

**Testimony of Damon King
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**Before the Committee on Human Services
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Department of Human Services

February 24, 2022

The Legal Aid Society of the District of Columbia¹ submits the following testimony to urge Mayor Bowser to permanently end the District of Columbia Health Care Alliance program's six month, in-person recertification requirement. This draconian requirement has subjected thousands of District residents who are immigrants to needless bureaucratic barriers in order to maintain access to healthcare. District leaders' failure, over more than a decade, to permanently end this policy is shameful and the Department of Human Services' (DHS) poor administration of the eligibility process in recent months – leading to the inappropriate terminations of thousands of Alliance and Immigrant Children's Program participants – only underscores the senselessness of maintaining special recertification requirements for the Alliance program. It is time to remove this damaging gap in the District's public health approach and ensure that the District no longer singles out low-income immigrants when it comes to accessing the healthcare they need.

Alliance Participants Have Been Subjected to Special Recertification Requirements for Far too Long

The District of Columbia Health Care Alliance is a locally-funded healthcare program that provides health insurance coverage to low-income District residents who are not eligible for Medicaid. It is a crucial gap-filling source of health coverage for immigrants living in the District, offering the promise of continuous access to healthcare to thousands of residents whose

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

immigration status leaves them vulnerable to economic marginalization and the numerous health challenges that flow from that marginalization. The program is operated by the Department of Healthcare Finance (DHCF), while DHS is responsible for administering its eligibility processes.

More than a decade ago, in October, 2011, the District instituted a policy requiring Alliance participants to renew their coverage every six months and to complete an "in-person interview" as part of each recertification of their eligibility. This requirement is significantly more onerous than the recertification process for similarly situated low-income Washingtonians enrolled in Medicaid.²

The policy immediately prevented many eligible participants from being able to maintain their health coverage under the Alliance and resulted in needless terminations. As early as April, 2012, Legal Aid testified before the Council's Committee on Health that we were seeing an increase in the number of Alliance participants seeking legal help because they attempted to recertify in-person but were unable to do so.³ In the intervening years, Legal Aid has documented the extreme measures that Alliance participants have had to take in order to renew their coverage, including – in the pre-pandemic years – lining up outside of DHS service centers at 4 AM or earlier to attempt to complete the in-person interviews required to keep their coverage.⁴ Enrollment and other data from those years have demonstrated that the Alliance participants Legal Aid has served are not outliers. As the DC Fiscal Policy Institute detailed in 2018, during the first year the six-month, in-person recertification requirement was implemented (FY12), Alliance enrollment plummeted by one-third, from roughly 24,000 participants to about 16,000.⁵ Data on the monthly completion of recertifications showed that a substantial number of participants up for recertification each month failed to complete the recertification process on

² Medicaid enrollees recertify once a year by mail and are not required to complete an in-person interview for recertification.

³ Legal Aid Budget and Oversight Testimony Regarding the Department of Health Care Finance, April 19, 2012. Available at: <http://www.legalaiddc.org/wp-content/uploads/2013/10/Apatterson4-19-12.pdf>

⁴ See, e.g., Legal Aid Performance Oversight Testimony Regarding the Department of Human Services, January 29, 2020. Available at: <https://www.legalaiddc.org/wp-content/uploads/2020/02/Legal-Aid-DHS-Oversight-Testimony-FY19-FY20YTD-Alliance-FINAL.pdf>

Legal Aid Performance Oversight Testimony Regarding the Department of Health Care Finance, February 6, 2019. Available at: <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-DCHF-Oversight-Testimony-Health-Care-Alliance-FINAL.pdf>

⁵ Jodi Kwarciany, *What DC Can Do to Improve Access to Health Care for Thousands of Immigrant Residents*. DC Fiscal Policy Institute, April 26, 2018. Available at: <https://www.dcfpi.org/all/what-dc-can-do-to-improve-access-to-health-care-for-thousands-of-immigrant-residents/>

time.⁶ Simply put, from the beginning, the decision to require Alliance participants to complete special requirements just to keep their healthcare has cost participants their health coverage.

