

Chapter 775

(House Bill 652)

AN ACT concerning

Health Facilities – Residential Service Agencies – Guidance and Reporting

FOR the purpose of requiring the Office of the Attorney General, in consultation with the Maryland Department of Health and the Maryland Department of Labor, to produce a guidance document concerning the application of certain laws to certain personal care aides; providing for the content and structure of the guidance report; requiring a residential agency to certify certain information on a certain form and through the signature of a certain individual to the Maryland Department of Health as a condition of obtaining ~~or renewing a~~ an initial license to operate as a residential service agency and with certain frequency thereafter; requiring that a certain form developed by the Maryland Department of Health include a certain checkbox; requiring the Secretary of Health to provide a certain document to each licensed residential service agency on a certain basis; ~~requiring a certain residential service agency to report certain information to the Maryland Department of Health;~~ requiring the Maryland Department of Labor and the Maryland Department of Health to submit certain reports to certain committees of the General Assembly on or before a certain date; defining a certain term; and generally relating to guidance and reporting for residential service agencies.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 19–4A–01

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY adding to

Article – Health – General

Section 19–4A–11

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

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, 2021, THE OFFICE OF THE ATTORNEY GENERAL, IN CONSULTATION WITH THE DEPARTMENT AND THE MARYLAND DEPARTMENT OF LABOR, SHALL PRODUCE A GUIDANCE DOCUMENT CONCERNING THE APPLICATION OF EMPLOYEE PROTECTION LAWS IN THE LABOR AND EMPLOYMENT ARTICLE, TO THE ~~EMPLOYMENT~~ USE 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 THREE PAGES OR FEWER AND, TO THE EXTENT FEASIBLE, WRITTEN IN PLAIN LANGUAGE; AND

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

(B) (1) AS A CONDITION OF OBTAINING ~~OR RENEWING A~~ AN INITIAL LICENSE FROM THE DEPARTMENT TO OPERATE AS A RESIDENTIAL SERVICE AGENCY AND EVERY 3 YEARS THEREAFTER, A RESIDENTIAL SERVICE AGENCY SHALL CERTIFY TO THE DEPARTMENT, ON A FORM DEVELOPED BY THE DEPARTMENT AND THROUGH THE SIGNATURE OF AN INDIVIDUAL WITH AUTHORITY OVER THE RESIDENTIAL SERVICE AGENCY’S PAY OR EMPLOYMENT PRACTICES, THAT:

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

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

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

(3) A FORM DEVELOPED BY THE DEPARTMENT FOR USE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE A CHECKBOX BY WHICH A RESIDENTIAL SERVICE AGENCY THAT RECEIVES MEDICAID REIMBURSEMENT FOR THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A PERSONAL CARE AIDE SHALL INDICATE WHETHER THE RESIDENTIAL SERVICE AGENCY USES PERSONAL CARE AIDES DESIGNATED AS INDEPENDENT CONTRACTORS.

~~(C) EACH RESIDENTIAL SERVICE AGENCY RECEIVING MEDICAID REIMBURSEMENT FOR THE PROVISION OF HOME CARE OR SIMILAR SERVICES BY A PERSONAL CARE AIDE SHALL REPORT TO THE DEPARTMENT THE FOLLOWING:~~

~~(1) WHETHER THE RESIDENTIAL SERVICE AGENCY HAS CLASSIFIED THE PERSONAL CARE AIDE AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR; AND~~

~~(2) THE HOURLY PAY RATE OF THE PERSONAL CARE AIDE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before November 1, 2021, the following reports shall be submitted to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article:

(1) The Maryland Department of Labor shall report on the strategies undertaken by the Commissioner of Labor and Industry to educate residential service agencies, as well as workers, on understanding the laws governing the classification of independent contractors and employees, including the different tests used by State agencies in determining whether a worker is an independent contractor or an employee; and

(2) The Maryland Department of Health shall report on the steps taken to bring the rates for personal care aides in-line with the cost of delivering services as shown inadequate in the report issued by the Maryland Department of Health in accordance with Chapter 798 of 2018 and on turnover of personal care aides under the Maryland Medical Assistance Program.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.