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## HB 525- Employment Discrimination - Use of Cannabis Products

House Economic Matters Committee

February 23, 2024

POSITION: **SUPPORT IF AMENDED**

The Arc Maryland is the largest statewide advocacy organization dedicated to advancing the rights of individuals with intellectual and developmental disabilities and providing training, outreach, and service protections for individuals and their families.

Providers like The Arc deliver Home and Community Based Services under a Medicaid 1915(c) Waiver. The Waiver allows people with developmental disabilities to receive institutional-level services in their home communities. Caregivers, known as Direct Support Professionals, employed by The Arc are responsible for performing a myriad of tasks with and for adults with intellectual and developmental disabilities, such as, but not limited to, tasks that require safety consciousness, attention to detail, quick reaction time, patience, and skill demonstration. Direct Support Professionals may provide personal transportation services, provide physical escort supports for a person with mobility impairments, administer medications and treatments, assist individuals with personal care and hygiene tasks, provide behavioral supports, monitor blood pressure, assist an individual to prepare meals, and assist an individual with eating.

Because the caregivers in our field must be able to perform vital, personal, and skillful work, all of the organizations of The Arc conduct drug tests. We also do this not only to ensure safety, but to assure compliance with the Federal Drug-Free Workplace Act of 1988. Under the Act, workplaces with a federal contract of \$100,000 or more or a federal grant in any amount must implement a Drug-Free Workplace Program, which includes drug testing requirements. To fail to maintain a Drug-Free Workplace could jeopardize our federal funding. HB 525 attempts to address this by clearly stating that the bill does not preempt federal law.

That said, and due to the sensitive nature of the work that Direct Support Professionals provide to support people with intellectual and developmental disabilities, The Arc Maryland respectfully requests two amendments to exempt employees who work in "Safety-Sensitive Positions" from the legislation:

### TWO PROPOSED AMENDMENTS

On page 5, after line 7, insert:

**"SAFETY-SENSITIVE POSITION" MEANS A POSITION, AS DESIGNATED BY THE EMPLOYER, WHERE IT IS REASONABLY FORESEEABLE THAT IF THE EMPLOYEE PERFORMS THE POSITION'S ROUTINE TASKS OR DUTIES WHILE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL, THE EMPLOYEE WILL LIKELY CAUSE ACTUAL HARM, BODILY INJURY, OR LOSS OF LIFE TO SELF OR OTHERS.**



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On page 7, line 20:

(2) UNLESS:

- (I) **THE INDIVIDUAL IS EMPLOYED IN A SAFETY-SENSITIVE POSITION;** OR
- (II) THE EMPLOYER HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT AN UNLAWFUL USE OF CANNABIS HAS IMPAIRED AN INDIVIDUAL'S ABILITY TO PERFORM THE INDIVIDUAL'S JOB RESPONSIBILITIES, TAKE AN ADVERSE EMPLOYMENT ACTION AGAINST THE INDIVIDUAL BECAUSE OF:

Of note, **D.C. Law 24-190. Cannabis Employment Protections Amendment Act of 2022<sup>i</sup>** also singles out employees working in "safety-sensitive positions", stating that "Employers are prohibited from firing, failing to hire, or taking other personnel actions against an individual for use of cannabis, participation in the District's or another state's medical cannabis program, or failure to pass an employer-required or requested cannabis drug test **unless the position is designated "safety sensitive" or for other enumerated reasons.**

In the DC law, "**safety sensitive" positions include those which require "the supervision of, or the provision of routine care for, an individual or individuals who are unable to care for themselves and who reside in an institutional or custodial environment... and the administration of medications..."**

For more information, please contact: Ande Kolp, Executive Director, The Arc Maryland 443-851-9351  
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<sup>i</sup> <https://code.dccouncil.gov/us/dc/council/laws/24-190>