COVID-19 Protections Provided Only Temporary Relief from the Alliance's Onerous Requirements

As the spread of COVID-19 escalated in the spring of 2020, the Bowser Administration recognized the negative public health consequences of requiring Alliance participants to visit DHS service centers to complete in-person interviews with DHS staff. As part of a collection of pandemic protections for participants in safety net programs in the District, the Administration suspended the program's recertification requirements. From March, 2020 through September, 2021, Alliance participants were not required to recertify, remaining covered during that time. Further, when the Council passed the FY22 Budget Support Act, it included language that would prevent the Administration from conducting in-person interviews as part of the recertification process for the full duration of FY22.⁷

Temporary protections for Alliance participants were a much-needed step and presented the District with an opportunity to amend its prior treatment of Alliance participants. Unfortunately,

⁶ For example, over the first five months of FY20 (the last before the pandemic), between one-fifth (22%) and one-third (33%) of participants required to recertify in a given month did not complete the recertification process by their deadline or re-enroll in the program within 30 days after their deadline. DHCF FY20-FY21 Performance Oversight Responses, Q35. Available at: https://dccouncil.us/wp-content/uploads/2021/06/DHCF-FY20-Performance-Oversight-Responses_FINAL_Updated.pdf

Data from prior years paint an even grimmer picture. For example, from October, 2017 through January, 2019, between 44% and 66% of Alliance participants up for recertification each month did not complete the recertification process on time. DHCF FY18-FY19 Performance Oversight Responses, Q49. Available at: <https://dccouncil.us/wp-content/uploads/2019/04/dhcf.pdf>

And DHCF reported in 2016 that during calendar year 2015, between 56% and 71% of participants each month did not complete the recertification process. *See*, DHCF FY2017 Budget Presentation for MCAC, March 2016, at slide 33. Available at: https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/publication/attachments/DHCF%20FY2017%20MCAC%20Budget%20Presentation%203-2016_1.pdf

⁷ The language of the BSA provision states that Alliance applicants and enrollees shall not be required to complete in-person interviews, but also includes an exception to this prohibition that allows the Mayor to require enrollees to complete an "in-person certification" once per year in FY23, FY24, and FY25. The effect of this is that Alliance participants are protected from in-person interviews in FY22, but these interviews could return beginning in October, 2022 (the start of FY23). Fiscal Year 2022 Budget Support Act of 2021, at p. 139. Available at: <https://lims.dccouncil.us/downloads/LIMS/47312/Meeting3/Enrollment/B24-0285-Enrollment12.pdf>

the temporary nature of these protections and the Administration's handling of Alliance policy in late 2021 have raised serious concerns about whether District leaders have learned the right lessons from the pandemic.

While phasing out most pandemic protections, the Administration restarted Alliance recertifications in October, 2021. Over the course of the month, healthcare and legal services providers serving Alliance participants reported that their clients were encountering a range of problems as they attempted to recertify and maintain their coverage, including DHS losing documents, inadequate notices, and difficulty with the online recertification process.

Ultimately, Deputy Mayor Wayne Turnage reported that at the end of October, nearly 7,000 participants in the Alliance and the Immigrant Children's Health Program were inappropriately terminated from their coverage.⁸ While the Deputy Mayor ultimately reinstated terminated participants and delayed recertification deadlines through February, 2022 by six months,⁹ the poorly-planned and executed restart of recertifications by DHS underscores a fundamental truth: that maintaining separate, high-barrier recertification requirements for Alliance participants continually puts them at risk of losing coverage through no fault of their own.

Legal Aid and its partners will closely monitor how the Administration handles recertifications in March-September 2022. We urge the Committee on Human Services and the Committee on Health to ask DHS and DHCF respectively how each agency plans to ensure that the problems Alliance participants encountered this past fall do not happen again. However, policymakers must go beyond this to implement a *permanent* solution. Alliance participants deserve better than a series of temporary protections and stopgaps to protect them from a policy that should have been repealed years ago.

The District Must End the Six-Month, In-Person Recertification Requirement

Currently, thanks to the Alliance Budget Support Act subtitle and subsequent implementing regulations, there will be no in-person interviews this fiscal year, but there is nothing to prevent the Administration from returning to the pre-pandemic status quo and reinstating in-person interviews in FY23.¹⁰ The same Budget Support Act subtitle contemplates a shift from six

⁸ The Deputy Mayor reported this in an Email to members of the Committee on Health on November 12, 2021. DHS oversight responses reflect a slightly lower, but still alarming, number of terminations: Of the 8,500 Alliance and ICP participants required to recertify by October 31, 2021, 6,100 Alliance/ICP participants were terminated. FY21-22 DHS Performance Oversight Responses, Q152. Available at: <https://dccouncil.us/wp-content/uploads/2022/02/DHS-FY21-22-Performance-Pre-Hearing-Responses.pdf>

