

HOUSE BILL 1415

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By: **Delegates Hill, Ebersole, Johnson, Kelly, Shetty, and Terrasa**

Introduced and read first time: February 7, 2020

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health Facilities – Residential Service Agencies – Compliance with State Labor**
3 **Laws**

4 FOR the purpose of requiring the Maryland Department of Health, in consultation with the
5 Maryland Department of Labor and the Office of the Attorney General, to produce a
6 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 through the signature of a certain
9 individual to the Maryland Department of Health as a condition of obtaining a
10 license to operate as a residential service agency; requiring the Secretary of Health
11 to provide a certain document to each licensed residential service agency on a certain
12 basis; requiring a residential service agency to annually recertify to the Maryland
13 Department of Health certain information through the signature of a certain
14 individual to maintain certain licensure; requiring a certain residential service
15 agency to report certain information to the Maryland Department of Health;
16 requiring the Maryland Department of Health to coordinate with the Maryland
17 Department of Labor for a certain purpose; prohibiting the Maryland Department of
18 Health from issuing or renewing a certain license to a residential service agency
19 under certain circumstances; defining a certain term; and generally relating to
20 residential service agencies and compliance with State labor laws.

21 BY repealing and reenacting, with amendments,
22 Article – Health – General
23 Section 19–4A–01
24 Annotated Code of Maryland
25 (2019 Replacement Volume)

26 BY adding to
27 Article – Health – General
28 Section 19–4A–11
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2019 Replacement Volume)

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

Article – Health – General

19–4A–01.

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

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

(1) Audiology and speech pathology;

(2) Dietary and nutritional services;

(3) Drug services;

(4) Home health aid;

(5) Laboratory;

(6) Medical social services;

(7) Nursing;

(8) Occupational therapy;

(9) Physical therapy;

(10) Provision of invasive medical equipment; and

(11) Home medical equipment services.

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

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

(1) Oxygen and oxygen delivery systems;

(2) Ventilators;

- (3) Respiratory disease management devices;
- (4) Electronic and computer driven wheelchairs and seating systems;
- (5) Apnea monitors;
- (6) Transcutaneous electrical nerve stimulator (T.E.N.S.) units;
- (7) Low air loss cutaneous pressure management devices;
- (8) Sequential compression devices;
- (9) Neonatal home phototherapy devices;
- (10) Feeding pumps; and
- (11) Other similar equipment as defined in regulations established by the

Secretary.

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

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

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

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

(i) A home health agency that is licensed under the provisions of Subtitle 4 of this title;

(ii) A person required to be licensed as a home health agency under the provisions of Subtitle 4 of this title;

(iii) A home-based hospice care program that is licensed under the provisions of Subtitle 9 of this title;

(iv) A hospital that is licensed under the provisions of Subtitle 3 of this title;

(v) A related institution that is licensed under the provisions of Subtitle 3 of this title;

(vi) Personal care providers under the Medical Assistance Personal Care Program;

(vii) Any person practicing a health occupation that the person is authorized to practice under the Health Occupations Article;

(viii) A nursing referral service agency that is licensed under Subtitle 4B of this title;

(ix) A group of persons licensed under the same title of the Health Occupations Article practicing as a business; or

(x) Residential rehabilitation services providers approved under regulations adopted by the State mental health authority.

19-4A-11.

(A) (1) ON OR BEFORE DECEMBER 30, 2020, THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND DEPARTMENT OF LABOR AND THE OFFICE OF THE ATTORNEY GENERAL, SHALL PRODUCE A GUIDANCE DOCUMENT CONCERNING THE APPLICATION OF EMPLOYEE PROTECTION LAWS IN THE LABOR AND EMPLOYMENT ARTICLE, TO THE EMPLOYMENT OF PERSONAL CARE AIDES EMPLOYED BY RESIDENTIAL SERVICE AGENCIES.

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

(I) 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 A RESIDENTIAL SERVICE AGENCY MAY TAKE TO ENSURE COMPLIANCE WITH THE LABOR AND EMPLOYMENT ARTICLE;

(II) BE FIVE PAGES OR LESS AND, TO THE EXTENT FEASIBLE, WRITTEN IN PLAIN LANGUAGE; AND

(III) BE REVISED AND UPDATED ON AN ANNUAL BASIS.

