Summit

Independent Living Center, Inc.

An Advocacy & Resource Center for Montanans with Disabilities

Serving Western Montana since 1981

700 SW Higgins, Suite 101, Missoula, MT 59803 • (406) 728-1630 TT/Voice • Fax (406) 829-3309 • www.summitilc.org

EXHIBIT 2
DATE 3.9.15
SB 277

March 9, 2015

Representative Art Wittich, Chairman
House Health and Human Services Committee

Dear Chairman Wittich and members of the committee:

My name is Mike Mayer. I serve as the Executive Director of Summit Independent Living Center Inc., a Missoula-based, private nonprofit organization that provides independent living services to people with disabilities in 7 counties in western Montana. As a Medicaid provider agency, we also provide self-directed Community First Choice and Personal Assistance Services to approximately 200 individuals in our service area.

I'm testifying in support of SB 277 and strongly encourage the committee to vote yes on this bill.

On December 24, 2014 DPHHS adopted administrative rules effective January 1, 2015 mandating that all providers of Medicaid Community First Choice and Personal Assistance "provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. The quarterly report must include the names, addresses, and phone numbers, wages, years of experience in aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check."

I have several concerns with the quarterly reporting requirements. First and foremost, direct care workers who choose to work for consumers through the self-directed program should not have to have their names, addresses, phone numbers and other personal information reported to DPHHS by provider agencies. This is a blatant violation of these employees' individual privacy rights, as information reported to the state becomes public information subject to public review. Worse yet, under the administrative rules these individuals have no say whatsoever in disclosure of this information to the state. All Montanans have a constitutional right to privacy. People who choose to provide personal assistance services to people with disabilities and seniors should not have to give up their basic privacy rights simply because Medicaid is reimbursing the provider agency that pays their wages. We all have a right to decide whether our phone number is listed in the telephone directory, whether our address is published, or not. At a minimum we all have the right to authorize disclosure of our personal information to outside entities for any purpose.

This requirement also singles out caregivers in the self-directed program. The state statutes for the self-directed program stipulate that the consumer, or his or her personal representative, share the employment relationship with the provider agency that serves as the official employer of record. Consumers, or their representatives, are responsible for hiring, firing, scheduling, training and supervising their caregivers. By compelling providers to disclose employee information, the state is also compelling consumers to disclose their caregivers' personal information, and they also have no say in the matter.

Given the nature of the self-directed program, these caregivers are often family members, friends or neighbors of the consumers they serve, especially in rural areas. Family caregivers frequently live in the same home with the person who needs care and only work in that household. In short, the self-direct workforce tends to be a very different workforce than those who work in the agency directed program. I am concerned that mandatory reporting of caregivers' personal information may make it more difficult for consumers to recruit and retain attendants who may be uncomfortable or unwilling to have their personal information reported to the state.

The rationale given in the administrative rules for the quarterly reporting requirement is to evaluate this work force quality, stability, and sustainability, and potentially to provide ongoing training and compliance information to direct care workers, or to set up a voluntary caregiver directory. This was never brought up for discussion at any of several Community First Choice Development and Implementation Council meetings as the CFC program was being developed and implemented, nor was it discussed at the CFC provider agency training session or a series of ongoing WebEx meetings in the spring and summer of 2014. Only at the very end of this development process, during administrative rulemaking, was the mandatory quarterly reporting requirement inserted. Stakeholders had absolutely no input into whether such caregiver training, compliance and reporting is even needed or desired. This requirement came not from DPHHS, but from the governor's office.

The self-directed model has always placed the responsibility on consumers to train their caregivers to meet their individual needs and preferences. If the state perceives a need for better-trained direct-care workers, that perception should be substantiated through discussion by the CFC Development & Implementation Council, surveys of self-directed CFC consumers, provider agencies, and personal assistants, or a study group. However, it would not be appropriate for the state to provide training in any case given the self-directed model. Training resources could be developed and made available in a variety of ways/formats to CFC consumers to use as they see fit for their needs and preferences.

From a purely Community First Choice service provider aspect, this requirement would add an additional, unreimbursed and significant administrative burden for self-directed provider agencies, while agency-based providers are excluded.

Finally, I question why the administrative rules target only the self-directed CFC program, and not the agency-based program as well to monitor and evaluate the quality, stability and sustainability of the overall workforce for personal assistance services across the board. Among provider agencies it is common knowledge that agency-based providers struggle more with workforce issues than do consumers utilizing the self-directed model for their Community First Choice and Personal Assistance Services.

I strongly encourage the committee to vote yes on this bill. There are far less intrusive and more effective ways to evaluate and potentially strengthen the personal care workforce than the mandatory quarterly reporting requirement of only self-directed CFC providers.

Sincerely,

Mike Mayer

Mike Mayer
Executive Director