



Disability Rights Ohio
50 W. Broad St., Suite 1400
Columbus, Ohio
43215-5923

614-466-7264 or 800-282-9181
FAX 614-644-1888
TTY 614-728-2553 or 800-858-3542
disabilityrightsohio.org

Michael Kirkman, Esq.
Executive Director
mkirkman@disabilityrightsohio.org

April 28, 2017

Representative Ryan Smith
Chair, House Finance Committee

Representative Jack Cera,
Ranking Member, House Finance Committee

Statehouse
Columbus, Ohio 43215

Re: Substitute House Bill 49

Dear Chairman Smith and Ranking Member Cera:

I am writing you today as an interested party regarding Substitute House Bill 49, Ohio's 2018-19 biennial budget. As the federally authorized and state-designated system to protect the rights of Ohioans with disabilities, Disability Rights Ohio (DRO) brings a unique perspective to the issues presented by this bill.

You will hear from others about changes being proposed in the House in the sub bill, and the impact they will have on the system of services and supports for Ohioans with intellectual and developmental disabilities (I/DD). In particular, no new funding for Home and Community Based Service (HCBS) waivers, removal of the add-on for complex care, and no increase for shared living all have the effect of exacerbating Ohio's overdependence on institutional care, which violates Title II of the Americans with Disabilities Act. These changes can only have a negative effect on people with I/DD.

Our focus here, however, is on the removal in the House version of the budget of critically necessary funding to increase pay for home health workers. Recruitment, training, and retention of these workers has become more difficult in recent years because of low pay. Yet this component of the workforce, which provides direct care to recipients, is arguably the most critical.

Federal law requires states which participate in Medicaid must "provide such methods and procedures relating to utilization of, and payment for, care and services ... to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that

such care and services are available to the general population in the geographic area . . .”¹ In 2016, the Center for Medicare and Medicaid called for information from the public related to this provision,² particularly as it related to rebalancing of Medicaid between institutional and community-based long term service and supports and the integration mandate of Title II.³

These legal requirements mean that the state of Ohio must, at a statewide and systemic level, ensure sufficient capacity with a robust pool of providers to support people with intellectual and developmental disabilities in their communities. Notwithstanding the federal requirement, the system is currently in a precarious position. People, particularly those with greater needs, and their families already struggle to find, train, and retain reliable providers. Any new proposal should not have the impact of further weakening provider capacity throughout the state.

The issue of system capacity and adequate rates is more than just a regulatory question. It presents a very human component as well. As pointed out in a recent series in the Columbus Dispatch, inadequate pay and training for home care causes workers to struggle and puts individuals at risk of neglect or even serious injury.⁴

This issue is complex, with the complexity caused by a conflation of other issues related to minimum wage and overtime restrictions. These put even further limitations on the availability of the highly trained and skilled staff needed in these positions. It is not just a problem for Ohio, but nationally.⁵

This body has heard the stories of Ohio’s families before. Two years ago the Executive Budget proposed doing away with the “independent provider” program. We remain grateful that the General Assembly removed that provision, although the state has moved to rulemaking to regulate the cost of overtime incurred by these providers.⁶ Even in that context, multiple concerns have been raised. In a DRO publication, Justin Martin and his community of supporters explain the importance of highly qualified staff to his life and to his ability to be a fully realized, participating member of our society.⁷

¹ 42 U.S.C. § 1396a(a)(30)(full statute at https://www.ssa.gov/OP_Home/ssact/title19/1902.htm). See *Armstrong v Exceptional Child Inc.*, 575 U.S. ___, 135 S.Ct. 1378 (2015)

² 81 FR 78760, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-09/html/2016-27040.htm>. See “Improving the Balance: The Evolution of Medicaid Expenditures for Long Term Services and Supports” available at <https://www.medicaid.gov/medicaid/ltss/downloads/evolution-ltss-expenditures.pdf>

³ 42 U.S.C. § 12132; 28 C.F.R. 35.130(d)

⁴ <http://www.dispatch.com/news/20170320/dividing-lines--families-juggle-long-hours-low-wages>.

⁵ <https://nonprofitquarterly.org/2016/10/17/nonprofit-wage-issues-emerge-front-center-across-country/>

⁶ See proposed OAC 5123:2-9-03, http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/listAllActionsPublicDisplayRules.jsp?entered_rule_no=5123:2-9-03

⁷ Available on line at http://www.disabilityrightsohio.org/assets/documents/dro_justin_martin_medicaid_booklet.pdf. DODD withdrew its proposed rule on overtime for providers and plans to refile it in the near future <http://www.dispatch.com/news/20170405/state-pulls-proposal-to-cut-ot-for-home-care-providers>

Reps. Smith, Cera
Sub Bill 49
April 28, 2017
p. 3

We recognize that increasing pay alone is not the solution. This is a serious workforce issue that requires careful planning to ensure that the individuals hired are provided the training and have the necessary skills and temperament to do this difficult and demanding work. Accordingly, DRO encourages that any plan to increase pay should also be tied to workforce readiness, training, and qualifications. But the current pay rates, which cannot compete with WalMart or McDonalds, are a significant barrier to moving this issue forward.

Thank you again for the opportunity to provide this written interested party testimony. We urge the House to consider carefully the consequences of this proposal on the thousands of people with disabilities who rely on independent and agency providers to receive home and community based care. If you have any questions or want to discuss this matter further, please contact me at your convenience.

Respectfully submitted



Michael Kirkman
Executive Director

c: full committee