



## **Administrative Complaint**

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Services 200 Independence Avenue, S.W.,  
Room 509F Washington, DC 20201

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, Maryland 21244

### **Re: Discriminatory Medicaid Renewal Processes in the District of Columbia**

The National Health Law Program (NHeLP) and Disability Rights DC at University Legal Services (DRDC) file this complaint on behalf of the people with disabilities who are discriminated against by the policies and processes of, and failure to act by the Department of Health Care Finance (DHCF), the Medicaid agency for the District of Columbia (DC). NHeLP protects and advocates for the health rights of low-income and underserved individuals, including people with disabilities, through advocacy, education, and litigation at the federal and state levels. DRDC is the federally mandated protection and advocacy program (P&A) for DC and represents people with disabilities and older adults who rely on long-term care (LTC) services, among other activities. NHeLP and DRDC have been advocating to address Medicaid renewal issues causing coverage losses in DC throughout the unwinding of the Medicaid continuous coverage period.

DHCF operates Medicaid renewal systems and processes that fail to provide equal access to Medicaid coverage, and DC residents with disabilities have been harmed by the methods of administration that have caused Medicaid-eligible disabled individuals to lose their coverage. Specifically, DHCF:

- Operates Medicaid eligibility computer systems that limit the ability of individuals receiving LTC to renew their Medicaid coverage independently, forcing them to rely on the unreliable assistance of Medicaid providers or case managers and not assistants of their own choosing;
- Screens out individuals with disabilities by failing to use available information to complete *ex parte* renewals and requiring individuals to submit information that is already available to the agency; and
- Fails to halt procedural terminations for this population and protect eligible individuals from improper loss of coverage or otherwise intervene to ensure ongoing coverage and services when responsible entities fail to perform their assigned duties.

### Legal Background<sup>1</sup>

DHCF has an affirmative obligation to people with disabilities to ensure equal access to services and nondiscrimination under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.<sup>2</sup> States and DC must not simply avoid disability discrimination, but actively ensure access to its programs and services, including through program design and policy choices as well as evaluations of access.<sup>3</sup> A Title II entity must also make reasonable accommodations to its policies and procedures when necessary to ensure program access to people with disabilities and make program choices such that the program does not discriminate by design or policy.<sup>4</sup> A program that responds *ad hoc* to access issues, fails to adequately plan, requires individuals to hope assistance occurs, or otherwise deters access does not meet the affirmative obligations of disability discrimination protections.<sup>5</sup> DHCF's failure

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<sup>1</sup> "DOJ and HHS both enforce the Americans with Disabilities Act (ADA) with respect to state Medicaid programs. . . . This includes providing individuals with disabilities equal opportunity to participate in and benefit from a state's Medicaid program." U.S. Dep't of Justice Civil Rts. Div. & Ctrs. for Medicare & Medicaid Services, Dear State Medicaid Admin. & Other Interested Parties (Jan. 24, 2024).

<sup>2</sup> 42 U.S.C. § 12132; 29 U.S.C. § 794; *see also Pierce v. Dist. of Columbia*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015) (discussing the affirmative obligations under the ADA and obligation to evaluate programs and services to ensure they are providing access).

<sup>3</sup> 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b); *Tennessee v. Lane*, 541 U.S. 509, 524-26 (2004) (the ADA is prophylactic measure needed to counter systematic deprivations of rights); *Ability Ctr. of Greater Toledo v. Sandusky*, 385 F.3d 901, 907 (6th Cir. 2004); *see also Pierce* 128 F. Supp. 3d at 269.

<sup>4</sup> 42 U.S.C. § 12101(a)(5) (ADA purpose includes discriminatory policies and criteria); 385 F.3d at 901; *Disabled in Action v. Bd. of Elections*, 752 F.3d 189, 200-02 (2d Cir. 2014).

<sup>5</sup> *Disabled in Action*, 752 F.3d at 200-02.

to provide access to Medicaid coverage and reasonable accommodations to the existing renewal procedures amounts to deliberate indifference to Medicaid beneficiaries with disabilities' rights.<sup>6</sup> The relevant inquiry is "whether those with disabilities are as a practical matter able to access benefits to which they are legally entitled."<sup>7</sup> DC residents enrolled in LTC do not have such access to Medicaid coverage.

