

**Testimony of Andrew Patterson
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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 6, 2019

The Legal Aid Society of the District of Columbia¹ submits the following testimony to raise concerns about deeply alarming service reductions and disruptions to low income District residents' home health care services. These reductions and disruptions, resulting from a series of poorly implemented changes that the Department of Health Care Finance ("DHCF") has made to Medicaid home health care services over the last year, are putting vulnerable District residents' health, safety, and well-being at risk. We urge DHCF to suspend all reductions and terminations of home health services until the agency has corrected the underlying problems with its assessment process. Further, we hope that the Committee will use today's hearing, as well as its ongoing oversight power, to determine how these problem occurred and ensure that DHCF corrects them before more individuals are harmed.

Home Health Care Services Are Vital for District Residents with Significant Medical Needs

Home health care services are a critically important benefit under the District's Medicaid program. In the District, any Medicaid beneficiary who demonstrates a medical need for a home health aide to complete important activities of daily living may receive a limited amount of Personal Care Assistance. Beneficiaries who require a higher level of care due to more serious limitations may receive more intensive home health care services care, including case management services, through the Medicaid home and community-based waiver program for individuals who are elderly and/or have physical disabilities ("EPD Waiver"). Home care health services allow people to safely complete routine daily activities, such as using the toilet, getting around inside their homes, managing their medication, preparing food and getting dressed, when it would otherwise be dangerous for them to attempt to do so alone. These services can help beneficiaries remain in their homes and communities when they would otherwise need to receive

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." Over the last 87 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

care in residential nursing facility. Without reliable access to Medicaid-provided home health care services, many low-income residents would be placing their health and well-being at risk attempting to engage in the basic activities of daily living.

Fiscal Year 2018 Changes to the Assessment Process Have Led to Service Reductions, Terminations, and Disruptions

In the summer of 2018, DHCF implemented three substantial changes to home health care services under the Medicaid program. These changes applied to both the community Medicaid program as well as the EPD waiver program:

- A new contractor, Liberty Healthcare Corporation (“Liberty”) replaced Delmarva, the previous contractor, as the entity that is responsible for conducting level-of-care determinations for Medicaid and EPD waiver beneficiaries.
- DHCF began using a new assessment tool, the InterRAI assessment tool, to determine the amount and scope of home health care services that are medically necessary for beneficiaries.
- DHCF began using a new computer system, DC Care Connect, to manage the home health care services benefit.

The design and implementation of these changes has been poorly managed and have had harmful impacts on our client community.

Beneficiaries Have Experienced Substantial Reductions in Home Health Care Service

After these changes went into effect, Legal Aid and other service providers saw a large increase in the number of Medicaid enrollees whose home health care hours were drastically reduced, or in some cases, terminated all together. In responses to questions from the Committee on Health, DHCF stated that 227 people who were previously receiving EPD waiver level services have had those services terminated after being reassessed with the InterRAI tool.² Additionally, of 2,257 people who receive Personal Care Aide services, more than one-third (36.5%) have had their home health hours reduced after being reassessed with the InterRAI tool.³ Legal Aid has seen multiple clients who rely on home health aides to meet very basic needs were being informed of reductions of as many as 10 hours per day or more in their home health services. At least initially, many beneficiaries experienced these reductions before ever receiving written notice of them, which only led to further confusion and fear.⁴

² DCHF FY8-FY19 Oversight Responses, Q56.

³ DCHF FY8-FY19 Oversight Responses, Q57.

⁴ We understand that DHCF has reiterated to case managers and home health agencies that they may not reduce services until a beneficiary receives written notice of their reduced hours.

The level-of-care reductions that Legal Aid has seen with our clients do not reflect any medical improvement on the part of the beneficiary. Rather, the new InterRAI assessment tool, as it is being used by Liberty personnel, appears to be the main cause. Legal Aid has heard stories from our clients, as well as from other legal services providers, of assessments being done in a quick and cursory fashion, leading to erroneous need assessments. For example, one Legal Aid client, a 74-year-old woman who suffered a debilitating stroke many years ago, had her home health hours reduced by 4 hours per day, when she was receiving 16 hours per day, after her reassessment. Apparently, the person who did her most recent assessment concluded that our client could go up and down a full flight of stairs, despite the reality that this client needs assistance from her health aide to get up from her chair and to walk from her living room to her restroom.

