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SB 384 - Health Facilities - Residential Service Agencies - Compliance with State Labor Laws Hearing before the Senate Finance Committee, February 11, 2021

Position: SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project aims to ensure that our state's low-wage workers receive fair and full payment for their labor, as well as other basic protections on the job. The PJC **supports SB 384** and urges a **favorable** report.

The problem: Maryland's 30,000 personal care aides are often misclassified as independent contractors, denying them access to the social safety net and reducing job quality when Maryland faces a shortage of these essential workers.

- A 2018 [study](#) found that Maryland will need nearly 40 percent more care workers over the next ten years due to our aging population. But poor job quality is causing a shortage. The shortage is worsening during the pandemic, as many care recipients seek to leave nursing facilities.
- Misclassification occurs when employers wrongly call personal care aides "independent contractors" (meaning they are self-employed and have their own businesses) instead of employees. Misclassification cuts workers out of social safety net protections like workers' compensation and unemployment insurance that are available to employees but not independent contractors.
- Some employers misclassify their workers because they rely on "word of mouth" in the industry rather than legal advice. Correcting misclassification will improve job quality and attract more personal care aides to the field at a time when our state needs them more than ever.

SB 384's solution: guidance and reporting.

- The bill has two parts. First, it would require the development of a short guidance document that would explain the differences between independent contractors and employees, and how these differences apply to the home care industry. The bill would then require that residential service agencies (MDH-licensed home care agencies) read this guidance document when they obtain their license. This will help educate RSAs about existing Maryland law; without it, many RSAs will continue to rely on incorrect word of mouth.
- Second, for Medicaid-funded work only, it minimally expands reporting by adding two data points to the existing system MDH already uses to track Medicaid-funded personal care: the worker's employment

classification and pay rate. Reporting this information will help Maryland learn more about how state money is spent.

This bill is consistent with state policy that businesses receiving state money should use it transparently.

- Maryland has long sought to ensure that businesses receiving state money use it transparently and create decent jobs, as shown by Maryland's Prevailing Wage and Living Wage Laws. In the Prevailing and Living Wage contexts, businesses not only pay higher wages but submit biweekly payroll reports showing the precise dollar amount every worker was paid.
- SB 384 offers a narrower and less burdensome means of ensuring transparency. For Medicaid-funded work only, it would simply add two columns to an existing spreadsheet MDH uses to track Medicaid-funded personal care work: one for the worker's classification as employee or independent contractor, and one for the worker's pay rate. This information will help inform the state about how its money is spent.

Misclassification of personal care aides is both a *race equity* issue and a *gender equity* issue.

- Historically, care work was often not considered "real work" because it was performed by women, especially women of color. Personal care aides in Maryland are mostly Black women: about 90% are women and about 70% are Black.
- When personal care aides are wrongly classified as independent contractors, it makes it much harder to obtain workers' compensation—and injury rates are extremely high due to the lifting the job entails. This can cause financial crisis and even homelessness.
- Misclassification also increases workers' tax burden as they mistakenly file as "self-employed." In the aggregate, misclassification increases instability for many Black families and deepens the racial wealth gap.

Misclassification of personal care aides hurts businesses doing the right thing—which is why the country's leading home care trade association denies membership to home care agencies that classify such workers as independent contractors.

- Home care agencies that properly classify their employees face unfair competition from agencies that misclassify their workers. Businesses that misclassify their employees do not pay employment taxes, giving them an unfair—and illegal—advantage over businesses that follow the law.
- Home care agencies that misclassify their employees also "poach" workers from law-abiding agencies by promising them tax-free pay—but without telling workers that they will face a much higher tax burden at the end of the year as supposedly "self-employed" individuals. This increased turnover hurts home care agencies and consumers of care.
- For these reasons, the country's leading home care trade association—the Home Care Association of America, with chapters in 16 states—requires its members to hire their caregivers as W-2 employees and "supports efforts to clarify and fully enforce existing worker classification laws." Please see the attached policy page of the Home Care Association of America and press release from Age Safe America—a leading organization dedicated to quality care—explaining this position and the reasons for it, with relevant sections highlighted.

For the reasons indicated above, the Public Justice Center **SUPPORTS SB 384** and requests a **FAVORABLE** report.

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POSITION

Worker Misclassification

The Home Care Association of America (HCAOA) supports efforts to clarify and fully enforce existing worker classification laws. Many in-home, non-medical companion care workers should be classified as employees, because how, where and when they perform their duties is controlled by the person or entity who sets up the assignment. HCAOA asks that you support legislative and regulatory efforts to enhance appropriate worker classification.

