiratory disease management devices;

11 (4) Electronic and computer driven wheelchairs and seating systems;

12 (5) Apnea monitors;

13 (6) Transcutaneous electrical nerve stimulator (T.E.N.S.) units;

14 (7) Low air loss cutaneous pressure management devices;

15 (8) Sequential compression devices;

16 (9) Neonatal home phototherapy devices;

17 (10) Feeding pumps; and

18 (11) Other similar equipment as defined in regulations established by the
19 Secretary.

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

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

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

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

- 1 (i) A home health agency that is licensed under the provisions of
2 Subtitle 4 of this title;
- 3 (ii) A person required to be licensed as a home health agency under
4 the provisions of Subtitle 4 of this title;
- 5 (iii) A home-based hospice care program that is licensed under the
6 provisions of Subtitle 9 of this title;
- 7 (iv) A hospital that is licensed under the provisions of Subtitle 3 of
8 this title;
- 9 (v) A related institution that is licensed under the provisions of
10 Subtitle 3 of this title;
- 11 (vi) Personal care providers under the Medical Assistance Personal
12 Care Program;
- 13 (vii) Any person practicing a health occupation that the person is
14 authorized to practice under the Health Occupations Article;
- 15 (viii) A nursing referral service agency that is licensed under Subtitle
16 4B of this title;
- 17 (ix) A group of persons licensed under the same title of the Health
18 Occupations Article practicing as a business; or
- 19 (x) Residential rehabilitation services providers approved under
20 regulations adopted by the State mental health authority.

21 **19-4A-11.**

22 (A) (1) ON OR BEFORE DECEMBER 30, 2021, THE OFFICE OF THE
23 ATTORNEY GENERAL, IN CONSULTATION WITH THE DEPARTMENT AND THE
24 MARYLAND DEPARTMENT OF LABOR, SHALL PRODUCE A GUIDANCE DOCUMENT
25 CONCERNING THE APPLICATION OF EMPLOYEE PROTECTION LAWS IN THE LABOR
26 AND EMPLOYMENT ARTICLE, TO THE ~~EMPLOYMENT~~ USE OF PERSONAL CARE AIDES
27 ~~EMPLOYED~~ BY RESIDENTIAL SERVICE AGENCIES.

28 (2) THE GUIDANCE DOCUMENT REQUIRED UNDER PARAGRAPH (1) OF
29 THIS SUBSECTION SHALL:

30 (I) DESCRIBE WITH SPECIFIC REFERENCE TO THE
31 RESIDENTIAL SERVICE CARE INDUSTRY:

1 1. **RELEVANT DEFINITIONS OF “EMPLOY”, “EMPLOYEE”,**
2 **“EMPLOYER”, AND “INDEPENDENT CONTRACTOR”;**

3 2. **THE CONCEPT OF INDEPENDENT CONTRACTOR**
4 **MISCLASSIFICATION AND THE POTENTIAL FOR LEGAL LIABILITY INCLUDING**
5 **MONETARY DAMAGES FOR EMPLOYEES; AND**

6 3. **STEPS A RESIDENTIAL SERVICE AGENCY MAY TAKE TO**
7 **ENSURE COMPLIANCE WITH THE LABOR AND EMPLOYMENT ARTICLE;**

8 (ii) **BE THREE PAGES OR FEWER AND, TO THE EXTENT**
9 **FEASIBLE, WRITTEN IN PLAIN LANGUAGE; AND**

10 (iii) **BE REVISED AND UPDATED ON AN ANNUAL BASIS.**

11 (b) (1) **AS A CONDITION OF OBTAINING ~~OR RENEWING~~ AN INITIAL**
12 **LICENSE FROM THE DEPARTMENT TO OPERATE AS A RESIDENTIAL SERVICE AGENCY**
13 **AND EVERY 3 YEARS THEREAFTER, A RESIDENTIAL SERVICE AGENCY SHALL**
14 **CERTIFY TO THE DEPARTMENT, *ON A FORM DEVELOPED BY THE DEPARTMENT AND***
15 **THROUGH THE SIGNATURE OF AN INDIVIDUAL WITH AUTHORITY OVER THE**
16 **RESIDENTIAL SERVICE AGENCY’S PAY OR EMPLOYMENT PRACTICES, THAT:**

17 (i) **THE INDIVIDUAL HAS READ AND UNDERSTOOD THE**
18 **GUIDANCE DOCUMENT PRODUCED UNDER SUBSECTION (A) OF THIS SECTION; AND**

19 (ii) **THE RESIDENTIAL SERVICE AGENCY WILL COMPLY WITH**
20 **THE RELEVANT REQUIREMENTS OF THE LABOR AND EMPLOYMENT ARTICLE.**

21 (2) **ON AN ANNUAL BASIS, THE SECRETARY SHALL PROVIDE THE**
22 **MOST CURRENT VERSION OF THE GUIDANCE DOCUMENT TO EACH LICENSED**
23 **RESIDENTIAL SERVICE AGENCY.**

24 (3) **A FORM DEVELOPED BY THE DEPARTMENT FOR USE UNDER**
25 **PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE A CHECKBOX BY WHICH A**
26 **RESIDENTIAL SERVICE AGENCY THAT RECEIVES MEDICAID REIMBURSEMENT FOR**
27 **THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A PERSONAL CARE AIDE**
28 **SHALL INDICATE WHETHER THE RESIDENTIAL SERVICE AGENCY USES PERSONAL**
29 **CARE AIDES DESIGNATED AS INDEPENDENT CONTRACTORS.**

30 (c) ~~**EACH RESIDENTIAL SERVICE AGENCY RECEIVING MEDICAID**~~
31 ~~**REIMBURSEMENT FOR THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A**~~
32 ~~**PERSONAL CARE AIDE SHALL REPORT TO THE DEPARTMENT THE FOLLOWING:**~~

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

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before November 1,
6 2021, the following reports shall be submitted to the Senate Finance Committee and the
7 House Health and Government Operations Committee, in accordance with § 2-1257 of the
8 State Government Article:

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

14 (2) the Maryland Department of Health shall report on the steps taken to
15 bring the rates for personal care aides in-line with the cost of delivering services as shown
16 inadequate in the report issued by the Maryland Department of Health in accordance with
17 Chapter 798 of 2018 and on turnover of personal care aides under the Maryland Medical
18 Assistance Program.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.