Disability Rights DC at University Legal Services (DRDC) appreciates the opportunity to testify regarding the Department of Health Care Finance’s (DHCF) performance. DRDC is the designated protection and advocacy program for people with disabilities in DC. DRDC represents DC residents with disabilities who are facing the termination, reduction, delays in provision, and denial of life-sustaining Medicaid long-term care personal care aide services (PCA). My testimony focuses on: (1) concerns regarding DHCF’s changes to the Services My Way program under the Elderly and Physical Disabilities (EPD) Waiver Program; (2) DHCF’s response to the ongoing direct care workforce crisis; (3) the need for DHCF to maintain accountability over the long-term care and other services delivered by MCOs; and (4) DHCF’s ongoing improper termination of Medicaid services for many eligible long-term care Medicaid beneficiaries with disabilities.

**DHCF Should Rescind the 16-Hour Cap on Services My Way PCA Services**

Since 2002, DRDC, among other advocate organizations, have worked with DHCF to develop a participant-directed services (PDS) program that would enable people with disabilities to hire and manage their PCA aides without the need to rely on home health agencies. PDS is a critical option considering the long-term care workforce crisis and an essential mechanism for the community to manage their care which, in some cases, involves high-level needs. The PDS program in the District is also known as Services My Way (SMW). However, DHCF has chosen to administer SMW in a manner that unnecessarily limits beneficiaries’ access to PCA services. In November 2023, DHCF began implementing its EPD Waiver amendment that sets a 16 hours per day cap on participant-directed PCA services under the SMW program. DHCF’s cap on

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1 DRDC, along with AARP Foundation Litigation and Terris, Pravlik, & Millian LLP, is plaintiffs’ class counsel in *Brown v. District of Columbia*. *Brown* is a class action under Title II of the ADA on behalf of DC residents in nursing facilities who seek transition assistance from the DC government to move back to the community with the Medicaid long-term care services they need. DRDC is also plaintiffs’ co-counsel and plaintiff in *LR v. District of Columbia*, a class action lawsuit under Title II of the ADA and the Medicaid statute on behalf of DC youth with significant mental and behavioral health challenges seeking intensive community-based services to prevent institutionalization.
participant-directed PCA services has resulted in the lack of reasonably prompt access to all authorized PCA service hours for those SMW enrollees authorized for 17-24 hours a day of PCA services. Accordingly, DHCF should amend the EPD Waiver to allow coverage for up to 24 hours a day of PCA services for those enrolled in SMW.

In response to our concerns, DHCF has said that SMW participants who are authorized to receive 17-24 hours of PCA services may have those remaining hours staffed through home health agencies under the Medicaid State Plan. This approach is the opposite of self-directed care. Moreover, DHCF is aware of the direct care workforce crisis, so it is concerning that DHCF is exacerbating the problem by requiring SMW participants to identify a home health agency to staff those remaining hours. Alternatively, DHCF has suggested that a beneficiary may ask one or more of their Participant Directed Workers (PDW) to apply to work for a home health agency and work the remaining portion of their hours through the agency. This approach also denies the SMW participant the use of self-direction to exercise employer authority to recruit, hire, and supervise PDWs to provide PCA services. DRDC is concerned about this inequitable treatment of SMW beneficiaries compared to other EPD waiver beneficiaries who rely on home health agencies. Additionally, this purported solution will not ensure prompt access to services because it is dependent on various factors outside the beneficiaries’ control, including a PDW’s willingness to seek employment from a home health agency and accept a potentially lower rate of pay, the willingness of the home health agency to hire the PDW and/or staff the remaining hours, and the completion of home health aide (HHA) certification when needed, among other factors.

A DRDC client’s experience is illustrative of the adverse impact of the 16-hour cap and the infeasibility of DHCF’s proposed solutions to staff the remaining hours. John is a 30-year-old man with skeletal and orthopedic disabilities. He is an EPD waiver beneficiary currently authorized to receive 24 hours of PCA services. He is completely dependent on these services for all activities of daily living. Since November 13, 2023, his 24 hours a day of PCA services have not been staffed because of the 16-hour cap. John and his case manager have diligently tried to identify a home health agency to staff the remaining 8 hours a day, contacting at least 14 home health agencies that all declined to staff those hours. He also was unable to address this issue by having his PDW get hired by a home health agency to provide the remaining hours. Although John and his case manager recently identified an agency that is willing to accept his case, the agency is not presently able to staff all his hours. Since the 16-hour cap went into effect, John has been relying on informal supports, when available, for assistance with his activities of daily living. As is evident, DHCF’s cap on SMW PCA services places John and persons like him at risk of deteriorating health and placement in nursing facilities at greater expense to the District, and in violation of their rights under Title II of the Americans with Disabilities Act (ADA).

**DHCF Must Do More to Address the Direct Care Workforce Crisis**

This self-directed services issue underscores DRDC’s ongoing serious concerns about the chronic staffing shortages in the long-term care service delivery system, which limits the delivery of all EPD Waiver services and results in authorized hours not being staffed. Despite the

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2 This name is a pseudonym to protect this beneficiary’s privacy.

3 Some home health agencies declined because they were not accepting new beneficiaries due to insufficient staffing and others cited agency policies that do not allow acceptance of Services My Way participants who use PDWs.
workforce crisis, DHCF can and must do more to address this problem. As the single state agency, DHCF is responsible to ensure that Medicaid beneficiaries receive the medically necessary Medicaid Waiver and long-term care services to which they are entitled. According to the Coalition on Long-term Care, as of October 30, 2023, the DC Board of Nursing reports that the number of home health aides went from 8,390 to 6,683 or a loss of 20.4 percent. DHCF reports that a total of 6,265 unduplicated individuals were enrolled in the EPD waiver in FY23. This supply driven EPD Waiver system ignores Medicaid beneficiaries’ actual needs.

As a result, District residents with disabilities do not receive EPD Waiver services in the amount that they need to remain safely in their homes; nor do they receive such services with the regularity necessary to prevent dangerous conditions that place them at risk of unnecessary institutionalization. DRDC appreciates this Committee’s leadership in introducing Direct Care Worker Amendment Act on November 6, 2023. In addition to establishing a living wage for this workforce, DHCF needs to monitor the extent EPD Waiver beneficiaries are not receiving the PCA services they are assessed to need. In DHCF’s FY23-24 and FY22-23 oversight responses, DHCF admits that it only has “anecdotal” information regarding “staffing-specific gaps in care” and does not systematically and accurately quantify the discrepancy between EPD Waiver beneficiaries’ authorized service needs and the EPD Waiver services, if any, that they actually receive due to staffing shortages. This systemic monitoring is critical for DHCF to determine the gaps in services and model its Medicaid system to address the needs of this population.