[DOWNLOAD](#)

POSITION

Elder Abuse Guidelines

Elder abuse is a serious problem affecting hundreds of thousands of older persons each year. Professionals in the field of aging are in a unique position to recognize this problem and initiate intervention. HCAOA supports the development of policies and procedures by its member agencies to reduce the incidence of elder abuse, and to recognize it and respond properly when it is encountered.

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POSITION

Keep Home Care Affordable

There is a critical issue surrounding the affordability of home care in the United States. As an advocate for private duty home care, the Home Care Association highlights important ways to keep home care affordable in the United States.

Age Safe® America Announces the Home Care Association of America as a Preferred Partner

Seniors, family members and homeowners are looking to Age Safe America for trusted information on home safety and aging-in-place solutions.

SARASOTA, Fla. ([PRWEB](#)) June 18, 2019 -- Age Safe America, LLC and Home Care Association of America (HCAOA) have negotiated an opportunity for all HCAOA Members to be preferred home care providers on the nationwide Age Safe® Services Registry. The Registry refers vetted professionals to aging Americans and their families. Members of the Age Safe Services Registry undergo a "best practices" background screening by their US based partner and/or belong to a reputable industry association and/or carry recognized professional credentials.

The Age Safe Services Registry is the only national network of [Senior Home Safety Specialists™](#) and Aging Services Providers with a focus on home safety and independent living. As a trusted source, Age Safe America receives inquiries from seniors and their adult children looking for a myriad of services, products, recommendations and solutions to successfully grow old in the place they choose; which for 9 out of 10 older Americans is their own home.

The Home Care Association of America is the leading trade association for the home care industry. Since its founding, HCAOA has made standards of care and patient safety central to its mission. Through its Standards and Ethics Committee, HCAOA has developed guidelines for the hiring, screening, training, and supervising of caregivers at all levels, often going beyond what is required by state regulations.

HCAOA membership eligibility requirements highlight the values and practices that separate HCAOA members from other providers in the home care market. For example, HCAOA members are required to hire their caregivers as W2 employees, rather than independent contractors. While families may be tempted to hire caregivers working as independent contractors because they generally work for a lower hourly rate, they often fail to understand that their liability exposure can be even greater as they essentially become their caregivers' employer.

"Quality home care services is an essential part of a successful aging in place plan, and Age Safe America's vision and core values align well with HCAOA," said Phil Bongiorno, Executive Director of Home Care Association of America. "This partnership represents a leap forward in access to full-service care for the millions of seniors choosing to age at home. Our member providers will be able to forge new partnerships with other key service providers, and the Age Safe® Services Registry will benefit from a wider array of home care providers."

Age Safe America was created in an effort to help reduce and prevent falls and their associated costs. They have positioned themselves as training and consulting leaders with their Senior Home Safety Specialist™ certification. Since 2015 Age Safe America has trained professionals throughout North America, Europe and the Middle East to meet the growing need for home safety assessments and aging in place home modifications. The company has trained healthcare professionals, home care providers, case managers, social workers, first responders, entrepreneurs, industry executives, assisted living communities, realtors, senior move managers, contractors, remodelers, home inspectors, handyman services, as well as staff and leadership of non-profit and Fortune 100 companies.

"We are very excited to initiate this partnership with the HCAOA and its quality membership. So far this year the Registry has seen considerable growth. Currently we are working with other leading industry associations and organizations with the same high level of standards to continue building the Registry nationwide," said Steven Bailey, Managing Director of Age Safe America, LLC.

About Age Safe America, LLC

[Age Safe® America](#) is a national membership, training and advocacy organization. Since 2015 the company has been directed by recognized experts in fall prevention, senior home safety, aging- in-place, universal design, home modifications, environmental assessment, and marketing to seniors and aging boomers. They provide training, consulting, certifications, product reviews, tools, resources and support to businesses and organizations providing products and services to seniors and their adult children.

About Home Care Association of America

Founded in 2002, the [Home Care Association of America \(HCAOA\)](#) is the industry's leading trade association – currently representing nearly 3,000 companies that employ more than 500,000 caregivers across the United States. HCAOA serves as the home care industry's unified voice. Representing a diverse number of small, mid-level and large corporations, HCAOA unites the industry through speaking with one voice in Washington, D.C. and state capitals across the country. HCAOA protects industry interests, promotes industry values, tackles barriers to growth and takes on industry-wide issues.



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Online Web 2.0 Version

You can read the online version of this press release [here](#).