### **Statement of Problems**

As a result of DHCF's choices, individuals with disabilities who need LTC are being improperly terminated from Medicaid coverage, including due to case managers failing to submit renewals timely.<sup>8</sup> This includes those who use home and community-based waiver services, such as DC's Waiver Program for People who are Elderly and/or have Physical Disabilities ("EPD Waiver"). For EPD Waiver participants, losing Medicaid coverage means losing needed waiver services, causing segregation from the community and increased risk of institutionalization.<sup>9</sup> In addition, the LTC population does not have the ability to submit information or have their choice of assistance as required by the Medicaid Act while other DC Medicaid enrollees may submit their information and have choice of assistance. This barrier is due to the design of the LTC eligibility system that limits access to certain providers and related policy choices that discriminatorily limit independence of the LTC population.<sup>10</sup>

#### **I. DHCF's Renewal Process for the LTC Population Limits Access to Coverage.**

DHCF operates different renewal systems for different Medicaid populations, and these systems do not provide equal access to coverage. The design of the system and policy

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<sup>6</sup> *Pierce*, 128 F. Supp. 3d at 278-79.

<sup>7</sup> *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2d Cir. 2003).

<sup>8</sup> 42 C.F.R. 435.930(a). 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."

<sup>9</sup> *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999).

<sup>10</sup> 29 U.S.C. § 701(b)(1) (stating the purpose of the Rehabilitation Act is "to empower individuals with disabilities to maximize . . . independence, and inclusion and integration into society"); *Disabled in Action*, 752 F.3d at 200-02 (discussing the importance of access to voting that is independent and deterrence from access is an injury). The Medicaid Act requires an application and renewal process by a system that allows residents to file forms online, in person by mail, or by telephone. 42 U.S.C. § 18083. It also requires that an individual be allowed their choice of assistance in the application and renewal process. 42 C.F.R. § 435.908(b).

choices, including failures by DHCF to remediate known problems, screen out people with disabilities in the LTC population, impose additional eligibility criteria on them, and use methods of administration that discriminate against the LTC population—all substantially impairing their access to Medicaid coverage.<sup>11</sup>

#### **A. Continuing Reliance on Non-Performing Case Management Screens Out EPD Waiver and other LTC Participants.**

In DHCF's current DC Access System (DCAS) a renewal for an individual receiving LTC must occur through the DC Direct Partner Portal. DHCF made the design choice to limit access to the Partner Portal to LTC providers, including ICF/IDs, nursing facilities, PACE providers and EPD Waiver case managers. Individuals cannot access their own information or file through the Partner Portal. Only designated agencies can submit information through the Partner Portal. These designated agencies are all providers and therefore limit choice of assistance for beneficiaries.<sup>12</sup> LTC enrollees cannot submit their renewal forms through the DHCF portal available to non-LTC enrollees.<sup>13</sup>

For EPD Waiver participants, their case managers are the Partner Portal providers and are explicitly responsible for “ensuring a beneficiary timely completes Medicaid reassessment(s) as part of the annual recertification requirements.”<sup>14</sup> Case management for EPD Waiver participants is performed by private providers contracted with DHCF.<sup>15</sup> Many of these EPD Waiver case management agencies have a history of non-performance including failures to: complete the minimum required contacts, create person centered service plans, request prior authorizations, and complete renewal

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<sup>11</sup> 28 C.F.R. §§ 35.130(b)(1)(ii), (iv), (2), (3), (8); see also *Ability Ctr. of Greater Toledo*, 385 F.3d at 907; *Henrietta D.*, 331 F.3d 261, 273 (2d Cir. 2003). The LTC population cannot submit the required renewal information through the portal available to non-LTC Medicaid enrollees.

<sup>12</sup> Not all EPD waiver providers have access to the Partner Portal. Direct care agencies do not have such access and can only “collaborate and support case managers.” Ex. 1, Letter from Melissa Byrd, Sen. Deputy Dir. & Medicaid Dir., DHCF, to Lyndsay Niles, Managing Attorney, DRDC et al. 2 (July 28, 2023) [hereinafter “DHCF Response to Advocates”].

