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Senate Finance Committee
SB 211: Labor and Employment - Family and Medical Leave Insurance Program -
Establishment (Time to Care Act of 2021)

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 concept of having a medical leave insurance program in Maryland. **That said, while the program would be incredibly helpful in allowing individuals, parents, and other caregivers to have access to paid leave and job security as they care for themselves or provide care to a loved one, the bill contains several problematic definitions and provisions. These definitions and provisions, as detailed herein, would likely create severe staffing and financial difficulties for people with disabilities who self-direct their home care services, and Developmental Disabilities provider organizations.**

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 that has been passed in other states has been found to boost economic security and opportunity for all, including an estimated 1 in 5 Americans with disabilities and their families.

A reportⁱ 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."

According to a survey completed by Bankrateⁱⁱ this month, just 39 percent of Americans surveyed say they could comfortably cover an unexpected expense of \$1,000. Many people live paycheck to paycheck and any unexpected illness could mean the difference between relative stability and absolute crisis.

SB211, while promising and well-intended, has several components that would create hardships for some people with disabilities and DDA (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. DDA providers are Medicaid providers and cannot pass on any of the costs of doing business to people who receive their services. Their primary funding source comes from the state budget and any state-mandated changes

to workforce benefits or wages needs to be coupled by a commitment from the state for increased state funding for DD services.

In addition to the costs to the DD provider/employers (to include people with disabilities who self-direct their services who are employers of record) there are inconsistencies between the Federal FMLA program and this leave program which would create undue tracking burdens, confusion, and added expense for providers and people who self-direct services.

Inconsistencies between the Federal FMLA program and the proposed Time To Care program:

Area of inconsistency	FMLA	“Time to Care”
Hours of 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	1 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 pre-natal 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 Rights	Employer must post rights in a conspicuous place	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 eligibility to take FAMI 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 24 weeks

In this time of pandemic, the workforce shortage in the Developmental Disabilities field has become dire. Workers are not coming into the field to work due to the known risks and low pay/benefits. Allowing a worker to have up to 24 weeks off through the Time to Care Program could create a dire staffing crisis for providers who already struggle to fill shifts. People who self-direct their services do not have a pool of alternative caregivers from which to draw. If their staff leaves for 24 weeks it may place their health in jeopardy. There is no back up long term staffing plan for many who self-direct: no one to provide care, dressing, bathing and other critical assistance for community living if their caregiver is on leave and they are compelled to hold their position.

Recommendations:

- 1. Add provisions to the bill to create state funding mandates for DDA Medicaid HCBS providers and people who self-direct to cover the projected costs of employer and employee contributions to the plan as well as additional administration costs.*
- 2. Amend definitions to align with FMLA for: Hours of work required for program eligibility, Definition of employer under which employee would be eligible for leave benefit, Definition of serious health condition, Notice of Rights, Payment of leave benefit to employee, and amount of protected leave allowed to be taken per year.*

In conclusion, we appreciate the intent of this bill, and hope the amendments we have included may be made in order to bring this benefit to workers in Maryland.

Sincerely,

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ⁱ https://www.thearc.org/file/public-policy-document/Georgetown_PFML-report_Dec17.docx

ⁱⁱ Survey: Fewer than 4 in 10 Americans could pay a surprise \$1,000 bill from savings
<https://www.bankrate.com/banking/savings/financial-security-january-2021/>