⁹ For current information on the status of recertification requirements, see: <https://dhs.dc.gov/page/esa-public-benefit-alerts->

¹⁰ See, *supra*, note 7.

month recertification cycles to annual recertifications, but delays implementation of that shift for *more than three years* to April 1, 2025. This means that, even assuming that the language is not revised in subsequent budgets or standalone bills,¹¹ Alliance participants who have waited more than a decade for the District to remove ineffective bureaucratic barriers to keeping their health coverage are being told yet again to wait for a permanent solution. That this issue has been allowed to go unresolved for over ten years demonstrates a lack of regard for struggling District residents who are immigrants – especially immigrants who are Black or Latinx.¹² And,

Further, Emergency and Proposed Rulemaking issued by DHCF also leaves open the question of whether there will be in-person interviews after FY22. The regulations state: " Applicants and beneficiaries for the Alliance program shall not be required to participate in an interview as a condition of eligibility during FY 2022. Waiver of participation in an interview in subsequent fiscal years is contingent on funding by the Council." Department of Healthcare Finance, Notice of Emergency and Proposed Rulemaking – Governing the DC Health Care Alliance, November 19, 2021. Available at:

<https://www.dcregs.dc.gov/Common/DCR/Issues/IssueCategoryList.aspx?DownloadFile={B7750860-5B51-4F45-8430-4DD61DDD57E5}>

¹¹ There is, in fact, a significant history of Alliance-related legislation being passed only to be subsequently modified or repealed, which makes projecting the future of Alliance policy difficult. In the last five years, the Council has passed four pieces of permanent legislation with language that would change Alliance recertification requirements: Bill 22-0231, Bill 22-0194, Bill 23-0890, and the FY22 Budget Support Act (B24-0285).

Bill 22-0231 (which attempted to fully repeal the six-month, in-person requirement) was passed in December, 2017, but was ultimately repealed by the FY21 Budget Support Act because neither the Mayor nor the Council funded it. Fiscal Year 2021 Budget Support Act of 2020, at p. 123. Available at: <https://lms.dccouncil.us/downloads/LIMS/45028/Meeting4/Enrollment/B23-0760-Enrollment17.pdf>

Bill 22-0194 and Bill 23-0890 were passed in October, 2017 and December, 2020, respectively. Bill 22-0194 permitted Alliance participants to complete one of two in-person interviews per year over the phone, while Bill 23-0890 was the Council's second attempt at a full repeal of the six-month, in-person requirement. Bill 22-0194 was ultimately funded in the FY21 budget. Bill 23-0890's Alliance provisions have not been funded. The FY22 Budget Support Act adopts elements from both bills but also modifies them. It limits in-person interviews to once per year in the years in which they are permitted, similar to Bill 22-0194, but does not permit in-person interviews every year. On the other hand, in response to the Mayor and Council's failure to fund either Bill 22-0231 or Bill 23-0890 in the years since B22-0231 first passed, it pegs the repeal of the six-month recertification schedule contemplated by B23-0890 to a date in the future (April 1, 2025). *See, supra*, note 7.

¹² FY20-21 oversight responses show that in FY20, more than 70% of Alliance participants identified as either Hispanic (50.1%) or African American (20.2%). FY20-21 DCHF, Q42 (Attachments, at p. 161, available at: <https://dccouncil.us/wp-content/uploads/2021/06/dchatt.pdf>).

especially in the wake of COVID-19, it is deeply flawed public health policymaking. Alliance participants deserve better, and the Mayor should act to eliminate these barriers to healthcare in the FY23 budget process.

Legal Aid urges the Mayor to:

- Use the FY23 Local Budget Act and Budget Support Act to permanently repeal the six-month recertification schedule and replace it with an annual recertification schedule; and
- Permanently end the requirement that Alliance participants complete an in-person interview as part of the application or recertification process.

Taken together, these changes would permanently end the six-month, in-person recertification requirement and make Alliance renewal requirements similar to requirements that already exist in Medicaid.

Conclusion

There are many lessons that policymakers should take from the last two years of the COVID-19 pandemic. Perhaps the most obvious is that public policies that impede District residents' access to healthcare are problematic and dangerous. Ending the six-month, in-person recertification requirement once and for all must be a top priority *now*.