



MARYLAND DEVELOPMENTAL DISABILITIES COALITION

Dedicated to the rights and quality of life for people with developmental disabilities in Maryland

Senate Finance Committee

February 11, 2021

SB 486: Labor and Employment – Employment Standards During and Emergency (Maryland Essential Workers’ Protection Act)

Position: Oppose



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The Maryland Developmental Disabilities Coalition is comprised of five statewide organizations that are committed to improving the opportunities and outcomes for Marylanders with intellectual and developmental disabilities (IDD).



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The COVID-19 pandemic has created unprecedented and unique challenges for people with developmental disabilities, their families, and community providers. DDA-licensed community services are only possible because of the dedication of the staff whose supports enable people with intellectual and developmental disabilities (IDD) to live meaningful, inclusive lives in their communities. **Direct Support Professionals (DSP) play a critical role in the daily lives of the over 17,000 people with developmental disabilities who receive services and supports funded and licensed by the Developmental Disabilities Administration (DDA).** Like teachers, DSPs create ways to teach people new skills. Like nurses, they pass medications, provide treatments, document care, and speak with medical professionals. Like social workers, they get people connected to their communities. Like counselors, they listen, reflect, and offer suggestions. DSPs provide whatever support it takes so people can thrive in their communities.



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Protecting the health and safety of this essential workforce is of paramount concern to DDA-licensed providers who are subject to OSHA’s workforce requirements as well as to health, safety and emergency protocols that are part of the regular licensing process for DDA community providers. This includes a requirement under *COMAR 10.22.02.10(A)(17)* that requires IDD providers to implement “State and federally required safety precautions, infection control, and standard precautions...” While we share the concerns about worker safety, the DD Coalition respectfully opposes SB 486 for the following reasons:



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Unfunded mandates and financial distress

This pandemic has exacerbated an already existing workforce crisis. We remain deeply concerned that service providers will not be able to provide the critical ongoing services and supports to Maryland’s most vulnerable citizens.



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- **Hazard pay** - As this committee is well aware from discussions about the minimum wage, DD providers are funded through state and federal Medicaid dollars, and are legally prohibited from “charging” for the services they provide in order to make up financial shortfalls due to unfunded mandates. The ability of DD providers to offer enhanced pay during a state of emergency is solely driven by whether funding for that cost is provided by the State. There is no provision in the bill to provide funding to Medicaid providers to offset costs that would be incurred if the bill should pass.
- **Financial assistance for unreimbursed health care costs** - While some number of claims may be covered through Workers Compensation, there will be employees who fall into the categories of having costs associated with their health insurance, and those who have not opted to have employer-sponsored health insurance will therefore have out-of-pocket costs as well. Again, the financial cost of this mandate has the potential to be significant, and State reimbursement would be necessary in order to not negatively impact DD community providers and their ability to continue to provide vital services.

Health and Safety

The COVID-19 pandemic has disproportionately affected the health and well-being of people with developmental disabilities. The following provisions of SB 486 **would put Marylanders with intellectual and developmental disabilities at greater risk:**

- Allowing **essential workers the option to refuse to perform certain duties if they fear for their life or health** during the emergency. Direct support professionals can face risk by working during times of emergency, but the essential nature of their work can literally mean the difference between life and death for people with developmental disabilities. **This section of the bill places people with developmental disabilities at high risk of injury or death based on a staff member's fear.** During the current pandemic, community providers went to extraordinary lengths to provide a safe working environment to the greatest extent possible. Unfortunately, there was a lack of assistance from the state in resources and in policy early in the pandemic, leaving community providers responsible for accessing PPE and yet deprioritized for a limited supply of PPE as critical masses were held by suppliers for hospitals. There was great difficulty understanding and implementing conflicting direction from state and federal agencies, while continuing to operate on the frontlines when many employers could move to a virtual business model.
- **Evacuating the worksite** until it has been properly sanitized is both unnecessary and would again place people with developmental disabilities at risk. Many of the "worksites" are group homes, and having to evacuate the entire home, especially for the people with disabilities who live there and are immune-compromised, would put them at greater risk.

Lack of Clarity Regarding "Emergency"

The definition of "emergency" that appears in SB 486 is broad, and does not require the issuance of an executive order, declaration, or proclamation in order to trigger the requirements of the bill. The bill's requirements could take effect retrospectively based on an announcement by a local or state emergency management agency, making the bill overly broad, and real-time compliance virtually impossible.

Service provider agencies and DSPs play a critical role in addressing the healthcare of people with developmental disabilities, and they must continue to provide services and supports to people with developmental disabilities through this pandemic, and during any future emergency.

A strong, well-funded workforce to support people with developmental disabilities is critical. As essential workers on the frontline, we know direct support professionals need and want to be safe; however, this bill puts the lives of people with developmental disabilities at risk.

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