GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health Care Finance

Hearing on

B25-0565, the "Direct Care Worker Amendment Act of 2023"

Testimony of
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Before the
Committee on Health
Council of the District of Columbia
The Honorable Christina Henderson,
Chairperson

March 13, 2024
1:00 p.m.
Room 412
John A. Wilson Building
1350 Pennsylvania Avenue,
NW
Washington, DC 20004

Good morning, Chairperson Henderson, and members of the Committee on Health. I am Wayne Turnage, Deputy Mayor for Health and Human Services (DMHHS) and Director of the Department of Health Care Finance (DHCF). I am here today to provide testimony on behalf of DHCF on B25-0565 the "Direct Care Worker Amendment Act of 2023." The stated purpose of this bill is to establish a minimum wage for direct support services at 120 percent of the District's living wage, as well as require several changes to the licensure and credentialing of Direct Care Workers (DCWs). My testimony will focus on the reimbursement issue and my colleague, Theresa Walsh from DC Health, will speak about the licensure and credentialing issue. Throughout my testimony, I will use the designation Direct Support Professional (DSP) to refer to the group of workers that fall within the scope of the legislation to remain consistent with prior law and avoid confusion. DSPs are utilized in both Home and Community Based settings (HCBS) for direct care provided through Personal Care Aides (PCA), Direct Care and Home Health; as well as Institution settings such as Skilled Nursing Facilities, Hospitals, and Intermediate Care Facilities (ICF).

Prior and Current Efforts to Enhance DSP Wages

DHCF's role in creating the system for payment of enhanced rates to DSP workers has evolved significantly since Councilmember Nadeau first introduced the Direct Service Professionals Wage Act in 2019. Medicaid supports the DSP wages for Home and Community Based Services (HCBS) through a rate methodology that is based on the living wage requirement. The rate methodology for institutional settings is based on cost reports, and rates are updated with scheduled updates every four to five years (based on inflated audited cost). The bill, when passed, required the District to make an annual payment that would increase the wage of DSP workers up to 117.6 percent above the living wage, but was limited to providers serving the intellectual

and developmental disabilities (IID/IDD) community only. Under the Act, the District is required to incorporate the cost of the living wage plus the average of 117.6% of this wage (across the individual provider agency) into the rate methodology. This legislation was passed unfunded, but subject to appropriations.

Enhanced Rates Established with Phase-In. In 2022, the legislation was funded and amended through language in the FY23 Budget Support Act. The Act required DHCF to establish a rate that supported the payment of an average of 117.6 percent of the living wage (across the individual provider groups) by FY2025. The ICF/IID providers funded a supplemental payment in CY2021 utilizing the Stevie Sellow's provider tax to support the efforts to increase the living wage for DSPs. DHCF funded the increased cost through a supplemental payment until it was incorporated in the ICF/IID rate in CY2023.

In CY2023, a phased-in approach for HCBS providers was established that mimicked the successful implementation of the process used for ICF/IID's, with plans to effectuate the rate increase in CY2025. The phased-in approach included an initial supplemental payment in CY2023 to all providers that could demonstrate they paid an average of 110 percent of the living wage with a final payment scheduled for the summer of 2024 to those who had increased DSP wages to an average of 117.6 percent of the living wage. The initial report set the base for the first payment and each subsequent report would show the provider's ability to use the funds in accordance with requirements of receiving the additional payment. Each payment is based on the number of hours each DSP worked and then annualized over a 12-month period, including fringe and administrative costs.

Tiered Compensation Established. Under our payment model, providers are given the flexibility to create a tiered compensation schedule that considers the DSP workers' qualified

experience and demonstrated competency. For any single employee, this tiered system uses the legally mandated living wage as the minimum payment floor but establishes no maximum threshold for a single rate paid to any single employee, provided an average wage of 117.6 percent has been achieved across their DSP workforce. Should a provider choose to pay above the average of 117.6 percent, the rules do not prohibit them from doing so. Accordingly, by the time new reimbursement rates are established for the providers in FY2025, the cost of the enhanced wages will be well-incorporated into their operations.

At the time these changes were developed, we believed the policy would fuel wage growth for DSP workers and thus serve as the appropriate prelude to a pending, more permanent change. The table below shows the average rate adjustment from the living wage from January 2023 projected through July 2024. As shown, the average wage increase generated by this system grew from 10 percent as of January 2023 to 17.6 percent effective January 2025. Stated as a percent of the living wage, these changes amount to 110 percent and 117.6 percent respectively of the District's mandated wage floor.