1 **(B) (1) AS A CONDITION OF OBTAINING A LICENSE FROM THE**
2 **DEPARTMENT TO OPERATE AS A RESIDENTIAL SERVICE AGENCY, A RESIDENTIAL**
3 **SERVICE AGENCY SHALL CERTIFY TO THE DEPARTMENT, THROUGH THE SIGNATURE**
4 **OF AN INDIVIDUAL WITH AUTHORITY OVER THE RESIDENTIAL SERVICE AGENCY'S**
5 **PAY PRACTICES, THAT:**

6 **(I) THE INDIVIDUAL HAS READ AND UNDERSTOOD THE**
7 **GUIDANCE DOCUMENT PRODUCED UNDER SUBSECTION (A) OF THIS SECTION; AND**

8 **(II) THE RESIDENTIAL SERVICE AGENCY WILL COMPLY WITH**
9 **THE RELEVANT REQUIREMENTS OF THE LABOR AND EMPLOYMENT ARTICLE.**

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

13 **(3) TO MAINTAIN LICENSURE UNDER THIS SUBTITLE, A RESIDENTIAL**
14 **SERVICE AGENCY SHALL ANNUALLY RECERTIFY TO THE DEPARTMENT, THROUGH**
15 **THE SIGNATURE OF AN INDIVIDUAL WITH AUTHORITY OVER THE RESIDENTIAL**
16 **SERVICE AGENCY'S PAY PRACTICES, THAT:**

17 **(I) THE INDIVIDUAL HAS READ AND UNDERSTOOD THE MOST**
18 **CURRENT VERSION OF THE GUIDANCE DOCUMENT PRODUCED UNDER SUBSECTION**
19 **(A) OF THIS SECTION; AND**

20 **(II) TO THE BEST OF THAT INDIVIDUAL'S KNOWLEDGE, THE**
21 **RESIDENTIAL SERVICE AGENCY'S PAY PRACTICES COMPLY WITH THE PROVISIONS**
22 **OF THE LABOR AND EMPLOYMENT ARTICLE.**

23 **(C) EACH RESIDENTIAL SERVICE AGENCY RECEIVING MEDICAID**
24 **REIMBURSEMENT FOR THE PROVISION OF HOME CARE OR SIMILAR SERVICES SHALL**
25 **REPORT TO THE DEPARTMENT THE FOLLOWING:**

26 **(1) WHETHER THE RESIDENTIAL SERVICE AGENCY HAS CLASSIFIED**
27 **EACH WORKER AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR;**

28 **(2) THE AVERAGE REGULAR HOURLY PAY RATE OF EACH EMPLOYEE**
29 **CALCULATED ON A WEEKLY BASIS; AND**

30 **(3) WHETHER THE RESIDENTIAL SERVICE AGENCY PAID EACH**
31 **EMPLOYEE AN OVERTIME RATE OF 1.5 TIMES THE EMPLOYEE'S REGULAR HOURLY**
32 **PAY RATE PER HOUR FOR EACH HOUR THE EMPLOYEE WORKED MORE THAN 40**

1 HOURS IN ANY GIVEN WEEK.

2 (D) THE DEPARTMENT SHALL COORDINATE WITH THE MARYLAND
3 DEPARTMENT OF LABOR TO ENSURE THAT RESIDENTIAL SERVICE AGENCIES ARE
4 NOT MISCLASSIFYING PERSONAL CARE AIDES OR SIMILAR EMPLOYEES AS
5 INDEPENDENT CONTRACTORS.

6 (E) THE DEPARTMENT MAY NOT ISSUE OR RENEW A LICENSE TO A
7 RESIDENTIAL SERVICE AGENCY THAT THE MARYLAND DEPARTMENT OF LABOR
8 DETERMINES IS MISCLASSIFYING PERSONAL CARE AIDES OR SIMILAR EMPLOYEES
9 AS INDEPENDENT CONTRACTORS IF, FOLLOWING NOTICE FROM THE DEPARTMENT
10 OR THE MARYLAND DEPARTMENT OF LABOR, THE RESIDENTIAL SERVICE AGENCY
11 HAS NOT REMEDIED THE ISSUE AFTER REASONABLE TIME TO DO SO.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2020.