

**Testimony before the District of Columbia Council
Committee of the Whole
Kwame Brown, Chair**

**Public Budget Oversight Hearing
2012 Budget Support Act**

Eric Angel, Executive Director, Legal Aid Society of the District of Columbia

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The leaders of our city have a set of tough choices to make this budget cycle, and those choices will reflect the priorities and values of District residents and our government. On behalf of the Legal Aid Society of the District of Columbia,¹ I urge the Council to invest in the long-term health and vitality of our community by ensuring that the District's most vulnerable residents are not forsaken during these economic times. In my testimony, I express some of Legal Aid's concerns about the proposed Budget Support Act. The FY 2012 budget, overall, takes a balanced approach in the rudimentary sense that it does not rely solely on budget cuts and shares the burden of the budget shortfall more recent budgets. However, the vast majority of the proposed budget cuts fall on the most vulnerable, those already in serious economic distress. Legislative proposals within the Budget Support Act threaten to deepen the crisis of poverty. About 2 out of every 3 dollars in cuts come from the budgets for human support services, and these cuts are accompanied by statutory changes that will disproportionately affect people living in poverty not only in FY 2012, but also in future years.

Although there are many items of note for low-income families in the proposed Budget Support Act, my testimony focuses on four of them: (1) the structure of the proposed Temporary Assistance for Needy Families (TANF) time limit; (2) changes in the recertification process for the D.C. Healthcare Alliance; (3) suspension of the Interim Disability Assistance (IDA) program; and (4) the importance of retaining revenue enhancement measures and delaying the shift of millions of vital dollars from the District's capital budget to the operating budget.

I. The Crisis of Poverty in the District

Poverty in the District is pervasive and persistent. Nearly 1 in 5 District residents -- and nearly 1 in 3 of the District's children -- live in poverty. An alarming 1 in 10 District residents has fallen into "deep poverty," living on less than 50% of the federal poverty line (or less than \$9,155 for a family of three). Although poverty has garnered more widespread attention since the onset of the recession, high poverty rates are not new to the District. One in five District residents was living in poverty even *before* the economic downturn. Moreover, District poverty

¹ The Legal Aid Society 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 both the oldest and largest general civil legal services program in the District of Columbia. Over the last 79 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers.

is unusually persistent and intergenerational in nature. The prevalence and intractability of poverty in the District underscore the need for collaboration between government officials and advocates in finding solutions to this issue. Poverty has deepened since the onset of the recession in part because of the dire employment situation for low-wage workers. The brunt of recession-related job loss has fallen on low-wage workers, including salespeople, food preparers and servers, janitors and maintenance workers, movers, security guards, and construction workers.² Unemployment in the District is extremely high, with one in ten District residents unemployed – almost half of those formerly low-wage workers. Roughly 30% of Ward 8 residents are actively seeking work, but are unable to find it.³

II. Temporary Assistance to Needy Families

The changes to TANF in the Budget Support Act reach beyond a mere FY 2012 budget savings measure and propose a graduated time limit to the program. The Budget Support Act proposes cutting long-term TANF recipients off cash assistance by October 1, 2013 even though officials at the Department of Human Services have repeatedly acknowledged that the TANF work program has failed, thus far, to provide basic services to connect recipients to work opportunities and other necessary supports. The current system uses a one-size-fits-all approach, sending recipients to a work vendor whose primary motivation is to get that person into a job regardless of whether the job is appropriate or whether the individual is employable. Individualized assessments are not an integral part of the TANF application and placement process. The current system, therefore, fails to engage TANF recipients who are able to work in a productive work vendor process; it fails to provide job training and educational opportunities to increase recipients' ability to find work; and it fails to adequately assess recipients for disabilities, domestic violence, and other barriers to employment.

The Department of Human Services is well aware of these shortcomings. Thus, DHS has initiated a redesign of the program that will include a number of improvements, including greater focus on case management, moving people who are disabled from TANF to POWER and/or SSI, better assessments for people with barriers to work, and targeting job training to recipients' unique needs. These types of improvements – unlike time limits – are proven methods for enabling those TANF recipients who are able to move into the work place.⁴ However, *none of these changes have yet been put into effect*. The process for making the necessary reforms to TANF has been delayed. Even now, the RFP for new work vendors has not been issued. Assessments for TANF “long-stayers” have not started and will not begin until 18 months from now at the earliest. Not even one of the reforms that would give TANF a fighting chance of

² Katie Kerstetter, *Increase in DC's Unemployment Rate Falls Heavily on Those Least Able to Afford It 2* (June 25, 2010), <http://www.dcfpi.org/wp-content/uploads/2010/06/5-25-10unemployment.pdf>.

³ District of Columbia Department of Employment Services, *District of Columbia Jobless Drops to 9.9% in August*, September 21, 2010.