<sup>13</sup> See DHCF, Restarting Medicaid Renewals: The End of the Continuous Enrollment Requirement, Bi-weekly Meeting #7, at 15 (June 21, 2023), [https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page\\_content/attachments/Medicaid%20Renewal%20Biweekly%20Community%20Meeting%20062123.pdf](https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/Medicaid%20Renewal%20Biweekly%20Community%20Meeting%20062123.pdf).

<sup>14</sup> 29 D.C. Mun. Regs. Tit. §§ 4203, 4224.14.

<sup>15</sup> For the minority of the EPD waiver population of individuals enrolled in the D-SNP program with United Healthcare, renewal assistance is provided by those case managers.

forms.<sup>16</sup> As of June 1, 2023, DHCF identified at least six fee-for-service case management agencies, or one-third of case management providers, as having been issued formal requests for remediation related to redeterminations.<sup>17</sup> DHCF did not take action to ask individuals if they wanted to move from these case management entities or otherwise meaningfully ameliorate the harm to the affected individuals; it vaguely promised to “leverage any options within its authority to obtain and process the information required.”<sup>18</sup> DHCF also extended the time period to submit the renewal by 30 days for those who did not submit the renewal timely, but this did little to address the issues as the response rate with that extension remained low. DHCF has not taken steps to prevent EPD waiver and other LTC enrollees from being disenrolled due to program design and dysfunction.

EPD case management renewal problems only got worse. In October 2023, DHCF reported that at least 16 of the EPD waiver case management agencies, which serve 96% of the fee-for-service population, have failed to timely submit and process

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<sup>16</sup> Ex. 2, Letter from Claudia Schlosberg, Interim Convener, DC Coalition on Long-Term Care to Melisa Byrd, Senior Deputy & State Medicaid Dir., DHCF 3-4 (July 25, 2023) [hereinafter “DC Coalition Ltr. to DHCF”]; Ex. 3, Letter from Lyndsay Niles, Managing Attorney, DRDC et al., to Melisa Byrd, Sen. Deputy Dir./Medicaid Dir., D.C. Dept. of Health Care & Fin.; Katherine Rogers, Dir., Long-Term Care Admin., D.C. Dept. of Health Care & Fin. 3-4 (July 18, 2023) [hereinafter “DC Advocates Ltr.”]; Ex. 4, Letter from Lyndsay Niles, Managing Attorney, DRDC, to Deputy Mayor Wayne Turnage, DC Office of the Deputy Mayor for Health & Human Servs. et al. 3-4 (Oct. 25, 2023) [hereinafter “DRDC Oct. Ltr.”].

<sup>17</sup> DHCF Response to Advocates, *supra* note 12, at 2. According to the last updated list of approved EPD Waiver providers available on DHCF’s website, there are only 18 case management agencies, meaning one-third of case management agencies were under remediation. DHCF, Medicaid LTSS Provider Information Update, Medicaid LTSS Provider Listing (Approved Providers for EPD Waiver and State Plan Services, *available at* <https://dhcf.dc.gov/node/1418101>; DHCF Response to DRDC, *supra* note 18, at 2.

<sup>18</sup> DHCF Response to Advocates, *supra* note 12, at 2. DHCF promised to review the case files for the EPD waiver beneficiaries due for renewal in June that did not renew by the July 31, 2023 deadline in order to “better understand and hopefully determine any underlying causes [sic] 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. *Id.* at 3. Despite DRDC raising similar concerns regarding case management performance in its October 10, 2023 letter to DHCF, the agency did not report on this “review” or any findings. *Compare* DRDC Oct. Ltr., *supra* note 16 with Ex. 5, Letter from Melissa Byrd, Sen. Deputy Dir. & Medicaid Dir., DHCF, to Lyndsay Niles, Managing Attorney, DRDC (Dec. 12, 2023) [hereinafter “DHCF Response to DRDC”].

renewals.<sup>19</sup> Providers with repeat compliance notices are attending mandatory retraining and technical assistance, with future threat of sanctions for ongoing noncompliance.<sup>20</sup> Despite the ongoing noncompliance and more recent nearly complete non-compliance by case management agencies and procedural termination of EPD waiver members, DHCF has not described taking action steps to actually assist affected individuals. DHCF's policy of requiring case managers to assist individuals with disabilities in completing the Medicaid renewal is itself a policy that should help ensure access as people with disabilities commonly need assistance with the complex documentation and eligibility requirements of disability-related categories.<sup>21</sup> However, this policy choice fails to meet that goal when the case managers are the only ones who can complete the process, and they fail to perform their required function. DHCF's choice to focus on provider retraining is more of a long-term solution and does not address the immediate need to ensure access to the renewal process and ongoing coverage for the affected EPD waiver population and other LTC enrollees.