Tiered Model DSP Living Wage Using the Average of 117.6% of Living Wage

	Average of 117.6% of Living Wage				
Period	Minimum Level (LW Amount)	Average DSP Rate Adjustment	Average Marginal Increase Amount	Highest Tiered DSP Payment Rate	Highest Marginal Increase Above LW
1/1/2023	$ 16.50	$ 18.15	$ 1.65	$ 19.80	$ 3.30
7/1/2023	$ 17.00	$ 18.70	$ 1.70	$ 20.40	$ 3.40
1/1/2024	$ 17.05	$ 20.05	$ 3.00	$ 23.05	$ 6.00
7/1/2024	$ 17.50	$ 20.58	$ 3.08	$ 23.66	$ 6.16

Regarding payment amounts, Medicaid is forecasted to pay $73.6 million for services provided by DSP workers in CY2024 – an almost 30 percent increase in wage payments compared to CY2023 (see table below). This is a significant increase produced by a robust payment methodology.

DSP Wage Enhancement Payment Amounts				
Provider Type	**CY 2023 Estimated DSP hrs funded**	**CY 2023 Estimated DSP FTE Equivalents funded**	**CY 2023 Payment Amount**	**CY24 Forecast (117.6% of LW)**
ICFIID	1,094,580	526	$8,629,743	$8,204,265
DD Waiver	7,741,457	3,722	$19,481,423	$26,058,430
HHA	11,918,872	5,730	$30,408,361	$39,106,193
Others	77,220	37	$261,995	$231,958
Total	20,832,129	10,015	$58,781,522	$73,600,845

To address the current DSP workforce shortages many states have explored various methods in maintaining the current workforce throughout healthcare. Some states have explored and proposed options to establish tiered models to provide a career path to health care positions that require a higher level of certification and/or education. The current tiered model is similar to the model established in Montgomery County, Maryland. This is the only surrounding jurisdiction that has competitive rates with the District and is the closest in living wage for DSPs (the District still pays more). Several reasons explain the preference for this approach. Notably:

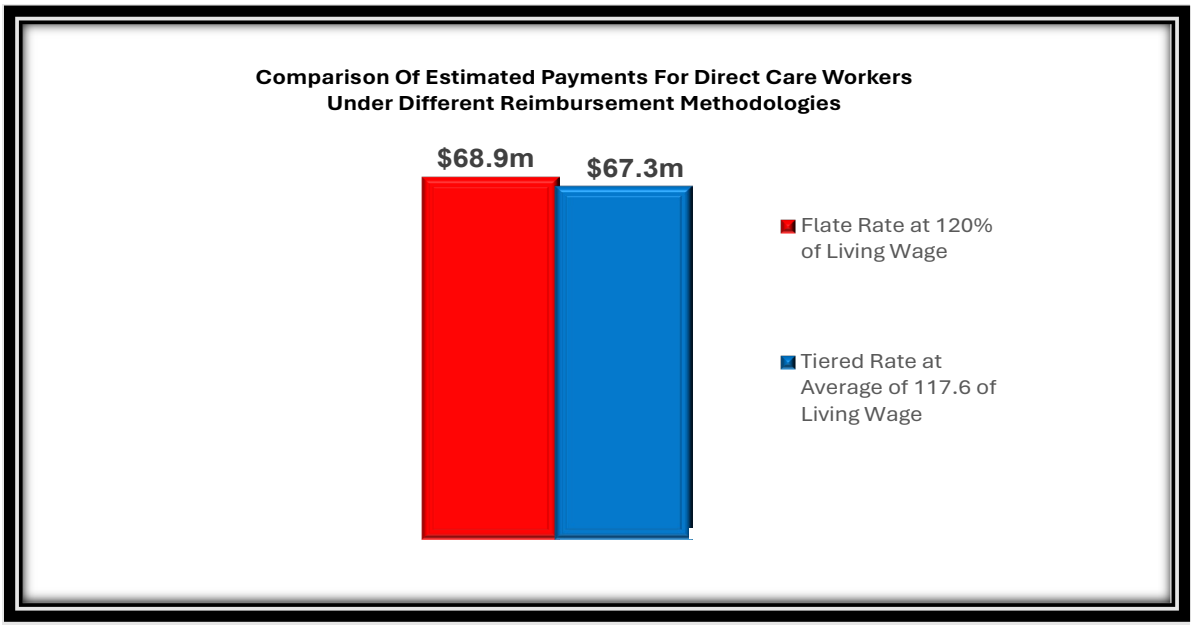
- Agencies can pay higher wages to more experienced employees, responsibly containing overall wage costs, while creating incentives for new workers who commit to the agency.