⁴ See, e.g., Katie Kerstetter & Jodi Podschun, *Voices for Change: Perspectives on Strengthening Welfare-to-Work From DC TANF Recipients*, DC Fiscal Pol'y Inst. & SOME (So Others Might Eat), Inc. 38-40 (Nov. 2009), <http://dcfpi.org/wp-content/uploads/2009/11/11-12-09TANFreport.pdf>; Nat'l Governors' Ass'n Ctr. for Best Practices, *State Strategies for Improving the Employment Outcomes of TANF and Low-Income Families 4* (June 2007), available at <http://www.nga.org/Files/pdf/0706IMPROVINGTANF.PDF>.

actually helping people “graduate out of TANF into permanent employment” has been implemented.

The proposed time limit, unlike any previously enacted TANF time limit in the nation, would be instituted retroactively. Families will lose their income even if they were exempt from work requirements for several months because they were pursuing other education opportunities or because they were fleeing domestic violence. At the May 6, 2011 human services budget hearing, a Legal Aid attorney who represents survivors of domestic violence presented the testimony of one of our clients⁵ who has received TANF for approximately six years. During the six years this client has been on TANF, she spent a short time in a GED program but had to suspend her educational pursuits because of the violence she and her children were facing at home. She has spent much of the past six years fleeing from her and her children’s abuser and dealing with the repercussions of the abuse on her children’s mental health. Her benefits were reduced along with over 6,500 other families’ on April 1, 2011. This client is not an outlier: It has been estimated that up to 35% of D.C. TANF recipients have experienced domestic violence or threats of family violence within the past year.⁶ These are not the kinds of families that the District should be cutting off from their one reliable source of cash income.

These comments highlight two fundamental flaws in the proposed time limit: (1) unlike time limits in any other place in America, it targets families regardless of the circumstances that caused them to remain on TANF for over five years, lumping together people who may be in very different circumstances; (2) it is imposed retroactively, so families will be cut off TANF without the benefit of employment and other services and long before they would benefit from the redesigned program. We, like many members of the Council, fully advocate moving more families toward self-sufficiency and into the workplace. It is better for them and better for the District. However, self-sufficiency does not come from leaving families who have not been prepared for the workplace penniless and more likely to fall into other systems (such as homeless services, criminal justice, foster care, child welfare, and so forth.) The time limit should, at the very least, operate so that families have a reasonable chance to receive the services they need to become self-sufficient before being forced out of the program. In addition, the time limit provision should include the most basic exemptions and opportunities for extension like every other state that has a TANF time limit.

Given the extensively-documented shortcomings of the current TANF regime, it is unreasonable for the District to impose a retroactive time limit at this time. This proposal would punish some of the most vulnerable in society – impoverished parents and children – before addressing the fundamental flaws in the administration of the District’s TANF program. It would increase poverty and push the most fragile families into the abyss of abject poverty regardless of the efforts they may be taking to move themselves out of the system.

⁵ This client needs to remain anonymous in the interests of the safety of herself and her children, but her initials are “T.H.”

⁶ Gregory Acs & Pamela Loprest, Urban Institute, *A Study of the District of Columbia’s TANF Caseload* 27 (Oct. 2003), available at http://www.neighborhoodinfodc.org/pdfs/410863_DC_TANF.pdf.

III. D.C. Healthcare Alliance

The Alliance provides critically important healthcare coverage for low-income District residents who, for various reasons, do not qualify for Medicaid. Although health care reform expanded Medicaid eligibility to cover many District residents who were formerly on the Alliance, there remain thousands of low-income District residents who, for various reasons, do not qualify for Medicaid under the new healthcare law. Therefore, the Alliance is an essential aspect of the medley of programs that help the District reach the goal of guaranteeing universal healthcare for District residents.

The proposed Budget Support Act proposes a change to the Alliance recertification process that will ostensibly save the District \$12 million. Instead of an annual recertification that requires the submission of a comprehensive form, each Alliance enrollee will have to go through a face-to-face recertification with a case worker in order to retain benefits.

Lurking behind this approach is the belief that a large number of the remaining Alliance beneficiaries should not be enrolled in the locally-funded program, either because they are not District residents or because they are eligible for other programs like Medicaid or Medicare. In the past – prior to the establishment of DHCF – the District has been criticized for the poor administration of the Alliance and has needed to devote additional resources to training workers to administer the program.⁷ In 2009, DHCF instituted elevated requirements for documentation of D.C. residency to address some of the shortcomings of the past.⁸ However: (1) there is no evidence that those problems are ongoing under the new administrative structure; and (2) most of those problems, even if they were ongoing, would not necessarily be improved by requiring more frequent and in-person recertification. The errors that plagued the Alliance eligibility process before the establishment of DHCF were primarily errors involving incomplete paperwork and mistakes by staff. Nothing about the proposed changes would address these types of issues; in fact, they would likely worsen them by stretching IMA staff even more thinly.

