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**SB 539: Labor and Employment- Family and Medical Leave Insurance Program
February 27, 2020 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 medical leave insurance program in Maryland.

That said, and while the 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 bill contains problematic definitions and requirements for employers of record, and as written, it would create a new, unfunded mandate for Medicaid Provider organizations that serve and support the community of people with developmental disabilities and people with disabilities who self-direct their services.** There is currently no provision in this bill to provide increased funding to medicaid providers to meet the obligations that would be created by passage of SB539.

The positive elements of a Family Medical Leave Insurance Program and how it would benefit people with I/DD and their families:

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 know 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 needs.

Paid family leave insurance programs that have been put in place in other states, have been found to boost economic security and opportunity for all, including an estimated 1 in 5 Americans with disabilities and their families. A report completed by The Leadership Conference Education Fund found that many low-wage workers with disabilities and family members of people with disabilities feared that "staying home when they or a loved one are sick or in need [would] mean not only the loss of a day's pay but also the possible loss of their job."

People with disabilities and their families often experience greater economic hardship and financial insecurity. According to another report, only 1 in 10 people with disabilities report

that they feel they could come up with \$2,000 for an unexpected need, compared to 1 in 3 people with no disability. Many live paycheck to paycheck, and any unexpected illness could create financial instability for a person or their family. The Time to Care Act proposed in HB 839 and SB 539 would provide much needed paid leave for those who need it, to care for themselves or a loved one.

However...

This bill, while promising and well-intended, has several bill components that would create hardships for some people with disabilities and Developmental Disabilities (Medicaid) providers in the state, including the creation of a mandatory benefit insurance plan to which both the employer and employee would be required to contribute, **without** bill provisions to create a budget mandate for increased DDA provider funding to support the change.

The current rate of mandatory shared contribution to the plan, proposed in the bill, is .5% of an employee's wages, split equally between employer and employee. There has been discussion of increasing this contribution rate to at least .67% to ensure enough contributions to create a viable insurance fund. At a .67% contribution rate, employees making \$14 per hour (\$560 per week), working 40 hours per week would contribute \$1.88 per week and employers would also contribute \$1.88 per week for that employee. This is an employer contribution of approximately \$100 per year per FTE.

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 (high turnover, high rates of staff vacancy, and high levels of staffing overtime costs).

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 may further destabilize our DD 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.

Many components of the Family and Medical Leave Insurance Program proposed through this bill do not align with the Federal Family Medical Leave Act (FMLA). Although FMLA is a separate leave law, the inconsistencies between the two could create administrative and management difficulties for DD providers and people who self-direct their DDA services. Here is a chart that provides details on some of differences between FMLA and this bill.

Area of inconsistency	FMLA	Family Med Leave Insur. (SB539)
The number of hours of employee work required for program eligibility	1250 hours within the 12 months prior to the start of leave	680 hours within the 12 months preceding the start of 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
Definition of serious health condition	The "continuing treatment" test for a serious health condition under the regulations may be met through a period of incapacity of more than three consecutive, full calendar days, plus treatment by a healthcare professional, or any period of incapacity related to pregnancy or prenatal care	There is no three-day standard for use of intermittent leave. 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

	Leave Act (FMLA) and telling employees how to file a complaint	eligibility to take FAMILI 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	Up to 12 weeks	Up to 12 weeks for most, and up to 24 weeks for others under certain circumstances* *See eligibility in the bill.

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.

With this bill, however, we have deep concerns that it creates mandates and administrative burdens which we believe would present unintended consequences if the bill is passed as written.

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

We ask that providers not be required to PROVIDE notice to employees but rather post notice (in a conspicuous place) of an employees' rights under this benefit

We will also ask that any legislation creating an insurance program with mandatory contributions also include a budget mandate for funding increases for medicaid community-based providers (such as Developmental Disabilities providers) and also funding increases to the individual budgets of people who self-direct their services. This funding would be necessary to cover costs associated with providing the new benefit plan. Without these amendments, The Arc Maryland's support must be considered withdrawn.

Respectfully Submitted,
 Ande Kolp
 Executive Director