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House Economic Matters Committee HB 496: Labor and Employment – Family and Medical Leave Insurance Program -- Establishment

Position: Support with Amendments

February 15, 2022

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.

The intent of HB 496, to assist employees who need leave in order to care for themselves or a family member is a goal supported by IDD providers and the reason why MACS supported the Maryland Healthy Working Families Act in 2017. However, the staffing, financial and administrative challenges raised by HB 496 threaten to negatively impact some number of the 18,000 Marylanders with IDD and their families that DDA-licensed providers support. While some caregivers will certainly be helped by this legislation, the impact of the bill on services by providers struggling with high vacancy and turnover rates will, we fear, have a negative effect on others.

Prior to the pandemic, IDD providers were struggling with high vacancy and turnover rates-- half of all IDD providers in 2019 had a direct support vacancy rate over 16% and 1 in 4 providers had a direct support vacancy rate over 24%.

As of January 2022, the average vacancy rate was 25%, with some MACS members reporting rates as high as 60%, and 1 in 4 providers reporting a direct support vacancy rate over 30%. These numbers do not account for staffing shortages caused by staff who are still employed but are out of work on other types of leave, including FMLA. This bill would now mandate that providers *double* the amount of family and medical leave, and expand the eligible uses, at a time when many are unable to serve the same number of people they had been supporting prior to the start of the pandemic, due to current staffing shortages.

If providers are unable to maintain full staffing for extended periods of time or are unable to find qualified replacement staff for employees

who might be eligible under the bill for up to *twenty-four* weeks of leave- community services that supports over 18,000 Marylanders with disabilities and their families will be further jeopardized.

It is critically important to note that the vast majority of IDD providers are nonprofit organizations, and all community providers rely on funding from the state and federal government. Unlike other businesses, **DDA-licensed Medicaid providers are federally prohibited from passing on cost increases to the people they support.** The unfunded employer mandate proposed by this legislation raises significant concerns for IDD providers. As this Committee will remember from the minimum wage debate, many of these Medicaid providers are already operating on thin margins, and do not have the financial capacity to absorb not only the additional cost of the employer portion, but to cover the increased costs associated with even more overtime for existing staff, temporary staffing, and training costs for substitute staff.

As drafted, HB 496 would:

- provide the possibility of 24 weeks of leave rather than 12 weeks of leave under FMLA;
- allow an employee to qualify for leave who has only worked 680 hours as compared to 1,250 hours under FMLA;
- permit an employee to take leave immediately after 680 hours rather than after a full year of employment as is the case under FMLA;
- permit an employee to become eligible for leave after working 680 hours **cumulatively across employers**. An employer would be required to provide 12-24 weeks of leave to an employee who may have only worked 1 hour for them if they had worked 679 hours for another employer within the same year. There is no mechanism in the bill for tracking these hours and thus it is unknown how an employer would know or be able to verify that an employee was eligible for leave if the employee had worked fewer than 680 hours for any single employer;
- permit an employee to take leave to care for an expanded list of family members and for expanded reasons that are not permitted under FMLA.

DD providers are also concerned about the return to work guarantee and how it relates to the training requirements for direct support professionals. Under this bill providers would be required to restore an employee to their full hours of work, even if they are out of compliance with the numerous training mandates that have to be kept current in order to work.

While there are many problematic aspects of this bill as noted above, the two most pressing challenges for IDD community providers are the potential for 24 weeks of leave and the unfunded mandate. In an effort to balance the interest in providing additional paid leave to employees against the negative impact that the loss of staff and

funding would have on people with developmental disabilities, MACS respectfully requests the following amendments:

1) a cap on paid family and medical leave to eligible employees of 12 weeks, running concurrently with the federal Family and Medical Leave Insurance Act (FMLA); and

2) require the State to cover the cost of the employer contribution proposed by this bill for DDA-licensed IDD providers.

Respectfully Submitted,

Laura Howell
Executive Director