Legal Aid does not oppose reasonable, appropriate efforts by the Department of Health Care Finance to limit Alliance eligibility to its intended beneficiaries. We agree that only D.C. residents should receive the Alliance. However, we are concerned that the proposed recertification process would do more to eliminate qualified individuals who need the Alliance for healthcare coverage than it would do to curb waste or fraud.

Our experience as legal services providers suggests that, while in-person recertification may in fact lower the Alliance rolls, it will likely do so for the wrong reasons and will leave many of our clients without the health coverage to which they are entitled. Legal Aid assists clients who have been terminated from medical assistance programs, not because they do not qualify, but because of problems with the recertification process. There are a multitude of

⁷ See Susan Levine, *D.C. Health Alliance Faulted on Eligibility Control*, *Washington Post*, Feb. 28, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/27/AR2008022704108.html>.

⁸ See Press Release, *DHCF Implements Controls to Alliance Program*, Aug. 21, 2009, <http://newsroom.dc.gov/show.aspx/agency/dhcf/section/2/release/17926/year/2009>.

problems with these processes that range from lack of notice, miscommunication between caseworkers and Alliance or Medicaid enrollees, and other bureaucratic obstacles. We do our best to resolve these issues for our clients (and, as lawyers, have a very high rate of success), but most people faced with recertification and other health access-related problems are unable to attain access to an attorney to help them navigate the system.⁹ They slip through our system's cracks – and many others who are fully eligible for the Alliance will join them if the recertification provision of the Budget Support Act is adopted. Making this process even more cumbersome and time-consuming (for both the enrollee and the agency) will do just as much or more to exclude eligible Alliance beneficiaries than it will to disqualify those who may be ineligible.

Research, both nationally and in other jurisdictions, supports our belief that introducing this type of red tape to the process of applying for the Alliance would mean that qualified people would lose coverage. Increased frequency of the process and the requirement for face-to-face recertification would introduce problems related to transportation (the time and cost travel to various social services offices can sometimes be prohibitive), employment (in many of our clients' low-paying and/or part-time jobs, the need to absent from work for a day or more to recertify for the Alliance will cause them to lose wages and could cause them to lose their jobs), and documentation (the trouble of securing required documentation), among others.¹⁰

Language access would likely also become a larger issue with more frequent and in-person recertification; miscommunication between a case worker and an applicant with limited English proficiency (LEP) is a serious risk under the reconfigured Alliance program. Under the current paper certification process, even if a form is not available in an enrollees' own language, the enrollee can receive assistance in completing the form and providing documentation. However, despite the District's obligations under the Language Access Act, a face-to-face meeting may well intimidate an enrollee or leave the enrollee with less information than is necessary to ensure that coverage is not unduly lost.¹¹

In addition, the proposed recertification process ignores the fact that IMA already has extreme difficulties processing applications and recertification forms in a timely manner. The difficulty of applying for or recertifying for benefits in person is well-documented and well-

⁹ See DC Access to Justice Comm'n, *Justice for All? An Examination of the Civil Legal Needs of the District's Low Income Community* 83-84 (Oct. 2008) (estimating unmet legal services needs in the District), available at <http://www.dcaccessjustice.org/files/CivilLegalNeedsReport.pdf>.

¹⁰ See M. Robin Dion & LaDonna Pavetti, Mathematica Policy Research, *Access to and Participation in Medicaid and the Food Stamp Program: A Review of the Recent Literature* at xiii (exec. summ.) (Mar. 7, 2000), <http://www.mathematica-mpr.com/publications/pdfs/accesslitreview.pdf>. See generally Center for Healthcare Strategies, *Reducing Barriers to Health Care: Practical Strategies for Local Organizations* (2007) (identifying barriers across several states related to transportation, limited English proficiency, lack of understanding of the processes for eligibility, and others), available at http://www.chcs.org/usr_doc/CKF-AI_Toolkit.pdf.