**DHCF Must Remain Accountable for the Delivery of Medicaid Long-term Care Services**

DRDC also has concerns that DHCF is not taking responsibility to ensure that UnitedHealthcare (United), the District’s Dual Eligible Special Needs Plan, or D-SNP, delivers the long-term care services DC Medicaid beneficiaries are authorized for and entitled to. By 2025, all long-term care services and supports, including those provided under the EPD waiver, will be carved into all MCO contracts. DHCF recently integrated EPD Waiver services into United’s contracts. State Plan PCA services are also a covered benefit within all managed care programs. Despite the integration of EPD Waiver services into United’s contracts, DHCF has an affirmative and non-delegable duty to administer the EPD Waiver program in a manner that ensures that EPD Waiver participants receive the services that they have been assessed to need or to provide participants notice of the denial, termination, or reduction of those services and an

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4 42 C.F.R. § 431.10(b)(1)-(2); D.C. Mun. Reg. tit. 29 § 4200.5.
7 2023-2024 DHCF Performance Oversight Hearing Responses, Question 72, [https://lims.dccouncil.gov/Hearings/hearings/282](https://lims.dccouncil.gov/Hearings/hearings/282); 2022-2023 DHCF Performance Oversight Hearing Responses, Question 54, [https://dccouncil.gov/wp-content/uploads/2023/03/Binder1111.pdf](https://dccouncil.gov/wp-content/uploads/2023/03/Binder1111.pdf) (“While DHCF receives complaints and grievances regarding staffing shortages and gaps, these data are anecdotal and noncomprehensive; DHCF has no comprehensive, reliable source for data capturing staffing-specific gaps in care. Claims or utilization data reflecting service delivery are impacted by other phenomena, such as services not delivered for other reasons (refusals, hospitalizations) or lack of documentation to support billing for services.”).
opportunity to appeal. Contrary to Medicaid federal law and District law, DHCF has taken the troubling position in Office of Administrative Hearing appeals that it has no legal responsibility when PCA service hours are reduced, terminated, denied, or not timely provided because United is responsible for the delivery of services and now makes determinations regarding the number of hours a beneficiary is authorized for under the EPD Waiver or Medicaid State Plan.

DRDC and other legal advocates have represented scores of individuals with disabilities, many of whom are frail and elderly, whose PCA services under the EPD waiver were denied, terminated or reduced improperly by the District or its contractors. Despite years of advocacy by DRDC and other legal advocacy organizations for DHCF and its contractors to adhere to Medicaid beneficiaries’ due process rights, United and other MCOs are failing to send legally required notices of its determination of the number of PCA service hours authorized after Liberty’s face-to-face assessment. DHCF or MCOs are also failing to provide timely and adequate notices that inform them of the reasons for PCA service termination or reduction, what they must do to continue their benefits pending the completion of the hearing, or their rights to due process as required under Federal and DC law. Additionally, when services are not actually provided timely due to staffing shortages, DHCF is not ensuring that beneficiaries are provided a notice of this adverse action, nor are they provided an opportunity to seek redress for that failure to provide services with reasonable promptness.¹⁰

Moreover, when beneficiaries appeal adverse actions regarding their PCA services, Medicaid beneficiaries are being told they need to exhaust United’s internal appeal processes before they can appeal to OAH to challenge adverse benefit determinations without DHCF and/or United providing any notice that they need to internally appeal. When notices are sent by DHCF contractors and providers, some confusingly inform the beneficiary that they can immediately appeal to OAH. DRDC is concerned by DHCF’s inaction to hold United and its providers accountable for failing to comply with all federal, District laws, and District regulations that govern the reduction, suspension, discharge, denial, or termination of EPD Waiver services and due process rights of EPD Waiver beneficiaries.

We have also spoken to beneficiaries that are unaware that United is making the determination regarding the number of PCA service hours they would receive. We have also received a complaint that a beneficiaries’ EPD Waiver case manager will not serve as their representative at their Medicaid Fair Hearing despite it being a role of the case manager when the beneficiary is unrepresented. We have already expressed our concerns to DHCF that it is a conflict of interest for the EPD Waiver case manager to work for United. We do not know how many DC residents are impacted by this lack of accountability or how many DC residents are not being afforded due process because we only know about those who contact us for legal assistance. DRDC urges the Council to look into these accountability and due process issues during this oversight hearing.

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¹⁰ 42 U.S.C. § 1396a(a)(8); 42 C.F.R. § 435.930(a)-(b).
DHCF Continues to Fail to Act to Protect Medicaid Beneficiaries with Disabilities in the Medicaid Renewal Process from Unlawful Medicaid Terminations

Finally, this is DRDC’s third time testifying about its ongoing concerns about DHCF’s inaction to prevent unlawful Medicaid terminations of people with disabilities in the Medicaid renewal process. As outlined in our prior testimony, DRDC met with DHCF and sent letters to DHCF and the Deputy Mayor for Health and Human Services over the last several months, most recently on October 25, 2023, regarding its serious concerns with Medicaid renewal process and the improper Medicaid terminations of long-term care and other life-sustaining services. We requested that DHCF make reasonable changes to its system to protect this population from unlawful Medicaid terminations. In its December response to our October letter, DHCF disagreed and declined to make the requested changes, despite its own data of system-wide case manager neglect. Although DHCF provides a 90 day-grace period and extended enrollment by 30-days for Non-MAGI beneficiaries to allow more time to complete the renewal, DHCF has reported that these changes have resulted in a relatively low renewal response rate.

As we previously testified, DHCF is aware that at least 16 EPD waiver case management agencies, which serve 96 percent of the Fee-for Service EPD Waiver population, have failed to timely submit and process the recertifications. But DHCF has failed to meaningfully act to protect this vulnerable population by, at a minimum, stopping Medicaid terminations for those beneficiaries whose renewal has not been completed at no fault of their own. DHCF is tracking and has knowledge that their renewal has not been completed at least in part because a case manager has failed to submit renewal information. We continue to urge DHCF to take this action to stop terminations while also at the same time continuing to work with case management agencies to remedy renewal compliance issues. Additionally, DHCF should allow for other pathways for long-term care beneficiaries to complete their renewal in addition to assistance from their case manager. DRDC is not recommending that DHCF

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11 DRDC Letter to Deputy Mayor for Health and Human Services and DHCF, October 25, 2023; DRDC, DC Long Term Care Ombudsman, and Legal Counsel for the Elderly Letter to DHCF, July 18, 2023; DHCF Response Letter to DRDC, LTCOP, and LCE regarding Medicaid Renewals for Long-Term Care Beneficiaries, July 28, 2023; (attached as exhibits).
12 DHCF Response Letter to DRDC’s October 25, 2023 letter, December 12, 2023 (attached as an exhibit).
15 As outlined in detail in prior testimony, DHCF’s regulatory procedures, which place the responsibility on case managers to complete Medicaid long-term care renewals, impact timely completion and processing of Medicaid renewals. 29 D.C. Mun. Regs. Tit. 29, §§4203, 4224.14 (“The Case Manager shall ensure a beneficiary timely completes Medicaid reassessment(s) as part of the annual recertification requirements.”). Pursuant to these District regulations and directives, EPD Waiver participants are neither responsible for, nor authorized by, DHCF to recertify their eligibility for waiver services. DHCF only accepts waiver recertification or applications from designated EPD waiver agencies that include case managers responsible for preparing applications, assessments, and recertification documents. Id. Accordingly, each waiver participant is assigned to a case manager who must complete the annual recertification paperwork necessary to maintain the waiver services and submit it to DHCF and its contract agency, Liberty Healthcare, for prior authorization.
remove the case management function to help ensure renewals are completed in a timely manner. Instead, as we outlined in our October letter, DHCF should modify its policies such that long-term care beneficiaries may access their renewal and submit information on their own, such that they may complete the renewal process directly as much as possible or have help from their case manager or other assistants of their choice.

