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## THE SENATE OF MARYLAND ANNAPOLIS, MARYLAND 21401

March 8, 2022

### Senate Finance Committee

#### **Senate Bill 868 - FAVORABLE** – Developmental Disabilities Administration – Self-Directed Services (Self-Direction Act of 2022)

The Self-Direction Act of 2022 distills a set of policy issues that we have been trying to resolve through legislation for the last three years. SB 868 is the products of a summer study (June through December 2021) that was completed by the House HGO committee on DDA's self-directed option for Marylanders with developmental disabilities. The complete report has been submitted to the committee for review. This legislation codifies the essential aspects of the program under jeopardy since 2014, when the Self-Direction Waiver, New Directions, was coupled with the waiver that was previously only for provider-managed services.

This bill does not seek to add new elements to Maryland's groundbreaking SD program -- which was initiated by participants and family advocates in 2005 -- the aim is only to restore what has been lost and to protect other aspects that have been at risk for several years.

Marylanders who self-direct are by and large doing remarkably well these days, and the self-direction program continues to grow. Many participants employ family members, so they did not experience the upheavals others endured during the Covid crisis. In fact, self-directed participants had measurably better health outcomes during Covid. Indeed, many people who self-direct were able to adapt their services in a way that allowed them to continue many of their regular activities -- preserving both their physical and mental health. However, allowing family to work at staff has been threatened for the last six years in various ways. This bill codifies that hiring a family member as staff shall be an option if desired by the individual receiving services.

Program participants have finally achieved financial parity with their peers in provider-managed services, thanks to a recent DDA policy change. And seemingly overnight, the [overnight programs](#) have been provided as was a main goal of this group for year. In FY22 DDA started the same budgeting formula in the LTSS software system it uses for provider-managed services to also determine self-

direction budgets, something the DDA waiver has always called for but has never been realized before. This is a change for participants accustomed to sacrificing goals and services to stay within their very limited budget.

There have also been other admirable changes from DDA administrators. DDA now meets monthly with representatives from SDAN, the Self-Directed Advocacy Network of Maryland—the driving force behind this legislation. As a result of that collaboration, DDA has implemented several program improvements. A recent example is a revised participant agreement which is finally based on the supported decision making model that SDAN has recommended for at least four years. This brand new agreement allows participants to get the help they need to administer their services without relinquishing their autonomy.

Deputy Secretary Simons has also taken steps to respond to SDAN's urgent request to restore the availability of overnight supports, which his department eliminated in the 2018 waiver renewal. Mr. Simons has made it clear that he wants "no one hurt," and has accessed "state only" funding for staff supports for overnight care on a case by case basis. And last Friday—just four days before this hearing--his department issued a [memo](#) notifying all participants that those supports are available again under waiver funding. That is wonderful news for people who have gone without the supports they need for the last four years.

With all of the recent progress, my colleagues may ask why legislation that guarantees these and other important aspects of self-direction is even necessary. There are two reasons.

First, there is still much lost ground to recover, including DDA policies which have minimized the role of the support broker—the lynchpin of Maryland's original New Directions program. Reducing access to the only team professional who specializes in self-direction has resulted in long service delays for transitioning youths and has made it difficult for individuals from disadvantaged communities, or those who lack a strong family support network, to self-direct at all.

The second reason for codifying the principles of self-direction into law is that DDA is like most state agencies: It is filled with well-intentioned people who are consumed with tasks that distract them from the needs of the very people they are meant to serve. Despite their dedication, they are sometimes out of touch with their constituents and unaware of the consequences of the policies they make.

Since 2016 DDA has attempted to eliminate the participant's right to hire family members, to eliminate choice in essential fiscal management services, to eliminate independent support brokers, to impose competency testing, to force people to relinquish their budget and employer authority to a single representative, and to eliminate personal supports altogether, forcing participants to seek supports from another state program not intended for the Maryland population with Intellectual/Developmental Disabilities.

