



State of Connecticut
Department of Developmental Services

DDS

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Commissioner

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Deputy Commissioner

**DEPARTMENT OF DEVELOPMENTAL SERVICES TESTIMONY
BEFORE THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
March 4, 2021**

Senators Kushner and Sampson, Representatives Porter and Arora and members of the Labor and Public Employees Committee, I am Jordan A. Scheff, Commissioner of the Department of Developmental Services (DDS). Thank you for the opportunity to testify on [S.B. No. 942](#) **AN ACT CONCERNING THE ON-TIME PAYMENT OF WAGES.**

This legislation deems any fiscal intermediary that provides payroll services for employers funded in whole or in substantial part by state funds as an employer, for the purposes of failure to pay wages in a timely manner. In addition, [S.B. No. 942](#) goes on to detail additional requirements for fiscal intermediaries when there is a failure to pay such wages on time.

For background, DDS contracts with two fiscal intermediaries, Sunset Shores and Allied, to provide administrative support, including training and payroll functions, to individuals that self-direct their DDS-funded services. As of December 2020, DDS had approximately 1,500 individuals that chose to self-direct their services. Self-direction is an important facet of the DDS continuum of services that empowers individuals with intellectual disability to live the life they desire. Individuals that decide to self-direct design their own support plans, control their own budgets, hire and manage their own staff and make their own choices. This is an important distinction to highlight, as the individual or their representative is the employer of record for any staff and has the power to choose who they hire and when it is appropriate to terminate an employee, including Personal Care Attendants (PCA). Neither the fiscal intermediary, nor the state, is the employer of the staff that an individual hires with funding for self-directed services.

To this end, subsection (a) of the legislation, which deems the fiscal intermediary as the employer, not only conflicts with the self-directed model, but may jeopardize federal Medicaid funds that provide reimbursement to the state for self-directed services, as outlined in the DDS Medicaid Waivers. Specifically, the waiver details that the individual or their legal representative serves as the employer of record and assumes all employer-related responsibilities.

Seeing that PCAs and other employees employed by individuals who self-direct their services are paid on time for the hours they work is a priority for the department. DDS understands and believes that all employees, have the right to timely payment of wages. DDS also is aware of complications that have led to processing delays related to the payment of PCAs on a weekly basis through our fiscal intermediaries. DDS continues to work in collaboration with the Department of Social Services (DSS), Office of Policy and Management (OPM), the PCA Workforce Council and the fiscal intermediaries to address and resolve these issues, while continuing to focus on improving payroll functions to avoid future complications.

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Subsections (b) and (c) of this legislation outline new requirements for fiscal intermediaries specific to payment of wages for PCAs and defines the failure to perform such requirements as a failure to pay timely wages and, therefore, subject to the mandates under sections 31-71a to 31-71i, inclusive, of the general statutes.

DDS has serious concerns with the provisions of this bill as it requires the fiscal intermediary to work directly with the employee of an individual who self-directs services. This conflicts with the self-directed model and is not within the purview of the contract terms between the fiscal intermediaries and the state.

Both fiscal intermediaries have a detailed process in place regarding timesheet review and payroll verification. Payment to employees under self-directed services is done on a weekly basis. To ensure timely payment, the fiscal intermediaries require the employer (i.e., the individual who self-directs services) to submit the employee's (PCA's) timesheet by a certain date and time during the week. Allied also sends employers an automated call the night before payment confirming the number of employees being paid for that payroll. This allows an opportunity for the employer to receive notification that an error may have occurred and time to correct that error. In addition, Allied provides the option for self-directed employees to receive an automated call or text (depending on their preference) confirming their payroll has been processed. There are circumstances, however, where timesheets are submitted late or have other problems that may result in delayed payment. Specifically, examples of timesheet errors that may delay processing include:

- Employer signature is missing;
- Hours are incorrect or missing;
- Service dates are incorrect or missing; and
- Dates, times, or other information on the timesheet is not legible.

Subsection (d) would require the Labor Commissioner to assess and collect fines of twenty-five dollars per day for each separate violation by an employer (presumably the fiscal intermediary and not the individual who self-directs services) of the requirements in subsections (b) and (c) of the bill. These fines and their collection, besides being a new requirement imposed on the Department of Labor, would be an unfair burden on the fiscal intermediaries, which in many cases may not even be responsible for the reporting and timesheet inaccuracies that may lead to a paycheck not being issued in a timely manner.

These fines could also prove to be disincentives for the fiscal intermediaries to perform Medicaid-required reviews to certify the accuracy of all timesheets and wage payments made to employees of individuals who self-direct services. To avoid fines that could add up quickly, fiscal intermediaries might choose to approve payments to employees without checking for simple inaccuracies or for evidence of fraud. Any overpayments of wages would then be required to be recouped by the fiscal intermediaries from the employees who had been overpaid. While the intent of the fines may be to get all employees paid on-time by fiscal intermediaries, the fines may well lead to errors in the payment of wages that could run afoul of Medicaid requirements and thus jeopardize DDS's self-directed services program.

DDS is committed to ongoing training for employers of record on timesheet completion and on-time payroll submission in an effort to mitigate timesheet-related processing issues.

It is important to note that both DDS and DSS are in the process of implementing an Electronic Visit Verification (EVV) system, pursuant to the federal 21st Century Cures Act (P.L. 114-255), for staff hired through self-direction, including PCAs. DDS anticipates this system will greatly reduce the need for paper timesheets and eliminate many payroll-related issues.

DDS would like to take this opportunity to reiterate our commitment to paying employees of individuals who self-direct their services in a timely manner. DDS will continue to make a concerted effort to work with all stakeholders to address any and all concerns that may contribute to a potential delay in payment of wages.

Thank you again for the opportunity to offer testimony regarding [S.B. No. 942](#) **AN ACT CONCERNING THE ON-TIME PAYMENT OF WAGES**. Please contact Rod O'Connor, DDS Legislative Liaison, by e-mail at rod.oconnor@ct.gov or by text at 860-883-0727 with any questions.