



David Rodwin, Attorney
Public Justice Center
1 North Charles Street, Suite 200
Baltimore, Maryland 21201
410-625-9409, ext. 249
rodwind@publicjustice.org

HB 1415: Health Facilities - Residential Service Agencies - Compliance with State Labor Laws Hearing before the Economic Matters Committee, March 10, 2020

Position: SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to an honest day's pay for an honest day's work. The PJC supports HB 1415, which would (1) address the shortage of personal care aides, (2) improve quality of care by reducing turnover, (3) help RSAs avoid lawsuits, and (4) help Maryland ensure that Residential Service Agencies (RSAs) receiving state Medicaid money do not violate Marylanders' rights.

The Problem: Misclassification of personal care aides as independent contractors is worsening the shortage of care workers, but Maryland neither educates RSAs on employment obligations nor tracks RSAs' pay practices. A 2018 [study](#) found that Maryland will need 40 percent more care workers over the next 10 years, but poor job quality is causing a worker shortage. MDH licenses 1,341 RSAs employing tens of thousands of Marylanders – about 90% women of color. But RSAs often misclassify their personal care aide employees as independent contractors. This hurts workers by increasing their tax burden and stripping them of wages, workers' comp, unemployment, and other protections. Most RSAs are small and mid-sized businesses. Many rely on advice from others in the industry and do not know that their employees are misclassified until they are sued. And though Maryland *already* uses a system through which workers phone-in and phone-out of their shifts, it does not ask RSAs to report what wages they pay their personal care aides, or whether they are classified as employees or independent contractors. As a result, the state does not know the pay practices of RSAs funded by state money.

The Solution: Ensure that every RSA reads a plain-language explanation of how Maryland's definitions of employee and independent contractor apply to personal care aides and RSAs, and require RSAs to report pay practices. HB 1415 has two components. First, it creates a short guidance document explaining how the concept of independent-contractor misclassification applies to personal care aides and requires RSAs to certify, on an annual basis, that they've read it and are complying with it. Second, it creates a small expansion of the system that MDH already uses to track which worker provides care to which Medicaid recipient through which RSA, and for how long. The expansion would simply add a few columns to an existing spreadsheet: the worker's employment classification, pay rate, and overtime pay rate.

HB 1415 follows Maryland's policy that businesses receiving state money should use it to create decent jobs. This precedent already exists, as expressed in the Prevailing Wage Law. That law not only requires businesses with public works contracts to report their pay practices – it also requires payment of higher "prevailing" wages. HB 1415 does not require RSAs to pay wages higher than the state minimum, but it does follow the policy that businesses receiving state money should report how they're spending it.

For the foregoing reasons, the PJC **SUPPORTS HB 1415** and urges a **FAVORABLE** report. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.