Consequently, since 2016 a small group of volunteers, have pushed the State to restore these facets of the program. They have persistently worked to restore Maryland's original vision for self-direction: flexibility, person-centeredness and participant choice and control of services, repeatedly stating that all people can self-direct with the right supports. We all appreciate DDA's new willingness to listen and change, but Marylanders with developmental disabilities should not have to rely on the *persistence* of one small group of volunteers or on *the good will* of a few DDA administrators to retain the supports and services that they need. Codifying self-direction principles into law will prevent future regressions in

support and service options. This bill will ensure that future Maryland DDA administrations maintain a flexible, person-centered program as envisioned, allowed and funded by The Federal Centers for Medicare and Medicaid Services (CMS).

This bill complies with all regulations and guidance by CMS and will not jeopardize the Federal Match.

Nothing in this bill is intended to increase the funds already earmarked for individuals' needs by the State. It merely gives them **flexibility in the use of and access** to the total amount of funds already allocated for their supports by the formula used for all budgets. The amendments made to the original bill, attempt to clarify this intention.

For these reasons, I request a favorable report with the amendment provided in your packet on SB 868.

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#### **Fiscal Note Concerns:**

##### **Personnel Costs**

DDA must complete the renewal and have CMS approval for the Community Pathways waiver by July 1, 2023. This bill only moves that deadline up by six months. If DDA does indeed need to contract with additional staff to make the few changes required by this bill, that same staff would also work on other aspects of the waiver renewal. The actual cost of implementing these changes into a new waiver is far less than the MDH OLS estimate. Required Training DDA already conducts regular, required training for both Coordinators of Community Services and Support Brokers. SDAN already meets regularly with DDA and supplies it with detailed recommendations for all aspects of self-direction at no cost. Specific recommendations regarding training for Coordinators of Community Service and Support Brokers could be seamlessly implemented into existing training at little to no additional cost to the State.

##### **Individual and Family Directed Goods and Services**

This entry by MDH OLS contains two errors. First, to our knowledge, the current cap on Individual and Family Directed Goods and Services (IFDGS) is \$5,000, not \$7,500. Second, the term "therapies" does not appear in the current bill. It was eliminated during the amendment process. Therefore, DDA would not be required to fund any therapies for all Community Pathways participants in provider-managed services. Furthermore, removing the cap from the IFDGS category would not require the state to allocate any additional funding for people who self-direct and who want IFDGS to fund "activities." As is now the case, participants can only access the IFDGS category by using their "savings," redirecting funds already allocated for them in the approved Person-Centered Plans and budgets. The \$81 million price tag for this change is imaginary.

##### **Support Broker (SB) Services**

The MDH DLS estimate of \$31.2 million is based on the false assumption that 50% of participants will use the maximum allowance of 40 hours per month. Note that participants must justify their need for every service they request in the Person-Centered Plans. To gain approval for 40 hours of SB services, participants would have to demonstrate a special need for 40 hours of Support Broker services, which DDA reviewers must then approve. Examples of individuals who might require maximum SB support are those who don't have a strong family network or those from disadvantaged communities. A closer estimate of those who would use the maximum allowance is 5% of 2,000 people--an additional cost of

\$3.2 million. SDAN recommends that participants who require additional SB supports draw them from their existing funding so that there is NO extra cost to the State.

### **Vehicle Use Reimbursement**

The MDH DLS estimate of \$5.8 million is based on a false assumption. The actual additional cost to the State for this aspect of the bill is ZERO. MDH assumes that everyone in self-direction uses a specialized van adapted for wheelchair use. Over 90% of individuals do not require a special van and travel in their employees' personal vehicles. And those employees are already reimbursed for mileage from the participant's currently allotted budget. This stipulation merely allows participants to use existing funding to reimburse family members who are NOT employees for mileage costs associated with the specialized vans they provide for their loved ones-- so that their employees can drive them to and from community activities.

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Please view these videos for more info about Self-Direction

[TRAILER - Why Work in Self-Direction? - YouTube](#)

["Self-Direction and the Good Life: Many Lives, Many Choices" - YouTube](#)