### **B. DHCF System Choices Limit LTC Passive Renewals and Create Unnecessary Administrative Burdens.**

The need for assistance is exacerbated by DHCF's choices to move to an updated eligibility system. DHCF moved to the new DCAS systems for the LTC population

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<sup>19</sup> DHCF, Restarting Medicaid Renewals: The End of the Continuous Enrollment Requirement, Bi-weekly Meeting #16, at 13 (Oct. 25, 2023), [https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page\\_content/attachments/Medicaid%20Renewal%20Biweekly%20Community%20Meeting%20102523%20%281%29.pdf](https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/Medicaid%20Renewal%20Biweekly%20Community%20Meeting%20102523%20%281%29.pdf). Subsequent presentations have simply reminded that "Beneficiaries with LTC and Waiver Coverage SHOULD have their renewal completed by a case worker" and that case workers are expected to complete the beneficiary's renewal through the case worker's version of District Direct, the Partner Portal. See, e.g., DHCF, Restarting Medicaid Renewals: The End of the Continuous Enrollment Requirement, Bi-weekly Meeting #22, at 6 (Feb. 28, 2024), [https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page\\_content/attachments/Medicaid%20Renewal%20Community%20Meeting%20022824.pdf](https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/Medicaid%20Renewal%20Community%20Meeting%20022824.pdf). See also DHCF, Meeting Recordings and Slides, <https://dhcf.dc.gov/page/meeting-recordings-and-slides> [last visited Mar. 6, 2024]. The same slide from the Feb. 28, 2024 meeting is also in other slide decks, including Feb. 14, 2024, Jan. 17, 2024; Dec. 20, 2023; and Dec. 6, 2023 but no additional information about actions taken by DHCF to assist this population is included. *Id.*

<sup>20</sup> DHCF Response to Advocates, *supra* note 12, at 2; DHCF Response to DRDC, *supra* note 18, at 2; DHCF, Bi-weekly Meeting #16, *supra* note 19, at 13.

<sup>21</sup> 29 D.C. Mun. Regs. Tit. §§ 4203, 4224.14.

without information needed for the new system from the legacy system, ACEDS.<sup>22</sup> This choice limited the number of EPD Waiver and other LTC participants who could be renewed passively and placed unnecessary documentation burdens on those individuals in the form of longer renewal forms.<sup>23</sup>

The forms a LTC eligible individual must return through their case manager or facility vary depending on when they were found eligible, but regardless of which form they are sent, they are facing requests to provide information to which DHCF should already have access.<sup>24</sup> If found eligible before November 15, 2021, which is many of the EPD waiver enrollees, an individual must work through their case manager or facility to return the 46-page conversion form and the LTC supplement.<sup>25</sup> The conversion form essentially asks all the same questions as a DHCF Medicaid application.<sup>26</sup> A LTC

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<sup>22</sup> DHCF Response to DRDC, *supra* note 18, at 3. DHCF says that DCAS needs information that ACEDS does not have and that the information is collected through the one-time conversion renewal forms. *Id.* However, DHCF does not indicate that all of the information requested is not otherwise available to it or not required. For example, the forms request information about current facility, which is not even relevant for waiver participants, but is also available to the agency through billing records. It also requests information on disability, which should be available based on enrollment in the waiver and other data as well.

<sup>23</sup> EPD Waiver enrollees need their LOC assessment to remain eligible for the waiver. 29 D.C. Mun. Regs. Tit. §§ 4201.2(a), 4201.6; DC Coalition Ltr. to DHCF, *supra* note 16, at 3.

<sup>24</sup> *Id.* Information should be available through data sources, including information available due to enrollment in the EPD waiver. Agencies are supposed to first try to renew non-MAGI eligible members through information available to the agency. 42 C.F.R. § 435.916(b).

