

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 197

(Senator Ellis)

Finance

Health and Government Operations

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

This bill specifies that the Maryland Department of Health (MDH) may reimburse a residential service agency (RSA) for personal assistance services only if the services are provided by an individual classified as an employee. **The bill takes effect January 1, 2026.**

Fiscal Summary

State Effect: Assuming RSAs participating in Medicaid are staffed exclusively with employees by the bill's effective date, there is no impact on Medicaid revenues or expenditures, as discussed below.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: An RSA is an agency that employs or contracts with individuals to provide at least one home health care service for compensation to an unrelated sick or disabled individual. Some RSAs have nurses that provide skilled care and certified caregivers that provide assistance with activities of daily living. Other RSAs provide physical therapy, occupational therapy, or speech therapy, or durable medical equipment. RSAs are licensed by the Office of Health Care Quality (OHCQ) in MDH. As of January 2024, there were 2,323 licensed RSAs in Maryland.

Chapters 775 and 776 of 2021 required the Office of the Attorney General, in consultation with MDH and the Maryland Department of Labor to produce (and annually update) a [guidance document](#) concerning the application of employee protection laws to the use of personal care aides (PCAs) by RSAs. Per the document, RSAs sometimes wrongly classify PCAs as independent contractors rather than employees. This practice is illegal worker misclassification that can lead to costly investigations and lawsuits as well as severe tax consequences for RSAs. Misclassification also hurts PCAs by denying them important legal protections including unemployment benefits, workers' compensation, sick leave, and the right to overtime pay and travel time pay.

The Acts also require, as a condition of obtaining an initial license and every three years thereafter, that an RSA certify to MDH 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.

Furthermore, the Acts require MDH to develop a form that includes a checkbox for each RSA receiving Medicaid reimbursement for the provision of home care or similar services by a PCA to indicate whether the RSA uses PCAs designated as independent contractors. This form is available on the OHCQ website and can be submitted electronically.

State Fiscal Effect: RSAs enrolled in Medicaid provide personal assistance services, primarily to individuals receiving community long-term services and supports as an alternative to nursing home placement. In fiscal 2022, MDH reimbursed RSAs \$394.4 million for personal assistance services provided to 14,230 Medicaid participants.

Of the 2,323 licensed RSAs in Maryland, 1,348 (58%) have completed an RSA certification. Of those RSAs that have completed certification, 579 (43%) receive Medicaid reimbursement. The 579 Medicaid-enrolled RSAs reported employing a total of 12,363 PCAs, of which 10,330 are employees and 2,033 are independent contractors.

Under the bill, Medicaid will likely only reimburse an RSA for personal assistance services if the RSA is staffed exclusively with employees. Verifying that every claim was provided by an individual classified as an employee would be too administratively burdensome. However, MDH anticipates that all RSAs will likely shift to a 100% employee model before the bill's delayed effective date of January 1, 2026. As a result, MDH does not anticipate a fiscal or operational impact on Medicaid operations.

To the extent RSAs are unable to comply with the bill's employee classification requirements, there will be an indeterminate impact on Medicaid operations beginning in fiscal 2026 to ensure RSAs that are not a 100% employee model are disenrolled as Medicaid providers. To the extent RSAs' status in this regard changes frequently, reenrolling and revalidating providers will enhance this burden and cost.

Small Business Effect: RSAs that participate in Medicaid, many of which are small businesses, incur additional costs to ensure that all PCAs are employees rather than independent contractors. Those RSAs that fail to comply with the bill will be disenrolled as Medicaid providers and no longer eligible for Medicaid reimbursement.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 489 and SB 180 of 2023.

Designated Cross File: HB 39 (Delegate R. Lewis) - Health and Government Operations.

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

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