DHCF’s inaction is very concerning given the consistently troubling data that, aside from SSI beneficiaries whose coverage is renewed passively, other people with disabilities and individuals 65 and older with renewals continue to have lower renewal rates than other Medicaid groups to date. Of those due to renew in June through November 2023, DHCF reported that approximately 8,900 non-MAGI seniors and people with disabilities were procedurally terminated or at risk of termination from Medicaid. In its FY23 performance oversight responses, DHCF reports that approximately 21 percent of EPD Waiver beneficiaries due to recertify on or before September 30, 2023 (an average of 409 beneficiaries were due for renewal each month) remain procedurally terminated from the waiver as of January 2, 2024. In its response to our October letter, we are concerned that DHCF is making problematic assumptions about the reasons for the low renewal rate for this population, including the unverified reasons that these beneficiaries procedurally terminated have passed away or moved out of the District.

We urge DC Council to, in its oversight authority, hold DHCF accountable to stop these unlawful Medicaid terminations and remediate the harm to those who need EPD Waiver services and other long-term care services to maintain their health and safety and remain in their homes and the community. Thank you again for this opportunity to submit testimony on these important issues.

For further information:

Lyndsay Niles, Managing Attorney
202-547-0198 ext. 128
lniles@uls-dc.org

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October 25, 2023

Deputy Mayor Wayne Turnage
District of Columbia Office of the Deputy Mayor for Health and Human Services
1350 Pennsylvania Avenue NW, Suite 223
Washington, DC 20004

Melisa Byrd, Interim Director
Eugene Simms, Interim Senior Deputy Director and Medicaid Director
Katherine Rogers, Director, Long-Term Care Administration
DC Department of Health Care Finance
441 Fourth St. NW, Suite 900S
Washington, DC 20001

RE: Improper Medicaid Termination of Long-Term Care and other Life-Sustaining Medicaid Services

Dear Deputy Mayor Turnage and Directors Byrd, Simms, and Rogers:

Disability Rights DC at University Legal Services (DRDC) represents people with disabilities and older adults who rely on long-term care services and other life-sustaining Medicaid services, including personal care aide (PCA) services under the DC Medicaid Home and Community-based Waiver Program for People who are Elderly and/or have Physical Disabilities (the "EPD Waiver Program").¹ We appreciate that DC Department of Health Care Finance (DHCF) leadership met with DRDC and other advocates on September 25, 2023 to discuss our concerns about the District’s high rate of procedural terminations of Medicaid services for Non-MAGI beneficiaries, which includes seniors and people with disabilities who receive EPD Waiver services and other long-term care services and supports.

¹ DRDC, along with AARP Foundation Litigation and Terris, Pravlik, & Millian LLP, is plaintiffs’ class counsel in Brown v. District of Columbia. Brown is a class action under Title II of the ADA on behalf of DC residents in nursing facilities who seek transition assistance from the DC government to move back to the community with the Medicaid long-term care services they need. DRDC is also plaintiffs’ co-counsel and plaintiff in LR v. District of Columbia, a class action lawsuit under Title II of the ADA and the Medicaid statute on behalf of DC youth with significant mental and behavioral health challenges seeking intensive community-based services to prevent institutionalization.
We were disappointed that at this meeting DHCF declined to pause procedural terminations for all non-MAGI beneficiaries, including long-term care beneficiaries. We are writing to share our ongoing serious concerns regarding the District’s policy and practices of improperly terminating Medicaid services for many eligible non-MAGI Medicaid beneficiaries. We also write to formally request that the District provide reasonable accommodations for these beneficiaries with disabilities to remedy discrimination, including by stopping these improper terminations and by allowing alternative pathways besides a case manager to submit renewals. Alternative pathways include direct assistance by DHCF staff to complete renewals for beneficiaries. DHCF knows case managers are not timely completing renewals and has an affirmative obligation to act to protect this vulnerable population from unlawful Medicaid terminations.

Although these individuals are likely eligible for ongoing waiver services and other long-term care services, the District is subjecting them to serious risk of harm, institutionalization, and potentially death. The District is aware of these risks because the District previously unlawfully ended the Medicaid benefits of EPD waiver beneficiaries who remained eligible for them. As reported by the Washington Post in August 2013, in 2012 approximately 300 EPD waiver beneficiaries were terminated from DC Medicaid for procedural reasons. At DRDC and other advocacy groups’ urging, DHCF identified those individuals and found that 133 had died and 37 had entered nursing facilities or other long-term care facilities. We urge the District to intervene to stop this practice and remediate the harm to those who need EPD Waiver services and other long-term care services to maintain their health and safety and remain in their homes and the community, rather than in nursing facilities.

Medicaid Renewal Process and the Long-term Care Program—Background and Issues

After Congress passed the Consolidated Appropriations Act of 2023 ending the Medicaid continuous enrollment requirement, DHCF restarted the process of renewing Medicaid eligibility on April 1, 2023. An accessible renewal process for people with disabilities is required by federal law and critical to help minimize the chance of wrongful Medicaid eligibility redetermination denials for individuals that remain eligible. Equal access to the renewal process is required by the Medicaid Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Section 1557 of the Affordable Care Act. Unfortunately, DHCF has structured its Medicaid renewal process in a manner that results in discrimination against people with disabilities. Despite being aware of systemic problems with the Medicaid renewal process, the District has failed to reasonably modify it to avoid discrimination as required under federal law.

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3 Id.

DHCF administers the EPD Waiver Program which, coupled with the State Plan PCA services program, provides up to 24 hours of daily Personal Care Aide (PCA) services and case management for people who need assistance with activities of daily living (i.e., bathing, dressing, mobility transfers, toileting, and eating). People with incomes up to 300% of SSI (= $2,742 per month in 2023) and have $4,000 maximum assets ($6,000 for a couple) are eligible for the program. All of the waiver participants terminated by DHCF likely continue to meet the medical and financial eligibility requirements for the waiver program.

Long-term care and home and community-based waiver beneficiaries are not allowed to submit renewals on their own and must rely on a case manager to do so. This population includes individuals receiving long-term care services in the community and individuals receiving long-term care in assisted living facilities and nursing facilities. Pursuant to District regulations and directives, EPD Waiver participants are neither responsible for, nor authorized by, DHCF to recertify their eligibility for waiver services. DHCF only accepts waiver recertification or applications from designated EPD waiver agencies that include case managers responsible for preparing applications, assessments, and recertification documents. Accordingly, each waiver participant is assigned to a case manager who must complete the annual recertification paperwork necessary to maintain the waiver services and submit it to DHCF and its contract agency, Liberty, for prior authorization. DHCF also requires people with disabilities to submit longer renewal forms than people without disabilities because DHCF decided to transition to an updated District Direct eligibility system without manually transferring long-term care beneficiary information into the updated system, compounding the barriers for people with disabilities to complete the renewal process and contrary to a renewal requirement that the District conduct ex parte renewals for the non-MAGI population.

The District is aware that DHCF and its waiver case management agencies have failed to timely submit and process the recertifications. Specifically, DHCF has identified at least “six case management agencies that have been issued a formal request for remediation related to redeterminations...” as of June 1, 2023. During our September 25 meeting, DHCF also reported that it has a master tracking document that identifies individual enrollees whose renewal has not been completed by the case manager and cases where the program code cannot be updated. According to DHCF, this master tracker is used to facilitate twice a week communication with case management agencies regarding compliance issues. We know that DHCF is focusing on more intensive training on the case manager’s role in renewal process, but training will not address the neglect by DHCF providers. Lack of recertification due to case manager non-response is a longstanding issue that has been exacerbated by the District

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5 For individuals that need more than 8 hours a day under the Medicaid State Plan, the EPD Waiver provides up to 16 hours a day of additional PCA service hours, totaling up to 24 hours of PCA services per day.
6 29 D.C. Mun. Regs. Tit. 29, §§4203, 4224.14 (“The Case Manager shall ensure a beneficiary timely completes Medicaid reassessment(s) as part of the annual recertification requirements.”).
7 This requirement may run afoul of the federal requirement that beneficiaries are able to choose who helps them to complete the renewal process and submit renewal information in the variety of ways. See 42 C.F.R. § 435.908(b), 42 C.F.R. § 435.923.
9 DHCF Response Letter to DRDC, DC Long Term Care Ombudsman, and Legal Counsel for the Elderly regarding Medicaid Renewals for Long-Term Care Beneficiaries, July 28, 2023.
10 Id. at 2.
undertaking a massive review of Medicaid eligibility after a 3-year pandemic-era pause on renewals. As a result, the District has terminated and continues to terminate Medicaid eligibility and services.

As a result of DHCF’s administrative renewal procedures, there is a low renewal rate for people with disabilities. At a rate of 39%, people with disabilities and individuals 65 and older with renewals due May–August have had lower renewal rates than other Medicaid groups to date.11 This means that 61% of non-MAGI Medicaid beneficiaries due to renew in May–August faced termination. DHCF reports that among District Medicaid beneficiaries due in May, June or July who have lost coverage to date (18,198 individuals), there is a 90% (16,454 individuals) procedural termination rate.12 Of those due to renew in June and July 2023, DHCF reported that approximately 1,600 non-MAGI seniors and people with disabilities were procedurally terminated from Medicaid, including almost 200 EPD waiver beneficiaries, 30 ID/DD waiver beneficiaries, 230 nursing facility and other non-waiver long-term care enrollees.13, 14 As of August 30, 2023, 2,100 individuals with disabilities and seniors due in August faced termination, including 170 EPD waiver beneficiaries, 50 ID/DD waiver beneficiaries, 190 nursing facility and other non-waiver long-term care enrollees.15

We request that consistent with CMS guidance16 and to reasonably accommodate people with disabilities in the renewal process, DHCF should stop procedural terminations for this population that would otherwise occur due to a non-response to the renewal form until DHCF

13 As of July 31, 2023, approximately 780 beneficiaries with a disability or seniors (i.e., non-MAGI) who were due to renew in June but extended through July lost coverage effective August 1. This includes approximately 250 full Medicaid beneficiaries, 110 Elderly and Persons with Physical Disabilities (EPD) waiver beneficiaries, 10 ID/DD waiver beneficiaries, and 100 nursing facility and other non-waiver long-term care enrollees. DC Department of Health Care Finance, Restarting Medicaid Renewals: The End of the Continuous Enrollment Requirement Bi-weekly Meeting #10, August 2, 2023, at 8, available at: https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/Final%20Medicaid%20Renewal%20Biweekly%20Community%20Meeting%20for%20Posting%20080223%20%281%29.pdf.
14 As of August 29, 2023, approximately 820 Medicaid beneficiaries with a disability or seniors who were due to renew in July but had coverage extended through August had their Medicaid terminated as of September 1. This includes approximately 260 full Medicaid beneficiaries, 80 EPD waiver beneficiaries, 30 ID/DD waiver beneficiaries, and 130 nursing facility and other non-waiver long-term care enrollees. DC Department of Health Care Finance, Restarting Medicaid Renewals: The End of the Continuous Enrollment Requirement Bi-weekly Meeting #12, August 30, 2023, at 12, available at: https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/Medicaid%20Renewal%20Biweekly%20Community%20Meeting%20083023.pdf.
can remediate the systems issues. Additionally, DHCF should also increase DHCF staffing to provide one-on-one help to people with disabilities and others who have been unable to complete timely renewals of Medicaid eligibility due to a lack of response by their case manager and provide the beneficiary the option to change case management agencies that are neglecting them in the redetermination process. At a minimum, DHCF must stop terminations for those beneficiaries DHCF is tracking and has knowledge that their renewal has not been completed at least in part because a case manager has failed to submit renewal information, or any other delay caused by DHCF’s administrative procedures. DHCF must also: (1) monitor the list of long-term care beneficiaries pending procedural termination; (2) investigate if the case manager has completed their tasks; if the beneficiary understands the renewal process; and if the beneficiary needs assistance completing the renewal process; and (3) extend eligibility and authorizations for services as needed to prevent termination of beneficiaries eligible for Medicaid and/or long-term care services. There is good cause for pausing terminations for the long-term care population because the lack of renewal response is at no fault of the beneficiary.

We are also concerned about systems issues that result in automatic terminations when renewals are timely submitted. Despite the District’s policy that timely submitted renewals will be placed in a pending status and Medicaid coverage will be extended to allow for ESA processing, DHCF acknowledges that there are still gaps in coverage. Although DHCF reports that its taking steps to manually extend Medicaid coverage for pending renewals to help prevent gaps in coverage, we urge DHCF to modify its system to automatically identify that a renewal is pending and automatically stop that termination.

Medicaid Act Violations

Federal Medicaid law prohibits states from "terminat[ing] Medicaid benefits or allow[ing] them to lapse without either providing adequate notice or without specifically finding those recipients ineligible for Medicaid." *Salazar v. District of Columbia*, 954 F.Supp. 278, 327 (D.D.C. 1996). Specifically, the District must “[f]urnish Medicaid promptly to beneficiaries without any delay caused by the agency's administrative procedures” and must “continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 C.F.R. 435.930(a), (b); 431.916(f)(1). Yet, in administering the Medicaid renewal process for long-term care beneficiaries, the District's policy and practice has been to act contrary to this requirement. By failing to timely initiate, process or act on Medicaid renewals, and thereby improperly terminating EPD Waiver services for eligible individuals and/or allowing their Medicaid benefits to lapse, the District illegally penalizes long-term care participants for its own administrative failures and at no fault of the beneficiary. The District is also failing in its Medicaid obligations to streamline and simplify the process, and provide assistance during the

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18 Id.
19 The District’s choices to not transfer data to facilitate ex parte renewal for this population fail to meet the obligations under the Medicaid Act to conduct ex parte renewals and not require Medicaid beneficiaries to provide unnecessary information. 42 U.S.C. § 18083; 42 C.F.R. §§ 435.916, .952(c). In addition, the choice to limit the renewal process to require individuals to go through their case manager improperly limits the person’s choice in assistant and ability to submit information in person, over the phone, and online. 42 C.F.R. §§ 435.907, .908, .916.
renewal process in a manner that is accessible to people with disabilities. 42 U.S.C. § 1396w-3; 42 C.F.R. § 435.908,.916.

Such policies and practices unequivocally violate long-term care beneficiaries' constitutional and federal statutory rights, and therefore give rise to claims actionable under 42 U.S.C. § 1983.

ADA and Section 504 Violations

In addition to the Medicaid Act violations described above, the District’s Medicaid terminations of long-term care beneficiaries run afoul of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a). As detailed above, the Medicaid and long-term care recertification process has been designed in a manner that discriminates against DC Medicaid beneficiaries with disabilities. 28 C.F.R. § 35.130(b)(3)(i). DHCF must, therefore, modify its renewal policies and practices to accommodate people with disabilities and to prevent discrimination. Halting Medicaid terminations for this population and extending prior authorizations are necessary to prevent unnecessary institutionalization and to maintain the health and safety of these Medicaid beneficiaries who have or will without prior authorization lose access to EPD waiver services and other critical services they need to remain in the community. Because these long-term care beneficiaries are not allowed to submit renewals on their own and must rely on a case manager to do so, DHCF should also extend prior authorizations in fairness to these beneficiaries because the lack of response is at no fault of their own.

Because the District is aware of these Medicaid beneficiaries' disabilities and is knowledgeable of and tracking the neglect by its case managers that is resulting in procedural terminations, the District’s failure to provide access to Medicaid coverage and reasonable accommodations to the existing renewal procedures amounts to deliberate indifference to Medicaid beneficiaries with disabilities’ rights. See Pierce v. D.C., 128 F. Supp. 3d 250, 278-79 (D.D.C. 2015). “Section 504 and Title II mandate that entities act affirmatively to evaluate the programs and services they offer and to ensure that people with disabilities will have meaningful access to those services.” Id. at 268 (citing 42 U.S.C. § 12131(2); 28 C.F.R. § 35.150(a); 28 C.F.R. § 35.150). Consistent with the duty to the Plaintiff in Pierce, the District has an affirmative responsibility to these Medicaid beneficiaries with disabilities to provide reasonable accommodations to afford them meaningful access to long-term care services and supports and cannot “sit idly by, taking no affirmative steps to accommodate” them. Id. at 270.

The District’s improper terminations also violate the integration mandate of the ADA, as articulated in Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999). By terminating Medicaid and waiver services, the District places individuals at risk of unnecessary placement in nursing facilities and limiting their ability to participate in their communities, which constitutes “[u]njustified isolation of the disabled.” The Court in Olmstead ruled that State and local governments must provide services and supports to people with disabilities in the most integrated settings appropriate to their needs and honor their choice of community-based alternatives to institutional placement.
**Affordable Care Act Violations**

The District’s denial of equal access to the renewal process for this population similarly violates the Affordable Care Act (ACA). Section 1557 of the ACA provides that no health program or activity that receives federal funds may exclude from participation, deny the benefits of their programs, services, or activities, or otherwise discriminate against a person protected under Section 504 of the Rehabilitation Act, 42 U.S.C. § 18116. This includes an obligation to make reasonable modifications in policies, practices, and procedures necessary to avoid discrimination. 45 C.F.R. § 92.205.

**Requested Relief**

It is DHCF’s responsibility to ensure that those individuals who are eligible for Medicaid, actually receive Medicaid-covered EPD Waiver services and other long-term care services. To accomplish this, DHCF must take the following steps as a reasonable accommodation:

1. Rescind all Medicaid and EPD waiver terminations issued from June 2023 to the present for reasons other than a specific finding of financial or medical ineligibility. Provide notice to those individuals affected as well as information about retroactive coverage so that people may have outstanding bills covered.

2. Restore Medicaid and EPD Waiver services to all those whose waiver services were terminated from June 2023 to the present due to any DHCF, provider agency or other contractor failure timely to initiate, submit, process or act upon requests for renewal and authorization. A beneficiary’s failure to act alone is insufficient reason to fail to restore coverage. Notice of reinstatement and retroactive coverage must also be sent to affected individuals.

3. Stop all Medicaid and EPD waiver terminations (by extending Medicaid renewal dates) for all long-term care beneficiaries until renewals are completed and processed with a specific finding regarding eligibility.

4. Extend prior authorizations (PAs) to ensure that EPD Waiver and other long-term care beneficiaries can continue to receive care without interruption and that providers can be paid for on-going, needed care.

5. Issue a written memorandum to providers that includes a blanket prior authorization for this subset of enrollees due for renewal to assure providers that they will be paid for services rendered while the renewal is pending. And if an individual is ultimately found ineligible, the memo should make clear that DHCF will honor the PA consistent with 42 C.F.R. 435.930.

6. Allow alternative pathways for long-term care beneficiaries to complete the renewal process, including:
   a. DHCF staff will provide direct, one-on-one assistance to recertify every long-term care beneficiary who has not responded to complete renewals.
   b. DHCF will allow other providers and assisters to help beneficiaries with completing the renewal process.
   c. DHCF will affirmatively provide the beneficiary with the option to change case management agencies that are neglecting them in the redetermination process. DHCF will extend renewal deadlines as needed so that a new case manager has sufficient time to complete the renewal process.
(7) Establish and implement new procedures for the efficient, timely processing of Medicaid renewals and requests for EPD Waiver authorization to ensure that EPD Waiver participants and other long-term care beneficiaries are no longer terminated from the program due to DHCF, provider agency or other contractor failure timely to initiate, process or act upon renewals and requests for authorization.
   a. Monitor the list of long-term care beneficiaries pending procedural termination; investigate if the case manager has completed their tasks; if the beneficiary understands the renewal process; and if the beneficiary needs assistance completing the renewal process; and extend eligibility and authorizations for services as needed to prevent termination of beneficiaries eligible for Medicaid and/or long-term care services.
   b. Consistent with CMS guidance, DHCF should streamline renewal forms and requirements for this population, including manually entering information from its legacy system into District Direct, rather than requiring individuals to provide information that DHCF already has.
   c. For pending renewals, DHCF should modify its system to automatically identify that a renewal is pending and automatically stop that termination.

(8) Create a plan to change the systems and policies such that an individual may access their renewal and submit information on their own, such that they may complete the renewal process directly as much as possible, or have help from their case manager or other assistants of their choice.

(9) Publicly report monthly the name of each case management provider with deficiency findings concerning renewals and the number of impacted beneficiaries receiving services from that provider, including the six case management agencies identified in DHCF’s July 28, 2023 letter.

We urge you to respond to Lyndsay Niles by email at lniles@uls-dc.org or by phone to 202-547-0198 ext. 128 no later than November 8, 2023 regarding the immediate steps the District will take to resolve these issues.

Sincerely,

Lyndsay Niles, Managing Attorney
Disability Rights DC at
University Legal Services

cc: Sheryl Johnson, General Counsel, DHCF, sheryl.johnson@dc.gov

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21 DHCF reported during the Medicaid Renewal Biweekly Community meeting on October 11, 2023, that DHCF will start reporting during the October 25 meeting the number of providers with current deficiency findings and the number of impacted beneficiaries. To facilitate full transparency, DHCF should also share the names of the providers, the specific nature of the deficiencies, and the corrective action to be taken.
December 12, 2023

Lyndsay Niles
Managing Attorney
Disability Rights DC at University Legal Services

Re: Improper Medicaid Termination of Long-Term Care and Other Life Sustaining Medicaid Services

Dear Ms. Niles:

Thank you for the input and recommendations related to the Medicaid renewal processes for Non-MAGI beneficiaries, specifically those with disabilities or receiving long-term services and supports (LTSS). Overall, the DRDC suggests that the District’s renewal system is broken at a systemic level because the District has not achieved a 100 percent renewal rate for this population. You have highlighted a number of specific concerns with the District’s recertification process, including assertions that the District has fallen short of meeting certain federal requirements, such as accessibility, and indicate that the District has not taken the appropriate steps to ensure eligible non-MAGI groups remain enrolled.

The purpose of this response is to clarify the District’s renewal processes, explain how the District provides oversight of this process, reviews and assesses the need for change, and details the resources the District has allocated to the renewal effort to support the unique needs of this group, as well as of every resident we serve. Additionally, while we seek to provide as much guidance as possible to correct erroneous assumptions and prevent them moving forward, it is important to note that issues raised were previously addressed in our regular provider meetings and in the biweekly Medicaid Renewal Community Stakeholder meetings, so this response reiterates some of what was previously shared.

Lastly, DHCF established a specific renewal process for individuals receiving LTSS, and DRDC is working in the community with the same beneficiaries that DHCF serves. I invite the DRDC to share any specific cases where an LTSS enrollee’s needs are potentially unmet, so that DHCF can work toward resolution.

1. Your letter expresses concern that DHCF declined to pause procedural terminations for all non-MAGI beneficiaries, including long-term care beneficiaries.

The District is interested in taking targeted actions to keep individuals who remain eligible for Medicaid enrolled in the program. At this moment, DHCF believes pausing procedural terminations for all Non-MAGI beneficiaries is overbroad.

DHCF has taken steps to increase the time beneficiaries can submit a renewal and maintain access to their coverage, including increasing the grace period for Non-MAGI Medicaid beneficiaries from thirty (30) days
to ninety (90) days. DHCF has also extended enrollment for every Non-MAGI cohort since the start of unwinding. DHCF continues to review data, work with District stakeholders, and collaborate with the Centers for Medicare and Medicaid Services (CMS) to identify initiatives and methods to effectively outreach to Non-MAGI individuals who do not renew.

2. Your letter states that DHCF knows case managers are not timely completing renewals and has an affirmative obligation to act to protect this vulnerable population from unlawful Medicaid terminations. Your letter recommends DHCF stop procedural terminations for this group and request that DHCF provide one-to-one support for individuals.

DHCF works with LTSS partners and providers to ensure compliance with requirements related to timely beneficiary renewals, for which case managers are responsible for Elderly and Persons with Disabilities (EPD) Waiver beneficiaries. Oversight actions, such as those summarized below, are how DHCF fulfills its obligation to protect vulnerable populations. Our EPD Waiver regulations provide a compliance process that DHCF leverages to notify, engage, and retrain providers or remediate compliance issues, including those related to timely beneficiary renewals. Additionally, DHCF staff monitors the status of EPD waiver enrollees for whom a renewal has been initiated.

DHCF tracks EPD cohorts by renewal timeline for both fee-for-service cases, served by 18 Medicaid-enrolled case management agencies, and Dual Choice enrollees, served by UnitedHealthcare. For fee-for-service beneficiaries, DHCF staff provides a list of upcoming renewal cohorts (up to three months ahead for planning and prospective reconciliation of renewal data discrepancies) to each enrolled provider monthly and communicates twice weekly with these providers to obtain case updates on active cohorts (e.g., all cases due to recertify in the upcoming zero to 90 days), including beneficiary refusals/non-response, request for assessment, completion of the application and supplemental, submission of documents within the DCAS Partner Portal, and response to inquiries from eligibility processing staff.

DHCF tracks active EPD and other cohorts with UnitedHealthcare staff through data exchange and standing weekly meetings on similar milestones, including (as applicable) beneficiary refusals/non-responses, requests for assessment, completion of the application and supplemental, submission of documents within the DCAS Partner Portal, and processing of applications.

For our fee-for-service providers, the sanction process noted above permits DHCF to issue remediation requests, also called “discoveries,” when violations of the timelines or requirements of Medicaid-enrolled providers are uncovered. Repeated discoveries lead to mandatory training and technical assistance and ultimately to provider sanctions outlined in our waiver regulations, up to provider termination.

In addition to pursuing action against providers demonstrating non-compliance (at any scale, large or small), DHCF actively engages partners like the Office of the Health Care Ombudsman, other home and community-based services providers like our assisted living residences or home health agencies, to provide additional case-specific assistance and engagement to support each beneficiary’s timely completion of renewal.

3. Your letter states that the Medicaid renewal process is inaccessible for people with disabilities, in violation of federal requirements.

The only portion of the LTSS renewal process that is not accessible to all parties, District-wide, is the actual function of submitting such a renewal or application into the District’s online system. This is compliant with federal requirements at 42 CFR §435.908(b).

The District’s Medicaid program is continually working to improve beneficiaries’ access to the Medicaid program, including ongoing improvements to the renewals process. This includes encouraging and
facilitating our healthcare providers’ opportunities to assist beneficiaries throughout the renewal process and educating, informing, and conducting outreach to supporting family members, caregivers, and other formal and informal supports surrounding our beneficiaries and applicants.

The District works on an inter-agency basis and with community partners to assure there are dedicated resources available to beneficiaries during the application and renewal process. DHCF recognizes that many individuals require assistance, particularly with the often-complex task of compiling financial records and documentation or completing a renewal document. DHCF partners with the Department of Aging and Community Living, the Department on Disability Services, our contracted Managed Care Organizations, and enrolled long-term care providers to ensure support is available for beneficiaries at renewal.

4. Your letter states that the District failed to transfer data that could facilitate ex parte renewal for this population, in violation of federal law....

DHCF wants to correct DRDC’s assumption that the District did not transfer available case information from the legacy eligibility system, ACEDS, to DCAS. The District transferred all information from ACEDS to DCAS; however, there is information required in DCAS that was not available from ACEDS. The additional information is collected through the one-time conversion renewal forms. The District’s inability to conduct ex parte renewals for Non-MAGI populations, partially due to the switch from ACEDS to DCAS, has been noted to CMS, and the District has taken a specified set of actions to mitigate the impact of this deficiency.

The District reiterates that its LTSS renewal process, which stresses coordination across providers, family members, and the beneficiary in the completion of materials for submission at renewal, is consistent with federal accessibility requirements.

5. Your letter attributes a low renewal rate for people with disabilities to DHCF’s administrative renewal procedures.

DHCF has shared information during biweekly Medicaid Renewal Community Stakeholder meetings to provide additional insight into Non-MAGI beneficiaries who are not renewing timely. Some of these beneficiaries do not appear to be actively using their Medicaid coverage, may be living outside of the District, or are deceased. As cited in your letter, at a rate of 39% as of September 18, 2023, people with disabilities and individuals 65 and older with renewals due May-August have had lower renewal rates than other Medicaid groups; however, an additional 20% of these beneficiaries had a pending renewal that confers an eligibility extension until a final determination is made. In addition, just under 3% were determined ineligible. For the remaining 39% of non-MAGI Medicaid beneficiaries due to renew in May-August and others who have faced termination due to non-response, DHCF continues to examine their characteristics to inform strategies for reaching these individuals.

6. Your letter requests DHCF take additional steps to ensure individuals who remain eligible for LTSS do not lose access to their benefits.

DHCF is committed to taking steps to ensure eligible individuals remain enrolled and retain access to services. DHCF has provided thirty (30) day extensions for all Non-MAGI cohorts since the beginning of restart. DHCF is also reviewing data to identify sub-sets of Non-MAGI beneficiaries to better tailor outreach strategies.

DRDC is aware that DHCF established procedures and protocols to grant authorizations for all LTSS enrollees. These measures are designed to ensure authorizations are aligned with eligibility upon completion of renewals. Additionally, DHCF issues emergency “gap” authorizations for providers in situations where a person cannot complete recertification, but services were delivered in good faith.
As mentioned during the recent biweekly Medicaid Renewal Community Stakeholder meeting and requested in prior meetings with DRDC, DHCF will report on EPD Waiver case management providers with a discovery and the number of beneficiaries served by these providers.

DRDC makes several other requests for relief that are already implemented by the District: DHCF prepulates renewal forms with available information for MAGI and Non-MAGI beneficiaries, but DHCF notes that the agency has less information for converted cases; DHCF has already modified its systems to extend eligibility for cases that are identified as pending; and DHCF reminds DRDC that EPD waiver enrollees have the right to change to any willing case manager or case management agency at any time. DHCF lacks the authority to summarily reassign beneficiaries to different case managers and case management agencies under federal and District waiver policies.

Thank you to Disability Rights DC for your continued support of the Medicaid program and its enrollees. I look forward to our ongoing collaboration.

Sincerely,

Melisa Byrd
Senior Deputy Director and Medicaid Director
VIA EMAIL: melisa.byrd@dc.gov; katherine.rogers@dc.gov

July 18, 2023

Melisa Byrd, Senior Deputy Director/Medicaid Director
DC Department of Health Care Finance
441 Fourth St. NW, Suite 900S
Washington, DC 20001

Katherine Rogers, Director, Long-Term Care Administration
DC Department of Health Care Finance
441 Fourth St. NW, Suite 900S
Washington, DC 20001

Re: Medicaid Renewals for Long-Term Care Beneficiaries

Dear Ms. Byrd and Ms. Rogers:

As you know, Disability Rights DC at University Legal Services (DRDC) is the designated protection and advocacy program for the District of Columbia that represents DC residents with disabilities. We, together with the Office of the D.C. Long-Term Care Ombudsman and Legal Counsel for the Elderly, write regarding our serious concerns about the high rate of Medicaid beneficiaries that face procedural terminations, including long-term care beneficiaries who face termination because their case manager has failed to timely complete the renewal process. As of June 15, 2023, of the 71,087 Medicaid beneficiaries with Medicaid certification end dates on or before August 31, 2023, approximately 57.1% are at risk of termination due to non-response.1

Although we applaud DHCF for agreeing to extend Medicaid coverage by 30 days2 for 6/30 and 7/31 non-MAGI certification end dates to respond to this issue, DRDC is troubled that DHCF has declined to extend prior authorizations for long-term care services and other essential services for this non-MAGI group despite CMS allowing DHCF this flexibility. Accordingly, we urge DHCF to immediately extend prior authorizations for these long-term care and other non-MAGI beneficiaries. As outlined in DRDC’s February 14, 2023 letter, DHCF must modify its renewal policies and practices as necessary to accommodate people with disabilities and to prevent discrimination. Extending prior authorizations are necessary to

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1 DC Department of Health Care Finance Eligibility Monitoring Dashboard: Medicaid Unwinding Report and Related Data, last updated June 15, 2023, available at https://app.powerbigov.us/view?r=eyJrIjoiMjg0MzBmUtMzY1NS00Y2U5LW1xZTQtZjI1ZGZmZmFmZWY2IiwidCI6IjhmZTQ0OWYxLThiOTQtNGZiNy05OTA2LTIzOTMsOTM5ZGE4MmQ3MzJ9.

2 It is also our understanding that CMS will also permit DHCF to grant additional extensions as needed to allow for completion of the renewal process.
prevent unnecessary institutionalization and to maintain the health and safety of these Medicaid beneficiaries who have or will without prior authorization lose access to EPD waiver services and other critical services they need to remain in the community. Because these long-term care beneficiaries are not allowed to submit renewals on their own and must rely on a case manager to do so, DHCF should also extend prior authorizations in fairness to these beneficiaries because the lack of response is at no fault of their own.³

DRDC also raised concerns in its February 14, 2023 letter about DHCF’s plans to rely on providers such as EPD waiver case managers to shepherd beneficiaries through the complicated redetermination process. These concerns have been realized, in part, by these providers’ failure to timely complete the renewal process. DHCF must hold its providers accountable for failing to submit Medicaid renewals. Please answer the following questions regarding provider accountability:

1. When case managers are not being responsive and the result is that a beneficiary loses eligibility, how will DHCF hold these case managers accountable? What is the penalty to the case manager? Will DHCF accept this as grounds to have the beneficiary’s Medicaid automatically reinstated because the termination was through no fault of their own?
2. Because DHCF has indicated it is not able to open the Partner Portal to other provider partners, have you considered a work around that would allow other assisters and authorized representatives to complete the renewal process for EPD waiver beneficiaries? If not, why not?

If DHCF maintains that it will not extend prior authorizations, please answer the following additional questions:

1. What is the reason(s) for not extending prior authorizations for on-going services that the beneficiary is receiving while DHCF is extending Medicaid eligibility?
2. What steps will DHCF take to ensure continuity of care and treatment for Medicaid beneficiaries who are receiving on-going care (e.g., PCA services, Waiver services, ADHP, Assisted Living, etc.), or who are undergoing a course of treatment?
3. Is it DHCF’s position that claims submitted by the provider after the expiration of the prior authorization will not be paid?
4. What guidance is DHCF offering providers about their obligations to continue to provide services and treatment after a prior authorization has ended?
5. Other than the beneficiary filing a fair hearing request, will DHCF take any specific steps to ensure care is not interrupted?

Please provide a comprehensive response to this letter by July 28, 2023. Thank you for your attention to this urgent matter.

Sincerely,

Lyndsay Niles, Managing Attorney

³ Of course, there are Medicaid beneficiaries who are required to submit their renewal forms that also may be unable to submit their renewal forms timely for reasons outside of their control and/or because they were not reasonably accommodated in the renewal process.
Mark Miller, D.C. Long-Term Care Ombudsman
Office of the D.C. Long-Term Care Ombudsman

Tina Smith Nelson
Managing Attorney, Economic & Healthcare Security Practice Group
Legal Counsel for the Elderly

cc: Alison Barkoff, U.S. Department of Health and Human Services, Administration on Community Living
Re: Medicaid Renewals for Long-Term Care Beneficiaries

Dear Ms. Niles, Mr. Miller, and Ms. Nelson:

Thank you for your letter. DHCF is grateful for the collaboration of partners like DRDC, LCE, and LTCOP in supporting our beneficiaries and program throughout the unwinding period, an unprecedented experience for Medicaid programs and the communities we serve. We are likewise appreciative of feedback around the specific pain points our beneficiaries and their families are experiencing throughout the process.

Based on the feedback provided, DHCF has obtained valuable input regarding the longer-term improvements or program changes, including system architecture or automation of currently manual processes. Additionally, some of this feedback presents us with options for operational changes that may require more immediate attention. Based on your letter and a letter submitted by your colleagues at the LTC Coalition, the Long Term Care Administration will meet with partners and providers. During these meetings, we will thoroughly evaluate the input and draw from our ongoing experience to identify and, where feasible, implement enhancements to the renewals process.
Currently, our authorization process is manual. A quality review determines the level of service approvable and issues authorization through a data entry process. These authorizations are not auto-generated nor automatically linked to eligibility. Instead, they are subject to eligibility and processing as a program integrity control.

We have established procedures and protocols in place to grant authorizations for all LTSS enrollees. These measures are designed to ensure authorizations are aligned with eligibility upon completion of renewals. Additionally, we intend to issue emergency “gap” authorizations for providers in situations where a person cannot complete recertification, but services were delivered in good faith. Issuing authorizations on an ad hoc basis is labor-intensive on top of existing operations. Both DHCF and our vendor partners anticipate that this process would require an additional thirty days to manually complete these authorizations. In most cases, this would obviate the need for authorization, making it an ineffective use of our shared and public resources.

In response to your questions about provider accountability:

1. As DHCF has repeatedly presented in various public forums, we have a regulatory framework in place to hold case managers accountable for their obligations. Our sanction process is outlined in 29 DCMR 4253. Since June 1, 2023, six case management agencies have been issued a formal request for remediation related to redeterminations, as of this past Tuesday. To provide context, these recent redetermination-related discoveries constitute nearly 90 percent of the remediation requests sent to providers through this channel in the last 12 months. DHCF anticipates additional remediation activities on an ongoing basis. It’s important to note that DHCF does not have the legal authority to “automatically reinstate” Medicaid eligibility without completing a full renewal as directed by CMS during the unwinding period. DHCF will leverage any options within its authority to obtain and process the information required to complete a full renewal for beneficiaries.

2. As DHCF has repeatedly presented in various public forums, the EPD Waiver has a policy and regulatory framework that obligates a specific entity for action of completing a renewal. This responsibility has been affirmed multiple times in biweekly, monthly, and ad hoc meetings. The other partners, including HCBS providers, family members, and authorized representatives, absolutely have a role and an opportunity to support renewals. Providers have been encouraged for some years to assist case managers in completing renewals. No direct care agencies have ever had direct responsibility or the necessary system access to complete EPD Waiver applications at any point in the program, but they have always had an opportunity to collaborate with and support the case managers in this process.

In response to your other numbered questions:

1. DHCF has an array of processes in place that aim to operationalize the EPD Waiver policy in line with our Waiver (our agreement with the federal government that grants us the legal authority to operate the program), along with federal and local regulations. Our processes are designed to ensure compliance with these requirements, which include maximizing beneficiary choice, person-centeredness of care delivery, adhering to provider qualifications requirements, and more. Eligibility extensions only grant an additional 30 days of eligibility, with the expectation that applications will continue to be submitted, reviewed, and processed, leading to service planning and authorizations as a result. During the extension or reconsideration periods, DHCF anticipates that any case with a completed renewal and EPD Waiver eligibility will ultimately receive a new authorization covering all eligible dates of service. Furthermore, the providers will be adequately compensated for any services delivered to maintain continuity of care.
As noted above, the operationalization of PA extensions is a manual, laborious, and time-consuming process, which can sometimes be unnecessary and cause disruptions in downstream care. Fee-for-service authorizations are issued manually, and extensions cannot simply be auto-effectuated. EPD Waiver and other LTSS authorizations are issued through a quality review process and utilization management process conducted by the agency’s vendor. As noted above, the process to extend all existing PAs to comply with this request would take 30 days to complete, which generally obviates the need for extensions. Extending existing authorizations requires adjustments to existing policy (for example, implementing 13-month authorizations, aligned with a prior service plan and potentially in conflict with a new, concomitant service plan) and future operations. Extended PAs disrupt the future PCSP and authorization process for every case with an extended authorization.

Of note, DHCF does issue “gap” or “emergency” authorizations in cases where routine processing fails. DHCF fully expects to initiate emergency authorizations in such cases where no new authorization is issued under existing authorities and operations (e.g., a beneficiary passes away before completing a renewal, but services have been rendered up until the date of death).

2. Several other regulatory requirements exist to protect Medicaid beneficiaries from disruptions to business processes that could adversely affect care delivery. Both DC Health and DHCF impose discharge procedures and regulatory requirements that prevent providers from discharging beneficiaries without adequate notice. For home health agencies and assisted living providers, notice requirements of 30 days preclude abrupt changes in care delivery, and improper discharges may also be appealed. Further, EPD Waiver providers are required to meet financial sufficiency standards to ensure that disruptions to providers’ cash flow do not negatively impact beneficiary care. Although delays in authorizations for extended renewals impact providers’ billing for a portion of 1/12 of their total census, our providers are required to have cash on hand sufficient to cover three months of all agency operations for their entire census.

3. DHCF adheres to its policy, and the policy of virtually every health care payer in the nation, requiring that services listed on the fee schedule, necessitating prior authorization, must be accompanied by appropriate authorization information for payment. It is DHCF’s position in this circumstance that authorizations will be issued through standard processes and that providers will be able to bill for any appropriate dates of service with eligibility, once renewed.

4. DHCF has been communicating with providers through various channels, including biweekly, monthly, and ad hoc provider presentations. Providers inquiring about their continuity of care obligations have been reminded of regulatory requirements regarding discharge. Providers seeking to discharge beneficiaries without eligibility have been directed to engage with the CM (Case Manager) and beneficiary directly to understand the status of eligibility renewal.

5. DHCF’s regulatory structure for the EPD Waiver program is designed to protect beneficiaries from such disruptions. All beneficiaries may exercise their right to appeal termination if it is effectuated in error. DHCF will undertake a review of the June EPD waiver beneficiary cases that do not renew by the July 31, 2023, deadline. The purpose of the review is to better understand and hopefully determine any underlying causes non-responsiveness. The results of this review will inform whether additional agency action is needed related to the affected individuals and inform changes to our outreach and engagement activities.

Thank you again for your feedback, and we look forward to our continued close collaboration throughout the coming months.
Sincerely,

Melisa Byrd
Senior Deputy Director and Medicaid Director

Cc: Alison Barkoff, U.S. Department of Health and Human Services, Administration on Community Living