<sup>25</sup> DHCF, Medicaid Restart Renewal Notices, <https://dhcf.dc.gov/page/medicaid-restart-renewal-notice> [last visited Feb. 23, 2024] [hereinafter DHCF Renewal Notices List]. DHCF, Sample Notice: Conversion Renewal Form, <https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/documents/%23%20%20Conversion%20Renewal%20Form%20Notice%20.pdf>; DHCF, Sample Notice: Long Term Care Renewal Form, <https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/documents/%23%20%20LTC%20Renewal%20Form%20Notice.pdf>. DHCF indicated in a meeting that those found eligible after November 15, 2021 would submit the LTC supplement and a pre-populated form that is shorter than the conversion form, but it is not clear what form they meant.

<sup>26</sup> The conversion form appears to be the general and non-MAGI Medicaid questions from the DHS Integrated Application, which is the application the DHCF website directs people to for non-MAGI categories. See DHCF, How to Apply for DC Medicaid?, <https://dhcf.dc.gov/service/how-apply-dc-medicaid>; DHS, DHS Integrated Application, [https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page\\_content/attachments/Integrated%20Application%2009092021a%20Final%20\\_0.pdf](https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page_content/attachments/Integrated%20Application%2009092021a%20Final%20_0.pdf). Most non-MAGI beneficiaries were



supplement asks many of the same questions regarding household members, income, and assets. Those found eligible after November 15, 2021 must return the LTC supplement.<sup>27</sup> Federal law requires the Medicaid agency to redetermine eligibility by using reliable information available in the individual's account or available to the agency, only contacting the individual to supplement.<sup>28</sup> DHCF has information available to it that it did not use during the ex parte process and is not pulling before sending documentation requests to non-MAGI eligible individuals.

Although DHCF cites CMS-approved mitigation plans for its failure to transfer non-MAGI information to DCAS in its responses to DRDC's letters, these mitigations only limit some income and asset requests, and they rely on providers to engage and assist beneficiaries with their Medicaid renewals.<sup>29</sup> This mitigation plan is reliant on the case management providers actually providing the expected services, which they have not. In addition, although DHCF touts that they are "encouraging and facilitating" providers' opportunities to provide enrollment supports but most of these providers do not have access to DCAS and must also rely on the non-performing case managers to submit any information.<sup>30</sup> DHCF's choices screen out people with disabilities, including the EPD Waiver participants, and inhibit access to ongoing coverage.<sup>31</sup>

## **II. DHCF's Provider Portal and Policy Framework Interfere with the Right to Independence and Choice.**

Independence, autonomy, and choice are key elements of disability rights and the protections of nondiscrimination statutes.<sup>32</sup> As recognized in other areas of accessibility, independent access is the goal with program features and policies to ensure access included, including modifications as needed and reasonable. For example, physical accessibility requirements are structured so that access is addressed for most types of

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required to submit a conversion renewal form. Ex. 6, Dept. of Health Care Fin., Fiscal Year 2023 Performance Oversight Pre-Hearing Responses 50 (2024).

<sup>27</sup> DHCF Renewal Notices List, *supra* note 25.

<sup>28</sup> 42 C.F.R. § 435.916(b).

<sup>29</sup> DHCF Response to DRDC, *supra* note 18, at 3; *see also* CMS, Summary of State Mitigation Strategies for Complying with Medicaid Renewal Requirements Described in the Consolidated Appropriations Act, 2023 at 5, <https://www.medicaid.gov/sites/default/files/2023-07/sum-st-mit-strat-comply-medi-renew-req.pdf>.

<sup>30</sup> DHCF Response to DRDC, *supra* note 18, at 2-3.

<sup>31</sup> 28 C.F.R. § 35.130(b)(1)(ii), (2), (3), (8).