¹¹ See generally E. Feinberg et al., *Language Proficiency and the Enrollment of Medicaid-Eligible Children in Publicly Funded Health Insurance Programs*, *Maternal & Child Health J.* (2002), at 5-18. This article focuses on children and Medicaid but also makes the larger point that limited English proficiency has been a significant barrier to accessing programs that provide health coverage to individuals with low incomes.

known. Our clients at Legal Aid have, on a fairly regular basis, lost benefits because they never received notification that they needed to recertify, because a staff member misplaced or misunderstood their documents, or simply because travel or other life circumstances interfered with their ability to meet the recertification deadline. A January 2010 *Washington Post* story profiled several District residents who had to wait up to seven hours, or return to the service centers on multiple days, to apply for and/or recertify their eligibility for safety net programs.¹²

At the April 14, 2011 DHCF budget hearing, Councilmember Catania expressed his own concerns about IMA's ability to carry out the recertifications. There are plans to hire 15 new FTEs to process recertifications, but even with those additional workers we have lingering doubts about IMA's capacity and ability to have the space, hours, and availability to keep hundreds of eligible D.C. residents from losing their healthcare coverage. Even DHCF director Wayne Turnage appeared to have concerns – when asked about IMA's ability to carry out recertifications in a way that would produce the estimated budget savings, he admitted that it was “an ambitious goal.” We believe that these recertifications will overwhelm IMA and thereby lead many eligible D.C. residents to lose their healthcare coverage. This proposal should be refined, and we are willing to work with agency officials to develop a more effective and less damaging process.

IV. Interim Disability Assistance

Interim Disability Assistance (“IDA”) provides \$270 of essential temporary cash assistance to the City's most vulnerable disabled residents while they wait (often months, or even years) to be approved for Supplemental Security Income (SSI). IDA serves as a loan to disabled adults while they wait to be approved for SSI benefits. IDA brings in revenue to partly pay for itself by reimbursing the District, from past-due SSI funds, for the IDA benefits provided.

Income from IDA has helped low-income, disabled District residents in myriad ways. For example, IDA has helped many disabled individuals move from homelessness into housing through programs like So Others Might Eat (SOME). In the last five years, SOME has housed 44 homeless IDA recipients who otherwise would probably have remained homeless. The clients we help at Legal Aid who are able to get IDA are often barely making ends meet, but are able to purchase the most basic needs because of their program. Without it, they would truly be left with nothing.

Currently, the District is reimbursed about 40% of the money it spends on IDA – one of the highest reimbursement rates of any of the 38 states that have a similar program.¹³ For FY 2011, the District expected to receive \$2 million in reimbursement from the federal government for IDA; the District has already outperformed this estimation by receiving \$2.5 million.

¹² Tim Craig, *Frustration Among Poor D.C. Residents Grows at Understaffed Assistance Center*, Wash. Post, Jan. 19, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/18/AR2010011803863.html>.

¹³ See Social Security Administration, Office of Retirement and Disability Policy, *State Assistance Programs for SSI Recipients* (Jan. 2009), available at http://www.ssa.gov/policy/docs/progdesc/ssi_st_asst/2009/ssi_st_asst09.pdf.

Despite the relative success of the program's reimbursement process, Councilmembers have pointed to the 40% reimbursement rate as a reason to dismantle the program. At the April 6 budget briefing, the Mayor complained that when the program was conceived eight years ago, "there was supposed to be an effort made to ensure that there was compatibility at the front end, the front door of eligibility, so that people who were accepted were clearly going to be accepted by SSI." Because of the number of people in the program who are denied SSI, the Mayor maintained that IDA has meant "the recreation of a general public assistance program for a lot of these people in the city."

This approach to IDA is flawed. First, the denial of an individual's SSI application does not necessarily mean that the application lacked merit and cannot be considered evidence of defects in the IDA program. Legal Aid and other service providers frequently represent – and win benefits for – clients with severe disabling conditions who were incorrectly denied benefits by SSA. Second, leaving individuals with disabilities penniless while they wait several months to receive SSI is not a reasonable solution to concerns about eligibility screening. We stand ready to work with agency officials to think about ways to improve the program and, if necessary, the screening process. In the meantime, the funding for IDA – which has already been trimmed to the "bone marrow" over the past few years – should be maintained.

V. Revenue Increases and Funding Sources

Although we are disappointed that the proposed budget suggests such deep cuts to programs that benefit the most vulnerable District residents, we were pleased to see that the Mayor suggested several revenue enhancements.

We understand that legislators are always concerned about raising taxes. However, if doing so is the only way we can avoid a catastrophic result that will affect not only low-income District residents, but have ripple effects across the District – we fully support doing so. In addition, the Mayor moved approximately \$50 million to the operating budget from the capital budget that some members of the Council would like to tap into to avoid income-based revenue enhancements. We urge the Council to consider setting aside at least part of those funds to protect vital safety net programs. Our priorities and values as "One City" demand this level of commitment to ensuring that those most in need of assistance receive it.

VI. Conclusion

Legal Aid recognizes that economic times are tough in the District, and that the \$322 million shortfall requires District leaders to make difficult choices about how we will spend limited funds. The budget is, in some ways, an improvement over those submitted during previous administrations. However, the Budget Support Act's proposed changes to the D.C. Healthcare Alliance and the TANF program are highly problematic. Legal Aid urges the Council to eliminate these provisions of the Budget Support Act and revise these proposals to better reflect the District's values and long-term policy goals.