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

**Public Hearing Regarding:**

**B25-0565, the “Direct Care Worker Amendment Act of 2023”**

**March 13, 2024**

**Introduction**

Good morning, Chairperson Henderson and Members of the Health Committee. My name is Andrew Patterson and I am a Senior Staff Attorney in the public benefits unit with Legal Aid DC<sup>1</sup>. Thank you for the opportunity to testify about the Direct Care Worker Amendment Act of 2023.

Legal Aid’s public benefits unit assists clients with many benefits programs administered by the District, including the DC Medicaid program and the Medicaid Home and Community Based Services Waiver program for the Elderly and Physically Disabled (“EPD Waiver” program). Legal Aid DC has represented or advised many Medicaid and EPD waiver beneficiaries on matters related to home health services. Home health

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<sup>1</sup> Legal Aid DC 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 92 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](http://www.LegalAidDC.org).

services are a critically important benefit for helping to ensure that hundreds of DC Medicaid and EPD Waiver beneficiaries age in place and stay in their homes, rather than having to move to a long-term care facility.

### **Home Health Aide Staffing Challenges, and Impact of the Direct Care Worker Amendment Act**

As the Chairperson is aware, the District is currently facing a serious staffing shortage of home health care workers. Data from the DC Board of Nursing shows that the number of licensed Home Health Aides declined by more than 1,700 between August 2023 and January 2024, which represents a decline of more than 20%.<sup>2</sup> That same survey showed a decline of 4,489 direct care workers<sup>3</sup> in 2023.

We are seeing these same staff decreases in our work. Legal Aid DC staff have heard directly from advocates and others who work on long-term care Medicaid and home health care issues that home health workers are leaving for jobs that pay better and/or are less demanding. We have also represented multiple clients in the past couple of years who are not receiving the full number of home health hours they have been approved for because (in large part) agencies do not have enough staff to meet the demand of approved hours. When elderly and disabled Medicaid beneficiaries try to complete their normal activities without the assistance they need, they are at risk for serious injury or worse, or increased risk of institutionalization.

The Direct Care Worker Amendment Act of 2023 includes multiple changes that would begin to address this staffing shortfall.

First, the Act raises compensation for Direct Care Workers to a minimum of 120% of the District's living wage. Multiple home health agencies that responded to a survey by the Long-Term Care Coalition cited insufficiently competitive wages as a major challenge in hiring and retaining home health aides.<sup>4</sup> Setting a minimum compensation level of 120% of the District's living wage is an overdue pay increase for these critically important workers, and should make these positions more competitive with other industries.

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<sup>2</sup> 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](https://www.dclongtermcare.org/wp-content/uploads/2024/02/Final-Jan-2024_Updated.pdf)

<sup>3</sup> Direct Care Workers include Home Health Aides, Certified Nurse Assistance, and Trained Medication Employees.

<sup>4</sup> [https://www.dclongtermcare.org/wp-content/uploads/2024/02/Final-Jan-2024\\_Updated.pdf](https://www.dclongtermcare.org/wp-content/uploads/2024/02/Final-Jan-2024_Updated.pdf), at Slide #13.

Second, the Act includes several commonsense measures that would simplify or eliminate administrative hurdles for Direct Care Workers' attempting to work in the District. Currently, Direct Care Workers are divided into Certified Nursing Assistants (CNAs) and Home Health Aides (HHAs), with the former working in skilled nursing facilities (SNFs) and the latter working in home settings. Each type of Direct Care Worker has its own licensing requirement, and CNAs are not allowed to work in the home without obtaining an HHA certification. The Act would eliminate these separate licensing requirements and replaces them with a single credential for "Direct Care Workers" (DCWs). This would provide for more flexibility for Direct Care Workers by allowing them to accept different jobs in a SNF and a home setting while maintaining their single DCW certification. Additionally, anyone currently licensed as a CNA or HHA would automatically be certified as a DCW, avoiding a need for yet another licensure requirement for the existing direct care workforce.

The Act would also allow CNAs and HHAs who are licensed in good standing in Maryland or Virginia to practice as DCWs in the District going forward.<sup>5</sup> Currently, except for a limited time during the COVID-19 Public Health Emergency, Maryland and Virginia Direct Care Workers must obtain licenses in the District in order to work here. In the Direct Care Workforce Survey, allowing health aides licensed in good standing in Maryland and Virginia to work in DC was cited by 78% of providers as a "very important" way of addressing the workforce shortage.<sup>6</sup>

### **Additional Legislation and Policy are Needed, Including Addressing the Long-Standing Issue of Finding Health Aides for Shorter Shifts**

While the Act would make needed improvements in the provision of in-home services, there are others, not addressed by the Act, that we would encourage the Department of Health Care Finance (DHCF) and the Council to consider. Legal Aid has represented multiple clients in the EPD waiver program who are approved for more than 8 hours of home health care assistance per day, but only receive 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 can be dangerous for an EPD waiver enrollee.

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<sup>5</sup> This was allowed by waiver during the Covid-19 Public Health Emergency, but was not continued after the PHE ended.

<sup>6</sup> [https://www.dclongtermcare.org/wp-content/uploads/2024/02/Final-Jan-2024\\_Updated.pdf](https://www.dclongtermcare.org/wp-content/uploads/2024/02/Final-Jan-2024_Updated.pdf), at Slide #27

Home health agencies have told Legal Aid staff, as well as DHCF, that the main staffing challenge in those situations is finding aides who are willing to accept a shift of fewer than 7 or 8 hours because home health aides, understandably, prefer to work and be paid for a full 8-hour shift.

Therefore, we strongly encourage DHCF and, if necessary, the Council, to consider additional reimbursement mechanisms – such as reimbursing workers for travel time to, from, and between shorter shifts – and other financial incentives, to encourage workers to accept shorter shifts.

### **Conclusion**

The District's provision of home health care services, through regular Medicaid and the EPD waiver program, have helped thousands of DC residents stay in their homes over the years. I have personally worked with multiple clients who absolutely would have had to leave their home for a residential facility but for the assistance they received from the EPD waiver program. But when there are not sufficient direct care workers to meet the level of need that exists, more District residents will end up at risk of losing their homes and communities and being forced into a residential facility. We encourage the Council to pass these provisions of the Direct Care Worker Amendment Act of 2023. Thank you for the opportunity to submit this testimony.