<sup>32</sup> *See, e.g.*, 29 U.S.C. § 701(b)(1); *see also Pashby v. Delia*, 708 F.3d 307 (4th Cir. 2013) (discussing a key feature of community integration versus institutionalization is autonomy and personal choice).



disabilities, including those with limited mobility, visual impairments, and limited hearing. A building cannot simply put a ramp in place when someone needs it; change must be part of the design and permanent so that an individual who needs to use a ramp instead of stairs can do so without asking.<sup>33</sup>

The Medicaid Act recognizes the importance of individual choice and autonomy in eligibility processes. Individuals must be allowed to have assistance from the person of their choice during application and renewal.<sup>34</sup> They must also be allowed to designate an individual or organization to act as an authorized representative.<sup>35</sup> The authorized representative must be allowed to complete and submit a renewal form, receive copies of the individual's notices and other agency communications, and act on behalf of the individual in all matters with the agency.<sup>36</sup> Non-LTC enrollees may use the assistance of their choice, complete the renewal process independently, and use a separate portal and processes generally. DHCF's requirement that a LTC must work through their case manager or facility to complete their Medicaid renewal limits access, provides an ineffective alternative program, denies access to the program that is not different, and limits choice and autonomy.<sup>37</sup>

### **III. DHCF's Choices Harm Individuals with Disabilities.**

DHCF's renewal processes are harming LTC enrollees, particularly those in the EPD waiver. Although these individuals are likely eligible for ongoing waiver services and other LTC services, the District is subjecting them to serious risk of harm, institutionalization, and potentially death. The most recent data from DHCF shows that an average of 25 percent of EPD Waiver participants, or over 100 individuals, have been procedurally terminated each month.<sup>38</sup> Eight percent complete renewals during the current one month extension period, and four percent complete a renewal later, with three percent within the 90-day recertification period and one percent after that time.<sup>39</sup> DHCF reports that approximately 21 percent of EPD Waiver participants due to recertify on or before September 30, 2023 remain disenrolled as of January 2, 2024.<sup>40</sup> Although DHCF offered vague assumptions that many of those disenrolled may have passed

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<sup>33</sup> *Tennessee v. Lane*, 541 U.S. 509 (2004); *Dopico v. Goldschmidt*, 687 F.2d 644, 652 (2d Cir. 1982); *see also Disabled in Action*, 752 F.3d at 200-01 (recognizing the importance of independence and privacy).

<sup>34</sup> 42 C.F.R. § 435.908(b).

<sup>35</sup> 42 C.F.R. § 435.923.

<sup>36</sup> *Id.*

<sup>37</sup> 28 C.F.R. §§ 35.130(b)(1)(iii)-(v); (2)-(4); (8).

<sup>38</sup> Ex. 6, *supra* note 26, at 78-79.

<sup>39</sup> *Id.* at 79.

<sup>40</sup> *Id.*

away or moved, more detailed information has not been made available to understand the impact of DHCF's actions.<sup>41</sup>

The District is aware its choices are harming people with disabilities because this is not the first time that DHCF's processes have had a detrimental impact on coverage for EPD waiver participants. In 2012, bureaucratic problems leading to procedural terminations left many EPD waiver participants without services, struggling for care and overall survival.<sup>42</sup> In 2012, DHCF similarly cited problems with contract case managers submitting incomplete or late paperwork.<sup>43</sup> In contrast to EPD Waiver participants, those receiving ID/DD waiver services have not experienced the same extent of problems and have had more timely renewals, with a primary difference being that case managers for that program are agency employees under the Developmental Disabilities Administration.<sup>44</sup>

In the face of questioning and requests from multiple parties, DHCF has not reported on any evaluation of the ongoing accessibility of its program.<sup>45</sup> It has not released numbers that indicate the current situation of those who have been disenrolled from the EPD Waiver and other LTC services. In response to advocacy letters, DHCF declined to halt procedural terminations for this population and does not claim to be doing any follow up or checking on whether individuals are actually receiving promised assistance to retain coverage.<sup>46</sup> Nor is DHCF doing anything to stop procedural terminations caused by case management failures.

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<sup>41</sup> DHCF Response to DRDC, *supra* note 18, at 3 ("Some of these beneficiaries do not appear to be actively using their Medicaid coverage, may be living outside of the District, or are deceased.")

<sup>42</sup> Alexia Campbell, *D.C. Dropped Hundreds of People from Medicaid Rolls without Cause, Attorneys Say*, WASH. POST (Aug. 11, 2013), [https://www.washingtonpost.com/local/dc-dropped-hundreds-of-people-from-medicaid-rolls-without-cause-attorneys-say/2013/08/11/63d9ec54-002e-11e3-9711-3708310f6f4d\\_story.html](https://www.washingtonpost.com/local/dc-dropped-hundreds-of-people-from-medicaid-rolls-without-cause-attorneys-say/2013/08/11/63d9ec54-002e-11e3-9711-3708310f6f4d_story.html).

