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**Before the Committee on Health
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Department of Health Care Finance

February 12, 2025

Thank you for the opportunity to present this written testimony for performance oversight of the Department of Health Care Finance (DHCF). Legal Aid DC¹ represents District residents in many types of matters involving the District's Medical Assistance programs. This includes beneficiaries who have experienced reductions or denials of necessary home health care services such as Private-Duty Nursing (PDN) benefits and Personal Care Aide (PCA) services through regular Medicaid and the Home and Community-Based Waiver program for the Elderly and Physically-Disabled (EPD Waiver).

In this written testimony, Legal Aid highlights two primary areas of concern. First, Legal Aid continues to encounter clients who are not receiving all of their approved, medically necessary Personal Care Aide hours through both State Plan Medicaid, and the EPD waiver. This has been a long-standing issue that DHCF is aware of, and we encourage DHCF to take meaningful policy steps as suggested in this testimony to close these service gaps. Second, Legal Aid has seen an increase in clients whose Private Duty Nursing hours are being reduced, sometimes by as many as 16 or 18 hours per day, despite no change or improvement in their health conditions.

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. 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 legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

Continued Staffing Challenges for Medicaid Home Health Agencies

Legal Aid remains concerned about the staffing shortage of personal care aides (PCAs) with the District's Home Health Agencies. PCAs provide in-home assistance with activities of daily living to people in both the community Medicaid program and the Home and Community-Based Services waiver programs. By helping Medicaid recipients safely perform their activities of daily living in their homes, PCAs serve as the backbone of the District's robust Medicaid home health services benefit. However, as both the Council and DHCF are aware, many home health agencies continue to be understaffed, which has led to many people in DC not receiving home health care services that DHCF agrees are medically necessary.

The DC Coalition on Long-Term Care completed a survey of home health care providers last year. That survey showed a 20% decline in the number of licensed Home Health Aides from August 2023 through January 2024.² Last year, many advocates and organizations, including Legal Aid, testified in support of the Direct Care Worker Amendment Act of 2023, and we applaud the Council for passing that legislation in October of last year. Although the Direct Care Worker Amendment Act is an important first step in addressing the staffing crisis, DHCF can take additional actions to ensure that individuals who need PCA services can safely remain in their homes.

Legal Aid also continues to encounter clients who need aides for shifts that are shorter than the typical 7 or 8 hours. This is a particularly common situation for people who are approved to receive 9-13 or so hours per day, which translates into a full 8 hour shift for one health aide, and then a shorter, 2-5 hour shift for a second health aide. This lack of care leaves beneficiaries – many of whom have significant issues with mobility, for example – on their own to complete their daily living activities for portions of the day. This increases their risk of injury and the possibility that they will need institutional or residential care, which exactly what the EPD waiver program was created to avoid.

To address these staffing shortages, Legal Aid makes the following recommendations:

DHCF Should Implement a 1915(j) Waiver To Provide All Medicaid Recipients of Personal Care Aide Services The Option For Participant-Directed Care

Section 1915(j) of the Medicaid Act allows states to give Medicaid recipients of PCA services an option for participant-directed care. Participant-directed care allows

² DC Board of Nursing Data, cited in the Long Term Care Coalition 2024 Direct Care Workforce Survey – available at: https://www.dclongtermcare.org/wp-content/uploads/2024/02/Final-Jan-2024_Updated.pdf

individuals to select their home personal care aides instead of being required to receive those services through a home health agency. Participant-directed services are already an option for beneficiaries in the District's Waiver program for the Elderly and Physically-Disabled (EPD waiver) through the Services My Way program, but there is no participant-directed care option for people who receive PCA services through State Plan Medicaid. Implementing a 1915(j) waiver would extend this right to individuals who receive PCA services through the State Plan Medicaid program.

Under a 1915(j) waiver, Medicaid participants could hire any person who is capable to perform as a personal care aide, including relatives such as a parent or spouse.³ Relatives or friends often have more flexibility in their personal schedules to work shorter shifts or irregular hours compared to aides from home health agencies. Indeed, many of Legal Aid's EPD waiver clients have family members or friends who are able to work shorter shifts and fill coverage gaps that aides from home health agencies were not able to cover, but this is currently not an option for beneficiaries who receive PCA through State Plan Medicaid. Extending the 1915(j) waiver would also further alleviate some of the burden on the home health agencies themselves and should increase the overall availability of health aides for all Medicaid and EPD waiver beneficiaries.

DHCF and The Council Should Create Additional Financial Incentives for Personal Care Aides To Work Shorter Shifts

Legal Aid continues to be concerned about gaps in coverage for EPD waiver beneficiaries. As noted above, Home Health Agencies often have trouble staffing shifts that are shorter than 7 or 8 hours. This has presented long-standing challenges to fully meeting the needs of people who PCA services. We strongly encourage DHCF and, if necessary, the Council, to consider additional reimbursement mechanisms and the funding required to support aides taking on shorter shifts. This could include reimbursing workers for travel time to, from, and between shorter shifts – as well as other financial incentives.

