



Council of the District of Columbia Committee on Health
Oversight Hearing on the District's COVID-19 Vaccination Process

Testimony of Disability Rights DC at University Legal Services
Peter Stephan, Staff Attorney

April 29, 2021

Disability Rights DC at University Legal Services (DRDC) appreciates the opportunity to provide testimony regarding the DC Council's Oversight Hearing on the District's COVID-19 Vaccination Process. DRDC is the designated protection and advocacy agency for the District of Columbia. We advocate on behalf of District residents with disabilities to promote their rights to live in the community and be free from harm.¹

The lives of senior citizens and people with disabilities, particularly Black District residents with disabilities, continue to be threatened by the District's inequitable distribution of the COVID-19 vaccine. Last month, we noted our concerns in testimony to this Committee regarding the Department of Health Care Finance's (DHCF) inadequate response, in partnership with DC Health, to facilitate equitable COVID-19 vaccine distribution for DC Medicaid long-term care beneficiaries, particularly residents in nursing facilities, assisted living facilities, EPD Waiver beneficiaries, and State Plan Personal Care Aide (PCA) beneficiaries in natural homes. The issues raised in our prior testimony still require the Council's attention regarding the: (1) low vaccination rates of residents and staff in long-term care facilities, (2) the District's failure to ensure its providers engage in a system-wide effort to provide education, outreach, and assistance for all eligible EPD waiver and other Medicaid long-term care beneficiaries to access vaccinations, and (3) the lack of vaccination rate data for home health aide staff and long-term care beneficiaries in natural homes. My testimony today highlights these ongoing disparities, along with the District's obligations under the ADA, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act to make reasonable modifications to the vaccination process to ensure equal access to the vaccination program for District residents with disabilities.

Nursing facilities still represent some of the District's highest rates of COVID-19 infections and deaths. Since we last testified about the DC Health data from the end of February,

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 *MJ 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.

80 more nursing facility residents became infected with COVID-19 (1,082 total), and eight more residents have died because of COVID-19 (218 total).² As we previously testified, as of February 2, 2021, 1,039 long-term care facility residents have received their first dose, representing only 31 percent of long-term care residents.³ At the same time, 1,614 long-term care staff have received their first dose, representing only 25 percent of long-term care staff. Given the amount of time since vaccines became available to these facilities, these deaths may have been avoided if DC Health and DHCF had done more to implement an effective vaccination program for nursing facility residents and staff to mitigate the ongoing serious risk of harm and death. Even for the residents and staff who decline vaccination, DC Health must rigorously monitor that nursing facilities are addressing vaccine hesitancy and implementing appropriate disease prevention practices for those residents and staff.

On April 6, 2021, DRDC and the DC Office of the Long-Term Care Ombudsman sent a follow up letter to DHCF and DC Health after meeting with both agencies to express our ongoing concerns and request updated information on the District's vaccine distribution plan implementation.⁴ DRDC and the Office of the DC Long-Term Care Ombudsman again requested this information on April 21, 2021 and April 26, 2021. To date, these agencies have failed to provide updates on vaccinations in long-term care facilities or any vaccination rate data on EPD Waiver beneficiaries, State Plan home health beneficiaries, and home health aides. Without this data, the District cannot ensure the system is equitable for the at-risk long-term care community.

As the District implements the senior walk up vaccination program and continues to expand vaccine access to the larger community generally, DC Health must ensure its vaccination program is accessible to people with disabilities.⁵ People with disabilities often face greater challenges in navigating administrative processes than others.⁶ Collected guidance from HHS' Administration for Community Living⁷ along with guidance issued by HHS' Office of Civil Rights detail obligations and best practices to accommodate people with disabilities at vaccination centers.⁸ HHS OCR's guidance explicitly states entities like DC Health and its contractors must provide help for individuals with disabilities who need assistance to complete tasks in the vaccination process, from filling out the vaccine card information upon arrival, to rolling up one's sleeve to get vaccinated. DC Health must also make reasonable modifications in policies, practices, and procedures where necessary to avoid discrimination. Examples of reasonable accommodations include allowing people with disabilities to fill out the paperwork

² These numbers are derived from the difference between DC Health's COVID-19 data on February 25, 2021 and the latest available data (April 17, 2021) comparing the number of infections and deaths among nursing facility residents. DC Health, COVID-19 Surveillance Data (last updated April 29, 2021). <https://coronavirus.dc.gov/data>

³ See attached Letter from DHCF to DRDC Re: COVID-19 Vaccine Distribution Plan Implementation, Feb. 5, 2021.

⁴ See attached DRDC Letter to Deputy Mayor Turnage, DHCF, and DC Health Re: COVID-19 Vaccine Distribution Plan Implementation (Apr. 6, 2021).

⁵ These are obligations set forth under Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Section 1557 of the Patient Protection and Affordable Care Act.

