

**Testimony of Andrew Patterson  
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**Before the Committee on Health  
Council of the District of Columbia**

**Budget Oversight Hearing Regarding the Department of Health Care Finance**

**June 10, 2020**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony about two issues of importance to Legal Aid’s client community. First, Legal Aid is strongly opposed to the recent imposition, by the Department of Health Care Finance (DHCF), of a 16 hour-per-day cap on Personal Care Assistance (PCA) services available to enrollees in the District’s Home and Community Based Medicaid Waiver program for the Elderly and Physically Disabled (EPD). This new limitation is set to take effect on October 1, 2020. We urge DHCF to reverse this decision, and for the Committee to ensure that there are sufficient resources in DHCF’s FY21 budget to guarantee personal care service hours that are sufficient to meet all enrollees’ needs. Second, Legal Aid urges the Council to, once and for all, permanently eliminate the harmful face-to-face recertification requirement for enrollees of the DC Health Care Alliance Program.

**DHCF Should Eliminate The 16 Hour-Per-Day Cap on Personal Care Assistance Services for Enrollees in the EPD Waiver Home Health Program**

The EPD waiver program provides in-home Personal Care Assistance services to District residents who have demonstrated a medical need for nursing-home level of care. By providing these services in the home, the EPD waiver allows District residents to remain in their homes and in their communities, rather than being forced to live in an in-patient institution.

To meet this important goal of allowing people remain in their homes, the EPD waiver program provides, in some instances, up to 24 hours of PCA services per day. DHCF, however, has recently limited the number of PCA hours available to enrollees in the EPD waiver program to

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<sup>1</sup> 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 general civil legal services program in the District of Columbia. Over the last 88 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

16 hours per day.<sup>2</sup> This limit does not make any exception for more than 16 hours per day of PCA services based on medical need. As such, all EPD waiver enrollees currently receiving 24 hours per day of PCA services will eventually be limited to 16 hours per day after this policy goes into effect.

Legal Aid is very concerned that implementation of a firm 16-hour cap on PCA hours, with no ability to go above 16 hours based on individual health needs, will place some individuals at serious risk of unnecessary institutionalization. We would like to briefly discuss two types of situations when Legal Aid assisted people with getting approved for 24 hours of PCA services. First, we have assisted clients who have a diagnosis of Alzheimer's disease, or other forms of dementia, who as a result, are prone to extreme confusion or dangerous wandering when left unsupervised. Without 24 hours of care, such individuals may leave on the stove, or walk out of their homes in the middle of the night. Second, we have also assisted clients who have severe mobility limitations or are at high risk of falling, who also have other health conditions that may require frequent mobility, such as urinary or fecal incontinence. Last year, Legal Aid represented an individual who was severely limited in her ability to walk, to transfer from sitting to standing, to get out of bed, and to get on and off the toilet. This client was at risk of falling when she tried to do any of these activities on her own. She also suffered from urinary incontinence. Several times, she fell in the middle of the night when trying to get from her bed to the bathroom, or while trying to change a soiled adult diaper. In at least one instance, she waited on the floor for several hours, until her aide showed up in the morning.

The ability to remain in one's home and community should be available to all DC Medicaid enrollees. But we fear that capping PCA hours at 16 per day will undermine the waiver's effectiveness for some of our most vulnerable residents, and will likely present some of those individuals no meaningful alternative to institutionalization. We urge DHCF to rescind this limit on services, and urge the Committee to ensure that there are sufficient resources in the FY21 budget to preserve appropriate levels of services for all who need it.

### **We Urge the Council to Remove Barriers in the Health Care Alliance Program Once and for All**

We are disappointed that the Mayor's budget does not permanently remove the Health Care Alliance program's requirement for a face-to-face recertification every six months. As we have seen elsewhere, the COVID-19 pandemic has disproportionately affected the District's black, brown, and immigrant communities.<sup>3</sup> The Alliance ensures health care access for thousands of members of the District's immigrant communities who would not otherwise have health

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<sup>2</sup> Application for §1915(c) HCBS Waiver, Draft DC003.04.08 (p. 16, 101) *available at*: <https://dhcf.dc.gov/epd-waiver-amendment>.

<sup>3</sup> *See, e.g.,* Andrea Swalec, *DC Flags Coronavirus Risks for African Americans, Latinos, Those With Medical Conditions*, NBC Washington, May 4, 2020. Available at: <https://www.nbcwashington.com/news/local/dc-flags-coronavirus-risks-for-african-americans-latinos-those-with-medical-conditions/2292660/>.

coverage, with roughly three-quarters of its enrollees identifying as black or Hispanic.<sup>4</sup> In light of this devastating pandemic, now is the time to remove barriers to health coverage and health care, rather than maintaining harmful barriers – such as the six-month, face-to-face interview requirement – that lead to people losing access to health care.

We and other advocates have raised concerns about this policy for many years, and yet it still has not been adequately addressed. Earlier this year, we testified to the Committee on Human Services about our continuing efforts to document long lines outside Department of Human Services (DHS) offices very early in the morning.<sup>5</sup> For multiple days in January, at both the Taylor St. and H St. service centers, the lines were more than 50 people long (in most instances, over 80 people long), with the first person in line arriving as early as 3 or 4 in the morning.<sup>6</sup> And Legal Aid has worked with many individuals who were forced to wait in long lines many times because they were turned away once the service centers reached their capacity for the day.

We appreciate that the Mayor temporarily suspended the face-to-face interview requirement at the start of the public health emergency and has temporarily extended coverage for those currently enrolled in the Alliance. But the Mayor's failure to remove it and move to annual recertification on a permanent basis is unacceptable. We urge the Council to address this now, especially in light of the ongoing COVID-19 pandemic.

Even when the health emergency is lifted, COVID-19 will likely continue to pose some level of risk to the population – there is even concern that we could see a “second wave” of infections later this calendar year. If the Mayor lifts the public health emergency and the Alliance's application and renewal policy returns to what it was before the pandemic, large numbers of people from especially vulnerable populations will again have to risk their health by congregating outside of DHS buildings to meet an excessive and unnecessary requirement, not to mention the health risks to the DHS employees who will need to be present to conduct interviews. We will also be re-opening precisely the type of public health gap that we should be closing to ensure that everyone is in a position to seek medical care promptly whenever they need it. The Council absolutely must repeal this demonstrably harmful policy.

In addition to repealing the six-month, in-person recertification requirement, this Committee should also ensure that DHCF has a plan for how it will handle re-certifications in the period

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<sup>4</sup> FY18-19 Department of Health Care Finance performance oversight data shows that in FY18, a combined 74.7% of Alliance enrollees identified as either black or Hispanic (25.3% black, 49.4% Hispanic). DHCF FY18-FY19 Performance Oversight Responses, Q35.

<sup>5</sup> 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>.

<sup>6</sup> DHS also reported that between 905 and 1202 individuals visited the service centers each month to recertify for their Alliance. *See* DHS FY19-FY20 Performance Oversight Responses, Q140(e)(i).

following the lifting of the public health emergency. While we commend the Mayor for continuing to extend people who are enrolled in a range of District safety net programs during the emergency, we are deeply worried about what will happen when the emergency ends, and everyone who has been extended is required to re-certify at once. This would be both disruptive for program participants and potentially overwhelming for the District Government. In our testimony regarding the proposed DHS budget, we requested that the Human Services Committee ask DHS its plans for transitioning safety net program participants back into a regular re-certification schedule post-emergency. We urge this Committee to ask the same question of DHCF.

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Thank you for the opportunity to testify at this hearing today. We look forward to working with the Committee between now and committee mark-ups to address these issues.