- Second, the agency has the discretion to use the tiers as a form of merit-based pay, thereby compensating more productive employees – again, without significantly increasing overall wage costs.

- Third, by creating wage tiers, agencies can mitigate problems of wage compression between managers and new employees. Wage compression becomes a difficult organizational problem when there

> are no or minor differences in pay between employees regardless of varying responsibilities, performance, and length of service. Wage compression can be ruinous to the morale of employees whose resume and tenure present a legitimate argument for meaningful differences in pay.

Perhaps the use of a flat rate payment system could be justified if this method significantly grew wage payments across the industry – it does not. Specifically, we estimate the difference in revenue generated across the industry to be less than $2 million (see graph below). For such a small gain, home care agencies would lose the ability to use their compensation system to reward employees for differences in position type, tenure, and performance. The implementation would also unintentionally punish providers who were paying over 120 percent of living wage (~$21.00) because the rate methodology would not cover any cost in excess of this threshold.



Criticisms of the Tiered Rate Methodology For DSP Workers Are Without Merit

The statement of introduction accompanying the proposed legislation curiously alleges that the system established by the new law is convoluted, difficult to administer, and provides little transparency for employees. One basis for this specious claim is the assumption that the responsibility for assessing provider compliance with the tiered payment methodology rests with

individual DSP workers – this is fundamentally flawed. There is not one group of providers to whom we make payments based on the systematic rules of the relevant reimbursement system, where employees are burdened with the responsibility of assessing their employer's compliance with reimbursement rules. That responsibility lies with DHCF, and we cannot credibly export that authority to any other agency or employee groups.

The statement of introduction further states that there is significant turnover on payroll for home health agencies from week to week, which requires providers to recalculate their average wage on a frequent basis. It is difficult to overstate the misguided nature of this criticism. There is likely not one home health agency – regardless of employee size or operating margin – that refuses to use electronic spreadsheets. A basic feature offered by this technology is embedded formulas which can be deployed to recalculate the relevant average wage paid to company employees in a millisecond, regardless of the number of changes to the data. Completely changing any reimbursement methodology because the system requires frequent changes to inputs is incredibly backwards and reactionary thinking.

Perhaps one of the most important points to note is that the District's current structure assumes agencies are paying an average of 117.6 percent. The proposed legislation eliminates the prospects of a tiered wage structure and establishes a hard minimum of 120 percent. If the District has to establish rates commensurate with this mandate, the ability to set dynamic rates will change –and CNAs, as well as other groups paid in excess of 120 percent, could face a reduction in pay.

DHCF reviewed the latest submitted reports to evaluate provider wage payments controlling for the type of payment model in use. The data clearly show that sixty-seven percent of the providers submitting reports are using the tiered model to establish a career ladder model within their DSP payment structure, with wages as high as $23.66 in July 2024. However, if the proposed legislation is enacted, the rate methodology will support the DSP living wage of 120 percent of

living wage ($21); a reduction of $2.66 per hour.

DHCF And Setting Market Rates

Madam Chair, I close my remarks by reminding the Committee of the role DHCF plays in with respect to setting labor market rates. In 2020, DHCF was urged to take on a greater role in setting wage rates for home care agencies, even prescribing minimum wage floors beyond what is mandated by District law. Our position then was this is not an appropriate role for the agency – nothing has changed four years later.

We continue to view with considerable skepticism and apprehension any proposals that would require DHCF to set an arbitrary wage mandate beyond what is already required because these proposals can distort the marketplace and run the risk of creating unintended effects. A wage mandate sets an artificial payment level thus presuming this price reflects true cost of the supplied labor—typically defined as the equilibrium price. A mandated and artificial increase in wage levels calls for assumptions about the equilibrium price that DHCF is simply not qualified to make. In this case, the letter of introduction assumes, without evidence, that the equilibrium price is higher than the living wage but does not exceed 120 percent. I do not understand the basis for that assumption as it is not empirically derived.

Moreover, our federally approved reimbursement methodologies for all provider types do not pre-determine wage levels. Rather, we allow providers to respond to the needs of the market with voluntary adjustments as they see fit. It is important to note that reimbursement methodologies are designed to partly address these circumstances by capturing required wage adjustments that providers must pursue for meeting their labor needs. DHCF's base rate of compensation for DSPs assumes that providers are at least paying the living wage established by the District, while using a tiered reimbursement model to compensate those providers who have developed a business case for paying higher wages. We do not, however, prescribe wage levels for provider groups, and we

approach with great caution any request that we do so.

Thank you for the opportunity to testify on this bill and I look forward to questions from the Committee.