

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 544

(Delegate Qi, *et al.*)

Health and Government Operations

Finance

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**Health Facilities - Residential Service Agencies - Reporting Requirement**

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This bill requires each residential service agency (RSA) receiving Medicaid reimbursement for the provision of home care or similar services by a personal care aide to report to the Maryland Department of Health (MDH) by October 1 each year the number of personal care aids classified by the RSA as (1) employees and (2) independent contractors. By July 1 each year, MDH must use the information to create a report concerning (1) Medicaid reimbursement rates; (2) the cost of delivering services; and (3) aggregated employment classifications of individuals who provide personal care. Data may only be in aggregate and may not identify a specific RSA. MDH must submit each report to specified committees of the General Assembly.

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**Fiscal Summary**

**State Effect:** MDH can develop a reporting form, receive submission of annual reports from RSAs, and create an aggregated report using existing budgeted resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** An RSA is an agency that provides supportive home care services, such as assistance with activities of daily living, housekeeping services, and some nursing services. An RSA may also provide one or more home care services or medical equipment (*e.g.*, oxygen, wheelchairs, walkers, and hospital beds). RSA includes any agency that employs

or contracts with individuals directly for hire as home health care providers. RSAs are licensed by the Office of Health Care Quality within MDH.

MDH must adopt regulations that set standards for the care, treatment, health, safety, welfare, and comfort of individuals who receive home health care services through an RSA. The regulations must provide for the licensing of RSAs. The regulations must include provisions that (1) provide for the establishment of RSAs; (2) establish qualifications for licensure; (3) set minimum standards for individuals who provide home health care services through an RSA; and (4) require an RSA to screen and verify the character references of all home health care providers employed by the RSA. An RSA must ensure that individuals that are referred are trained appropriately to provide care that is needed by the agency's clients.

A "personal care aide" is an individual who provides personal care. "Personal care" means a service that an individual normally would perform personally but for which the individual needs help from another because of advanced age, infirmity, or physical or mental limitation. Personal care includes help in walking, getting in and out of bed, bathing, dressing, and feeding, as well as general supervision and help in daily living.

Chapter 775 of 2021 requires the Office of the Attorney General, in consultation with MDH and the Maryland Department of Labor, to produce a guidance document concerning the application of employee protection laws to the use of personal care aides by RSAs. The guidance document must describe, with specific reference to the residential service care industry, (1) relevant definitions of "employ," "employee," "employer," and "independent contractor"; (2) the concept of independent contractor misclassification and the potential for legal liability, including monetary damages for employees; and (3) steps an RSA may take to ensure compliance with the Labor and Employment Article.

As a condition of obtaining an initial license to operate and every three years thereafter, an RSA must certify to MDH, on a form developed by the department, that an individual with authority over the RSA's pay or employment practices (1) has read and understood the guidance document and (2) will comply with the relevant requirements of the Labor and Employment Article.

**Additional Comments:** According to MDH, there are 1,362 RSAs licensed in the State, of which 819 providers are enrolled in Maryland Medicaid.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 600 (Senator Kelley, *et al.*) - Finance.

**Information Source(s):** Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2022  
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