<sup>43</sup> *Id.*

<sup>44</sup> DC Coalition Ltr. to DHCF, *supra* note 16, at 3, n. 2; see also DRDC Oct. Ltr., *supra* note 16, at 4, n. 13-15; DHCF, Bi-weekly Meeting #16, *supra* note 19, at 18 (out of 300 EPD waiver individuals that may have been improperly terminated for procedural reasons, 133 had died and 37 had entered nursing facilities; 95 were receiving Medicaid state plan services and 69 people were re-enrolled into waiver services).

<sup>45</sup> *Compare id.*; DRDC Oct. Ltr., *supra* note 16; DC Advocates Ltr, *supra* note 16 with DHCF Response to Advocates, *supra* note 12; DHCF Ltr. to DRDC, *supra* note 18; see also *Pierce v. Dist. of Columbia*, 128 F. Supp. 3d at 269 (responsibility for ongoing evaluation).

<sup>46</sup> DHCF Response to DRDC, *supra* note 18, at 2-3. Although DHCF maintains lists of EPD Waiver enrollees up for renewal, it does not use these lists to prevent wrongful

## Conclusion

DHCF created the barriers to access for the LTC population and knows that effective case management is important based on other populations, yet continues to simply sanction by issuing remediation requests, provide training to providers, and promote mechanisms for others to provide assistance. DHCF is not pausing procedural terminations for this group or otherwise using the information it claims to be collecting from providers to evaluate the reason for failure to respond before allowing a procedural termination to move forward. Nor has DHCF notified individuals approaching a procedural termination that they may change case managers and receive an extension if necessary. While providing more time can be helpful, more time does not address the barriers to access that the DHCF has built into its system. DHCF is allowed to use a different system for LTC participants, but such a system must functionally provide equal or greater access to Medicaid coverage through the renewal process, while recognizing the rights of individuals to use their choice of assister and independently submit information.<sup>47</sup> DHCF's LTC renewal processes do no such thing.

DHCF is not taking necessary actions to meet its affirmative obligations to the EPD Waiver population or others affected by the separate LTC eligibility system. We ask that DHCF be required to:

- Halt procedural terminations for the affected populations;
- Evaluate those terminated since renewals began anew in 2023 and reinstate Medicaid and EPD Waiver services where case management did not submit information timely;

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terminations or follow up to remediate procedural terminations occurring from failures by case management agencies. In comparison, DHCF recently touted that it identified “an issue affecting children with special needs” regarding children with SSI program codes and that its “response was to reinstate coverage for the impacted children while we work to solve the root cause of the problem.” Wayne Turnage, Deputy Mayor for Health & Human Servs. & Dir., Dept. of Health Care Fin., Testimony at the Fiscal Year 2023-24 Performance Oversight Hearing 8 (Feb. 8, 2024), [https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/release\\_content/attachments/FY2023-24%20DHCF%20Performance%20Oversight%20Testimony%20-%202.7.2024.pdf](https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/release_content/attachments/FY2023-24%20DHCF%20Performance%20Oversight%20Testimony%20-%202.7.2024.pdf); DHCF, Restarting Medicaid Renewals: The End of the Continuous Enrollment Requirement, Bi-weekly Meeting #22, at 10 (Feb. 28, 2024), [https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page\\_content/attachments/Medicaid%20Renewal%20Community%20Meeting%200022824.pdf](https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/Medicaid%20Renewal%20Community%20Meeting%200022824.pdf) (DHCF paused terminations and reinstated eligibility for some children with SSI who were improperly terminated.).

<sup>47</sup> 28 C.F.R. § 35.130(b)(1)(iv), (vii), (2).

- Allow alternatively pathways for LTC enrollees to complete the renewal process, including other providers and assisters to help complete the renewal process and DHCF staff to provide direct, one-on-one assistance to renew every LTC impacted by case manager neglect; and
- Implement policy changes to ensure equal access with all appropriate monitoring necessary to ensuring ongoing access.

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Respectfully submitted,

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