Reductions in Private Duty Nursing Hours

A second problem that Legal Aid began seeing in 2024 is an increasing number of individuals who have had their Private Duty Nursing (PDN) hours reduced. In many cases, these reductions have been severe, from 24 hours per day to as few as 6 hours per day. Often these reductions involve patients who have received the same level PDN hours for years, and whose medical conditions have not changed or improved at all. Private Duty Nursing services help to keep DC residents out of institutional care, and in their homes and communities. Without these critical services, many DC residents may lose their ability

³ 42 U.S.C. §1396n(j)(4)(B)

to stay in communities that they have called home for much or all of their lives. To address the recent increase in DHCF's reduction of Private Duty Nursing hours, we make the following recommendations:

a. DHCF Should Increase Transparency to its InterQual Assessment Tool and Criteria

DHCF, and its contractor Comagine, utilize the InterQual Assessment Tool to determine how many PDN hours are medically necessary for a patient. We understand that DHCF and Comagine began using the InterQual assessment in January of 2024. Adoption of this tool, therefore, coincides with the increase in PDN hour reductions that we and other organizations have encountered in the past year.

Initially, patients and advocates were told by DHCF that the InterQual assessment is a proprietary document and could not be shared. More recently, DHCF and Comagine have shared *some* additional information related to the InterQual assessment, but much of the process is still not transparent to patients and advocates. It is still unclear how the medical necessity of PDN hours is ultimately determined. It is a long-standing principle of Medicaid law that state agencies may not use secret or opaque standards when making medical necessity determinations.⁴ We encourage DHCF and Comagine to further increase their information sharing and transparency around the InterQual assessment tool and, specifically, how it is applied to determine the medical necessity of PDN hours.

b. DHCF Must Stop Issuing Unlawful Denials of Medically Necessary Health Services

DHCF is using overly restrictive standards for PDN services that result in unlawful denials of medically necessary health services. Several Legal Aid clients have received a PDN reduction or denial notice, which states that their PDN hour reduction is because they are not "dependent on life-sustaining technology." These notices also have wrongfully implied that because people also have approved Personal Care Aides (PCA), they no longer need Private Duty Nursing hours.

PDN regulations do require that an individual be dependent on life-sustaining technology that requires monitoring as an eligibility requirement,⁵ but the regulation does not explain with specificity what type of technology a beneficiary must depend on. Legal Aid has

⁴ National Health Law Program – Demanding Ascertainable Standards: Medicaid As A Case Study. Available at: <https://healthlaw.org/resource/demanding-ascertainable-standards-medicaid-as-a-case-study/>

⁵ DCMR §29-947.5

worked with several clients who require medical support or devices such as tracheostomies, continuous feeding tubes, saliva suctioning, and in-dwelling catheterization, to maintain their health and independence. We have also worked with clients who, due to extreme limitations in mobility and hand use, for example, are unable to administer their own medications, and with clients who need wound care.

People with significant health challenges can receive – and often require – concurrent PDN and PCA services when both are medically necessary⁶. For example, Personal Care Aides are not allowed to administer medications or provide wound care. They do not have the training to do so safely and effectively. Therefore, when people lose access to PDN services, DHCF is incorrect to say that these needs will be met by Personal Care Aides. The burden often falls on family members or friends. The loss of PDN hours also increases the risk of severe health complications or institutionalization.

Legal Aid is concerned that DHCF and Comagine, through use of the opaque InterQual assessment, apply overly restrictive standards to the provision of PDN services that are leading to unlawful denials of medically necessary health services through the reduction of PDN hours. Legal Aid, therefore, encourages DHCF to: 1) increase their and Comagine’s transparency around the InterQual Assessment and how it is utilized to determine what level of PDN hours are medically necessary; and 2) make any regulatory or other policy changes necessary to clarify and/or reinforce that PDN hours are available for people who need health services in the home that Personal Care Aides cannot perform, such as those listed above.

Conclusion

The District has created a robust set of Medicaid benefits, including PDN services and Home and Community-Based Waiver Service programs, to help aged and/or disabled DC residents remain in their homes and avoid institutional or residential care facilities. But these programs must operate with all of the legally required transparency so beneficiaries and their advocates can ensure that these residents receive the care they need, and DHCF must take actions to address the service gaps that Legal Aid DC and other organizations are raising today. We welcome the opportunity to collaborate further with DHCF and the Council on these issues, and we thank the Committee for the opportunity to submit this testimony.

⁶ DCMR §29-947.37