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House Economic Matters Committee HB 1326- Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave

Position: Oppose

March 2, 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.

MACS was an active stakeholder during the earned sick and safe leave debates of 2016 and 2017 and worked hard to help craft language that balanced the needs of employees to take sick and safe leave with the needs of DDA-licensed providers who are mandated to protect the health and safety of people with intellectual and developmental disabilities whom they support. Those leave discussions played out against the backdrop of a staffing crisis facing IDD providers driven by a long history of low wage rates paid by the state. That staffing crisis has deepened as a result of the COVID-19 pandemic and MACS is concerned that several provisions of this bill upend the delicate balance struck by the original sick leave bill.

As-Needed Employees

House Bill 1326 removes the existing exemption for workers who are called to work on an as-needed basis in a health or human services industry, who can reject or accept the shift, and who are not guaranteed to be called in to work by the employer (commonly referred to as PRN employees)—a work arrangement that benefits employees looking for hours to maintain licensure and/or control over their schedules, and employers looking to fill gaps in shifts. This provision was removed from the original legislation because of the significant operational changes it presents: a business would be required to provide paid sick leave to an employee who has not been scheduled to work nor has to agree to work a shift if asked. MACS is opposed to expanding sick leave eligibility for this unique category of employees.

Increased Leave

House Bill 1326 would require additional paid leave, in addition to that which exists under Maryland's current paid leave statute, during a public health emergency—much like what was required by the federal Families First Coronavirus Response Act. Those leave requirements were offset by tax credits which were critical for Medicaid providers operating on

precariously thin margins. No such funding mechanism exists in HB 1326, leaving providers with a significant unfunded mandate. More significantly, this leave provided extreme challenges for DDA-licensed providers who were scrambling to fulfill staffing ratios in order to meet health and safety mandates. These staffing challenges also resulted in soaring overtime expenses. While challenging, providers did, and continue to do, all that is within their control to protect their employees and provide leave whenever needed.

Retroactivity

Given that DDA-licensed providers are dependent on the state for funding, do not charge for their services nor are permitted under federal law to pass cost increases on to the people they support, MACS is very concerned about the retroactivity provision of the bill which could result in providers having to pay for prior unpaid leave that they have not been funded to provide.

Expansion of “family member”

The definition of family member was the source of much debate during the discussions of the earned sick leave bill, and the ultimate compromise resulted in definitions broader than that which is permitted under the federal Family and Medical Leave Act. House Bill 1326 would expand the reach of the bill further to include in the definition of family member for whom leave could be taken, an individual whose “close association with the employee is the equivalent of a family relationship.” Such broad language creates new operational challenges for employers. How are employers to determine who qualifies as a “close relationship” under this definition?

Definition of Health Care provider

The bill would authorize “an individual licensed or certified under federal or state law to provide medical or emergency services” to determine if an employee’s presence at the workplace would jeopardize the health of others due to a communicable disease. Given the medical nature of such a determination, MACS believes this authority should be limited to health care professionals who are *licensed* by the state (doctors and nurses) and not include those who are only *certified* as healthcare professionals.

We therefore urge an unfavorable report.

Respectfully submitted,

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