

**SB 275: Labor and Employment- Family and Medical Leave Insurance Program
February 10, 2022 at 1 p.m.
Senate Finance Committee**

Position: Support with Amendments

The Arc Maryland is the largest statewide advocacy organization dedicated to the rights and quality of life of people with intellectual and developmental disabilities (I/DD) and we support the creation of a family and medical leave insurance program in Maryland.

While the creation of a family and medical leave insurance program would be incredibly helpful in allowing individuals, parents, and other caregivers to receive pay for leave taken to care for themselves or provide care to a loved one, the current legislation contains problematic definitions and requirements for employers of record. **As it does not align with FMLA definitions for employers (regarding number of employees), number of hours worked before a person would be eligible, requirements for notification and the use of intermittent leave, among other differences, and would create a new, unfunded mandate for Medicaid Provider organizations and direct support professionals that serve and support the community of people with developmental disabilities and people with disabilities who self-direct their services, the legislation would create significant hardship for Medicaid Home and Community Based Disability Service Providers and staff.**

The common reality we all have is that almost all of us will need to take leave at some point, to care for our family member's or our own serious medical condition or to welcome a new child. Without pay during these periods of leave, people are often faced with making a grueling decision to take the leave without pay, that they or their loved ones need for health and bonding but which will create a financial hardship and threaten job stability, or not take the leave and continue to work to make ends meet, sacrificing the needs of their family or their own health needs.

People with disabilities and their families often experience greater economic hardship and financial insecurity. Many live paycheck to paycheck, and any unexpected illness could create financial instability for a person or their family. These are reasons why a Family and Medical Leave Insurance Program, which would provide pay during times of leave, would be helpful.

This acknowledged, **the legislation contains several components that would create hardships for some people with disabilities and Developmental Disabilities (Medicaid) providers in the state**, including but not limited to the creation of a mandatory benefit insurance plan to which both the employer and employee would be required to contribute,

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without a budget mandate for increased DDA Medicaid provider funding to support the mandatory contributions Medicaid providers and their employees would be required to make.

For a mid-sized Developmental Disability provider with approximately 200 full-time employees and 150 part-time low-wage Direct Support Professionals, **this new insurance plan would amount to a mid-sized provider contribution of between \$30,000-\$40,000 per year.** This figure includes estimations of contributions of administrative employees to the plan but **does not include the costs to the employer of replacement/temporary Direct Support Professional staff** who are often more costly than regular/permanent staff due to the current environment in DD community services.

The pandemic has ravaged the Direct Support Professional workforce. Data collected by the Maryland Department of Health confirms that DSP vacancy rates are closing in on 30% across the state. This means that roughly 1 in 3 positions are vacant. We worry what providers will do, and how they will handle the staffing requirements when staff take extended periods of time off. Even the temporary staffing agencies are unable to always fill the gaps, given the demand, intensive training, background, and licensure requirements of working with people with IDD.

DDA providers are **Medicaid providers** and **cannot pass on any of the costs of doing business on to people who receive their services.** They rely on state funding for their operations and for the state to provide increased funding for any statewide increases to minimum wage or new benefit programs that require a DD employer's contributions. Any new mandate for wages or employer contributions to mandated leave programs like the one that would be created through this bill, without an accompanying mandate for an increase in annual funding for Medicaid providers- to not only cover the contributions, but fund the overtime, recruitment, and other personnel costs associated with creating temporary coverage pools- may further destabilize our IDD system. Most Direct Support Professionals receive low wages already for their important work and the mandated employee contribution may also impact the finances of the Direct Support Professional workforce.

The family and medical leave insurance program created through legislation should align with FMLA as to not create two separate sets of standards, definitions, and assumptions by which employees and employers operate. Although FMLA is a separate leave law, the inconsistencies between the two could create administrative and management difficulties for IDD providers and people with disabilities who self-direct their DDA services. Here is a chart that provides details on some of the differences between FMLA and this bill.

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Area of inconsistency	Federal FMLA ⁱ	SB275
The number of hours of employee work required for program eligibility	1250 hours within the 12 months preceding the start of leave	680 hours within the 12 months preceding the start of leave. *Note there has been confusion as to whether the 680 hours must be worked with the same employer for eligibility or if the 680 hours is transferable from one employer to the next, thus potentially setting up a situation where an employee may work most of these hours for Employer A, and after becoming employed by Employer B and working just a few hours, take paid family and medical leave.
Definition of "employer" under which employee would be eligible for leave benefit	50 or more employees must work at the location for an employee to be eligible for FMLA	Employers with 1 employee must cover their employee
Intermittent Leave	Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason.	Employees must make "reasonable effort to schedule the intermittent leave in a manner that does not unduly disrupt operations", and "provide the employer with reasonable and practicable prior notice of the reason for which the intermittent leave is necessary. There are no definitions for intermittent leave intervals or minimum amount of leave (hours) to be taken at a time
Notice of Employee Rights	All covered employers are required to display and keep displayed a poster prepared by the U.S. Department of Labor summarizing the major provisions of the Family and Medical	Employer must provide written notice of rights annually to employees. When an employer "knows that an employee's leave may be for a qualifying reason, the employer shall notify the employee of the employee's

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	Leave Act (FMLA) and telling employees how to file a complaint	eligibility to take FMLI leave within 5 business days
Payment of leave benefit to employee	According to normal pay period schedule (typically within 14 days)	Within 5 business days after a claim is approved.
Amount of protected leave allowed to be taken per year	12 weeks within a one year period	Up to 12 weeks for most, and up to 24 weeks for others under certain circumstances* *Advocates for the legislation admit there is a loophole in the bill that may allow an employee to take 12 weeks of Family and Medical Insurance Leave and then another 12 weeks for qualifying reason under Federal FMLA, thus preventing contiguity of both leave programs.

Reiterating our position, The Arc Maryland supports the creation of a family and medical leave insurance program in Maryland. We would like to see this benefit offered nationally as we believe it will benefit our society when people do not have to worry about loss of wages when they need to care for themselves or a loved one.

However, the leave program proposed through this legislation creates deep concerns: We believe that it creates a separate standard employers and employees will have to navigate, and administrative burdens which we believe would present unintended negative consequences if the bill is passed as written.

For amendments, we ask that **the definitions of "covered (eligible) employee", other definitions mentioned above, and responsibilities of employers under the benefit plan be made consistent with Federal FMLA standards.**

We ask that employers not be required to PROVIDE notice to employees but rather post notice (in a conspicuous place) of an employees' rights under this benefit, consistent with other leave, insurance, and benefit notification requirements in law.

We will also ask that any legislation creating an insurance program with mandatory contributions also include a mandatory budget appropriation annually for funding increases for medicaid community- based providers (such as Developmental Disabilities

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providers) and also funding increases to the individual budgets of people who self-direct their services whose services are funded via Medicaid if they are recognized as Employers through bill definitions. The budget mandate would be necessary to cover costs associated with providing the new benefit plan and staffing extended vacancies for leave taken under the benefit.

Respectfully Submitted,
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ⁱ <https://www.dol.gov/agencies/whd/fmla/faq>