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Executive Director

**House Economic Matters Committee**  
**HB 581- Labor and Employment - Employment Standards**  
**During an Emergency**  
**(Maryland Essential Workers' Protection Act)**  
**Position: Oppose**

February 5, 2021

The Maryland Association of Community Services (MACS) is a non-profit association of over 100 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities.

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. 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 sponsor's concerns about worker safety, MACS respectfully opposes HB 581 for the following reasons:

### **Unfunded Mandates and Financial Distress**

- **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. HB 581 creates a mandate that DD providers will be unable to fulfill, unless there is a companion mandate for the MD Department of Health to fully cover the costs associated with hazard pay.
- **Financial assistance for unreimbursed health care costs** - While some number of claims will likely 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

and 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 Bereavement Leave** - HB 581 would mandate additional leave for essential workers that is another unfunded mandate. Earned sick leave law already provides for paid leave for employees, and the vast majority of employees of DD community providers receive paid leave for vacation and sickness.

### **Health and Safety**

- HB 581 allows **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, government entities fell woefully short in providing assistance early in the pandemic, leaving community providers responsible for accessing PPE and 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 people who are immune-compromised, would put them at greater risk.

### **Lack of Clarity Regarding "Emergency"**

The definition of "emergency" that appears in HB 581 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.

In closing, DD community providers are required to comply with countless federal, state and local statutory and regulatory requirements that balance maintaining the health and safety of people with developmental disabilities and staff. HB 581 would create an overlay of requirements that would jeopardize the health and safety of people with developmental disabilities, and would create unfunded mandates that would have dire financial consequences for organizations. Therefore we urge an unfavorable report.

Respectfully submitted,

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