⁶ *Disability Access in Vaccine Distribution*, U.S. Department of Health and Human Services, Office of Civil Rights, last accessed on April 27, 2021 at: <https://www.hhs.gov/sites/default/files/disability-access-vaccine-distribution.pdf>

⁷ *COVID-19 Response*, U.S. Department of Health and Human Services, Administration for Community Living, last accessed on April 28, 2021 at: <https://acl.gov/COVID-19>

⁸ *HHS Office for Civil Rights Guidance on Federal Legal Standards Prohibiting Disability Discrimination in COVID-19 Vaccination Programs*, U.S. Department of Health and Human Services, Office of Civil Rights, last accessed on April 27, 2021 at: <https://www.hhs.gov/sites/default/files/federal-legal-standards-prohibiting-disability-discrimination-covid-19-vaccination.pdf>

for check-in at home or outside the facility, greater social distancing for those with compromised immune systems, assistance from a designated support person to attend a vaccination appointment, and adequate seating for people with disabilities who have difficulty, because of a disability, standing in line for long periods of time to wait to enter the vaccination center or wait on standby for extra doses. For example, yesterday DRDC staff observed an elderly man with a disability at the Turkey Thicket vaccination center who was unable to stand outside in the long line to check-in for his vaccine appointment because he needed to sit down due to his disability. DC Health staff did not provide this individual immediate access to the vaccination center or at a minimum provide seating to allow him to wait in line. Instead, he had to rely on a family member who accompanied him to check him in while he sat down off to the side of the line. To help individuals who cannot wear a mask, DC Health should provide curbside vaccination. In addition, DC Health must provide an alternate method for vaccinating all individuals who cannot travel to a vaccination site, like home vaccination appointments or mobile, accessible vaccination sites. We applaud DC Health for starting this week its vaccination program for DC residents who cannot leave their homes. But DC Health cannot delay or deny this accommodation based on demand, as Director Nesbitt recently suggested.⁹ Moreover, demand for the homebound vaccination program should not be a barrier as DC Health has access through its partner agency DHCF to comprehensive long-term care and other data on the many District residents that need such home visits and where they reside, including EPD waiver and State Plan PCA beneficiaries.¹⁰

Additionally, as vaccine appointments dwindle and the District's pre-registration system ends, DC Health and DHCF must provide effective outreach and education in partnership with its providers.¹¹ This includes ensuring all vaccination communications are provided in accessible formats: braille, large print, electronic format for screen readers, and video remote interpreting. FEMA's Office of Equal Rights has created a checklist to assist local agencies to fulfill these and other civil rights obligations.¹² Effective communication is not optional. Federal and District law require communications accessible to everyone, including people with disabilities. We also know that only about half of the District's seniors in the community have been fully vaccinated.¹³ Mobile door-to-door outreach is critical to ensure the District is reaching the individuals with disabilities impacted by the digital divide or other barriers to access.

DC Health and DHCF must meet its obligations to protect and ensure vaccine access for nursing and assisted living facility residents, as well as residents in the community with disabilities. These include closing the gap in the low vaccination rates for residents and staff in long-term care facilities, ensuring effective vaccine outreach and education through accessible format materials and mobile outreach, transparency on home health aide and PCA beneficiaries'

⁹ Colleen Grablick. "D.C. To Begin Bringing COVID-19 Vaccines to Homebound Residents Next Week," DCist.com (April 19, 2021). <https://dcist.com/story/21/04/19/dc-starts-homebound-coronavirus-vaccine-april-26/>

¹⁰ *Characteristics of Homebound Older Adults: Potential Barriers to Accessing the Covid-19 Vaccine*, U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Issue Brief (April 6, 2021). <https://aspe.hhs.gov/system/files/aspe-files/265346/homeboundvaccovid.pdf>

¹¹ Jordan Pascale. "D.C. Will Open 11 Walk-Up COVID-19 Vaccine Sites on Saturday, End Pre-Registration System," DCist.com (April 26, 2021). <https://dcist.com/story/21/04/26/dc-opening-walk-up-coronavirus-vaccine-sites-may-1/>

¹² *Civil Rights Considerations During COVID-19 Vaccine Distribution Efforts*, U.S. Department of Homeland Security, Federal Emergency Management Agency, last accessed April 27, 2021 at: https://www.fema.gov/sites/default/files/documents/fema_civil-rights-covid-19_vaccine_checklist_02-06-2021.pdf

¹³ Colleen Grablick. "D.C. To Begin Bringing COVID-19 Vaccines to Homebound Residents Next Week," DCist.com (April 19, 2021). <https://dcist.com/story/21/04/19/dc-starts-homebound-coronavirus-vaccine-april-26/>

vaccination rates, and reasonable modifications at vaccination sites and to vaccination procedures. DC Health and DHCF must comprehensively track vaccination rate data regarding all DC Medicaid long-term care providers and beneficiaries, including those in community-based settings, and make this data available to the public.

Thank you for the opportunity to testify and I am happy to answer any questions.