Maryland
DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 14, 2024

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
Room 241, House Office Building
Annapolis, Maryland 21401

RE: House Bill 509 - Developmental Disabilities - Community Providers - Federal Participation for Local Funds - Letter of Opposition

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (Department) respectfully submits this letter of opposition for House Bill (HB) 509 - Developmental Disabilities - Community Providers - Federal Participation for Local Funds.

HB 509 would require the Department to develop a means to receive Federal Financial Participation (FFP) for county and municipality funds designated to supplement the rates paid by the Department's Medicaid waiver programs for individuals with intellectual and developmental disabilities.

The Department is committed to ensuring that our Medicaid waiver programs remain strong and equitable in order to ensure the best outcomes for Marylanders. We are deeply concerned that SB 509 would have detrimental impacts on these programs that are operated by our Developmental Disabilities Administration (DDA). There are three primary areas of risk related to HB 509: (1) impact on rate-setting, (2) impact on waiver cost neutrality and health equity outcomes, and (3) impact on Department systems and operations.

Impact on Rate-Setting and Health Equity
DDA operates three Medicaid waiver programs for individuals with intellectual and developmental disabilities: Community Pathways, Community Supports, and Family Supports. Under the present rate-setting system, the Department sets a single statewide rate for each waiver service, and then provides an enhanced differential rate for participants in counties with a high cost of living. This differentiated rate is available in Frederick, Montgomery, Prince George's, Calvert, and Charles Counties. The present rate-setting system uses nationally-recognized best practices to ensure that rates are set at a competitive and well-calibrated level of reimbursement, in line with Centers for Medicare & Medicaid Services (CMS) requirements and with actuarial analysis. Existing practices in Maryland are aligned with national standards and with the common practices of neighboring states.

Under HB 509, Maryland's waiver programs would no longer have two rate tables. The theoretical maximum number of rate tables under HB 509 could be as many as 360, depending on implementation. This prospect is raised by the possibility that each county and municipality in Maryland (23 counties and 157 municipalities) could set a distinct rate for its providers. If the Department were to retain its present geographic differential rate (which is based on participant address, not provider address), the Department would need to differentiate rates for every combination of provider jurisdiction and participant jurisdiction, leading to a maximum of 360 total sets of rates. Such a system would compromise the integrity of the existing rate-setting process, which is informed by input from stakeholders and is designed to ensure that fair and efficient rates are available throughout the State.

The rate-setting mechanism envisioned by HB 509 also exacerbates existing health equity issues, as rates could vary widely across small geographic distinctions, particularly within underrepresented communities. Counties and cities with larger budgets and larger populations would have greater capacity to supplement their local rates, attracting more providers to their jurisdictions. This could result in the highest-quality services being available only to those waiver participants with the wherewithal to live or move into a jurisdiction with favorable rates. In addition, provider capacity in underrepresented communities would continue to diminish or deteriorate under this system. The financial risks and new expenditures associated with this proposal, including system development, new types of fiscal operations, auditing and actuarial services, and other associated costs, would also affect the State's ability to enroll new waiver participants and reduce its waiver program waiting lists, including for individuals in crisis situations.

Impact on Cost-Neutrality

All Medicaid waiver programs must be "cost-neutral," a standard which CMS employs to determine if services provided under the waiver cost an amount equal to or less than the cost of institutional services, such as those provided by the Department's Holly Center and Potomac Center (42 CFR 441.303(f)(1)). At present, the State is able to manage cost-neutrality for its waivers through the rate-setting process.

Under HB 509, the State would lose control over the final rates paid to providers, as counties and municipalities would be allowed to "supplement" these rates to any extent they chose. This loss of oversight raises the possibility that a county or municipality could set its rates to a level which would violate the cost-neutrality maximum. In such an event, CMS could decertify the waiver program and halt FFP, leaving the State responsible for the entire cost of waiver services, exceeding $2 billion per year.

Impact on MDH Systems and Operations

Developing system capabilities to support the mechanisms envisioned by HB 509 would be difficult. First, Department software systems such as the Maryland Long Term Services and Support System (LTSS*Maryland*) billing application would require at least $1M in additional one-time funding to prepare to support hundreds of new rate tables and novel provider-address-based rate calculations. Second, the Medicaid Administration and the DDA would require at least $5M in new staffing costs over the first 5 years of the program. Third, the DDA would be

required to establish a significant accounts receivable operation, to invoice each county and municipality for their portion of the general funds expenditure applied to the final rate. The Department estimates that the volume of funds passing through this operation could exceed $100M per year. In the event that a county or municipality could not pay their expected portion of the rate, or was delayed in providing payment, the State would absorb this cost into its General Funds. The State also projects new recurring costs of approximately $155,000 per year for expanded auditing and actuarial services needed to support these new fiscal operations.

The Department remains committed to building equitable, efficient, and responsive health programs for all Marylanders. We are focused on creating rate systems which equitably support participants, direct support professionals, and provider agencies throughout the state.

For these reasons, the Department respectfully recommends that the committee vote unfavorably on HB 509.

If you would like to discuss this further, please do not hesitate to contact Sarah Case-Herron, Director of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary