

Testimony
Senate Bill No. 2276
Senate Human Services Committee
Senator Judy Lee, Chairman
January 24, 2023

Chairman Lee, and members of the Senate Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities (DD) Section with the Department of Health and Human Services (Department). I appear before you to provide information and propose an amendment for Senate Bill 2276.

Compensated family caregiving can be an important part of the state's system of care options. The Department believes if done thoughtfully, with appropriate attention to the nuances related to assessment, safety, and the mechanics of implementation, the new service outlined in this Bill could be a benefit to families across our systems of waivers.

The Department's position on the Bill is neutral with amendment primarily because we are concerned about the ability to effectively implement this proposed change knowing the extent of parallel system change that is likely to result from the recommendations associated with the Alvarez and Marsal Study, completed in response to 67th Legislative Assembly Senate Bill 2256.

The Department's proposed amendment is intended to identify issues that we believe would impede our ability to implement the Bill as intended. We believe the proposed amendments would allow for a more successful implementation of Senate Bill 2276 should it ultimately pass.

Section 1, page 1, lines 19-21 state " A waiver under this section which provides for coverage of self-directed in-home support services must include coverage of services provided by a legally responsible individual".

The Department proposes removing Subsection 3 as proposed in the Amendment. This does not compromise the intent of the Bill because any individuals who would be covered by Subsection 3 could already be included in Subsection 2 as written.

The service description for in home supports in the DD waiver states "the service benefits the primary caregiver by assisting the participant in activities of daily living. It also can be provided to the participant when the primary caregiver is either away from the home or is home but unavailable to care for the participant".

As per the intent of Senate Bill 2276, if the primary caregiver is the one providing the service, the intent of in-home supports as defined in the state's 1915(c) DD waiver cannot be met; if the primary caregiver is neither away from home nor at home but unavailable to care for the participant, but rather is providing care, the service cannot be deemed "in home supports" as defined in the waiver.

While the new "family caregiver" service provides in-home support, it is by definition, a different service from "in-home support" as currently defined in the waiver. Should the new family caregiver service be approved as part of the Bill, the Department anticipates being able to consider each individual's needs when authorizing services, regardless of whether the service is participant-directed or provider-managed, so long as the services that are authorized are not duplicative of each other.

Section 1, page 1, lines 17-18 indicates that the new service described in Subsection 2 of the Bill be available for “participants in the Medicaid 1915(c) waivers and any subsequent Medicaid waivers to be developed.”

Section 1, page 2, lines 1-2 states “the payment rate for the legally responsible individual must be the same as the rate for the non-legally responsible individual”.

To preserve the current Family Caregiver Personal Care service option that is part of the 1915(c) Aged and Disabled waiver, the proposed amendment removes the reference to “any subsequent Medicaid waivers” and the reference to payment rate in Subsection 5.

The Home and Community Based Aged and Disabled waiver has a service that allows payment to a family member that is comparable to the service outlined in Subsection 2 of this Bill; however, the rate structure is different and would need to change if the Bill passes as written.

Page 2 lines 1-2 also present a challenge for the other 1915(c) waivers that would be covered by this Bill. The Department would like to consider a daily rate for the service, both to streamline documentation and billing requirements for the family caregivers, and to streamline administration of the service by the Department; but if held to the current language that the service be paid at a rate equal to the rate paid for non-legally responsible individuals, the Department believes we may be required to utilize unit rates. The fiscal note was prepared based on the assumption that the service would need to be paid using a unit rate (rather than a daily rate).

Of note the Department was unable to provide an estimate of the impact of Subsection 5, as it is currently written, on the Aged and Disabled waiver and indicated such in the fiscal note. Should the Committee pass the Bill without the proposed amendment that replaces the current Subsection 5, the Department will need to update the fiscal note to quantify the impact to the Aged and Disabled waiver.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2276

Page 1, line 17, remove "and any subsequent"

Page 1, line 18, remove "Medicaid waiver to be developed"

Page 1, line 19, remove "A waiver under this section which provides for coverage of self-directed in-home"

Page 1, remove lines 20 and 21

Page 1, line 22, remove "4."

Page 2, replace lines 1 and 2 with:

4. This section does not apply to the Medicaid 1915(c) waiver for home and community-based services, aged and disabled"

Renumber accordingly