Quality of assessments aside, we have also learned that the InterRAI assessment tool improperly limits beneficiaries to 19 hours per day of home health services, even if more hours per day (up to 24 hours) are medically-necessary and allowable under Medicaid regulations. We are particularly alarmed at this cap, as Legal Aid has represented several clients in the past who required 24 hours per day of home health services, and several cases that have been referred to us just recently involve either reductions from 24 hours to a lower amount, or denials of 24 hours of care when that amount has been explicitly recommended by the beneficiary's physician. DHCF has told advocates that a "fix" to this problem will be in place by March, but it has also stated they cannot immediately restore 24 hours per day of care to beneficiaries that previously received that level of care.

Delayed Assessments Have Threatened Beneficiaries' EPD Waiver Eligibility

We have also been told by case managers of delays by Liberty in conducting assessments, which in turn have led to delays in the EPD waiver recertification process. Because an EPD waiver enrollee cannot complete the annual recertification process without having their level-of-care needs reassessed, any delay in that process threatens their eligibility for the EPD waiver program itself. And for many enrollees, coverage through the EPD waiver is the only way they can access Medicaid coverage. If their coverage is terminated, they not only lose access to home health care services, but they also lose access to their primary care doctors, medication coverage, transportation services, and any other medically-necessary services they obtain through the Medicaid program.

Legal Aid has met with multiple clients who were informed that their EPD waiver coverage had been terminated due to a delay in the recertification process. In one case, a client found out that her Medicaid had been terminated when she went to the pharmacy to pick up her prescription medication. That same client was also informed by her home health agency on a Friday that her aide would not be there the following Monday. Although we have been able to assist those specific clients and help them ensure their services are restored, we are concerned that others who have not been able to connect with an attorney or other representative may be at danger of lapses in their home health care services (and possibly their Medicaid coverage). Further, the disruption and confusion that these delays have created, even for clients who we have ultimately been able to help, is unacceptable and detrimental to their physical and emotional well-being.

Legal Aid Urges DHCF and the Committee to Prevent Further Harm to Beneficiaries

We appreciate the fact that DHCF has met with advocates to discuss these concerns. In one of those meetings, DHCF informed a group of advocates that the agency will develop an internal review process to review proposed reductions of home health care hours greater than 4 hours per day and cases in which a reduction would lead to the loss of EPD waiver-level services. It is not clear, however, whether this process has been developed and whether or not it is being implemented. When implemented, this process will presumably help in some cases but Legal Aid remains concerned that many beneficiaries will continue to lose medically-necessary home health services due to implementation of the InterRAI assessment tool. Even reductions of less than 4 hours per day can place beneficiaries in danger of injury or make them unable to complete important activities such as remembering to take medications or attending medical or other important appointments.

Therefore, Legal Aid urges DHCF to suspend all reductions and terminations of home health services until Liberty personnel are properly trained on conducting an accurate and thorough assessment of a beneficiary's medical needs.⁵ DHCF must ensure that those conducting assessments and reassessments for Liberty are gathering all relevant evidence of a person's medical conditions and limitations into the assessment process. DHCF must also ensure that those conducting assessments are including people such as beneficiary's Powers-of-Attorney and guardians in the assessment process.

We also urge the Council to exercise its oversight authority to determine how many people enrolled in the EPD waiver program have either lost their eligibility after they were reassessed with the InterRAI assessment tool, or experienced a reduction in their home health care hours. Such transparency is essential for monitoring the implementation of the InterRAI assessment tool, and holding DHCF accountable for ensuring that no Medicaid enrollee lose access to medically-necessary home health care services as a result of the changes made last summer.

⁵ We also urge DHCF to provide detailed information on the training that was provided to Liberty personnel prior to implementation of the InterRAI tool and prior to Liberty's takeover of the assessment process from Delmarva.