



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

CHRISTINA HENDERSON
Councilmember, At-Large
Chairperson, Committee on Health

Committee Member
Hospital and Health Equity
Judiciary and Public Safety
Transportation and the Environment

Statement of Introduction
Direct Care Worker Amendment Act of 2023
November 6, 2023

Today, along with Councilmembers Charles Allen, Brianne K. Nadeau, Matthew Frumin, Janeese Lewis George, Zachary Parker, Brooke Pinto, and Trayon White, Sr., I am introducing the Direct Care Worker Amendment Act of 2023. This bill addresses workforce challenges in the long-term care, skilled nursing, and home health fields. Specifically, this bill will eliminate barriers to licensure and certification for direct care workers and will establish a new minimum wage for individuals providing direct support services at 120% of the District's living wage.

Certified Nurse Aides (CNAs) and Home Health Aides (HHAs) provide crucial care and support services for patients under the supervision of a licensed nurse or other licensed medical professional. Their responsibilities cover a wide range of activities important to the daily life of the patient, including monitoring vital signs, cleaning medical supplies or equipment, communicating the patient's concerns to the medical providers, assisting with dressing and bathing the patient, ensuring safety protocols are in place, stocking medical supplies, aiding with nutrition and hydration, and moving or transporting the patient around their home or facility.

Under the current regulatory system for certifying CNAs and HHAs, providers perform essentially the same functions but in different settings. CNAs generally provide services in a skilled nursing facility, and HHAs provide services in a patient's home. However, they are separate licenses such that a CNA cannot provide services in the home setting unless they take an additional course and complete the certification requirements to become an HHA as well. Conversely, an HHA cannot provide services in a facility setting unless they are also certified as a CNA. This significantly burdens professionals as they must maintain two certifications. Further, because the qualifications are slightly different, professionals must often take time off from work to complete the additional coursework to become certified as the other provider type.

Workforce shortages in the long-term care and home health aide sectors cause a ripple effect of challenges across the health sector. For example, if an individual is ready to be discharged from a hospital to a facility, but that facility does not have the staffing capacity to accept new patients, the result is the hospital must essentially function as a skilled nursing facility to provide those services to an individual who could have received them in a less intensive setting. Further, since the additional hospital days were not medically necessary, insurance companies often will not reimburse the hospitals for those days, and hospitals are left to foot the bill.

The first goal of this bill is to alleviate some of the administrative burden that serves as a roadblock for individuals who want to provide these critical services. The bill directs the Mayor to replace the fragmented certification system for HHAs and CNAs with a unified credential for "direct care workers" (DCWs). Anyone currently licensed as a CNA or HHA will be automatically certified as a DCW. This change will eliminate the separate courses of study and need to maintain two licenses.



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The bill also expands the pool of eligible providers. Health professionals generally must be 18 years of age to become licensed or certified to practice. This bill lowers the age for DCWs to 16, provided the minor either has received or is actively pursuing a high school equivalency diploma. Further, to ensure adequate oversight of the younger DCWs, those under the age of 18 must practice in the facility setting and not a patient's home. Several schools in the District either have or would like to have training programs for DCWs so that upon graduation from the program they can begin practicing the profession.

Additionally, this legislation provides that CNAs and HHAs licensed or certified in good standing in Maryland or Virginia may practice as DCWs in the District. Providers from Maryland and Virginia were allowed to practice in the District during the COVID-19 public health emergency under a waiver of certification rules. Provider agencies reported that this flexibility alleviated some of the strains on the workforce with no adverse effect on the quality of services provided.

The legislation also requires the Mayor to eliminate barriers to the development and use of on-the-job training programs and registered apprenticeship programs that can lead to certification as a DCW. Some provider agencies have recognized that an apprenticeship model may be more effective in training some individuals for practice. This legislation requires the Mayor to provide this pathway as an alternative to the traditional classroom coursework.

The second major goal of this legislation is to establish a minimum wage for DCWs. Under the current system, the Department of Health Care Finance (DHCF) has established a mandatory average pay for HHAs. However, this is difficult to administer and provides little transparency for employees. For example, under the average wage system, a provider receiving less than the mandatory average can only assume that their lower wage is balanced by someone else at the agency receiving a higher wage. However, the individual would not have that information so could not hold the agency accountable. For agencies, there is significant turnover on the payroll week to week. That means they must recalculate their average wage on a frequent basis to ensure they meet the mandatory average salary.

This legislation will eliminate the convoluted system and replace it with a more transparent minimum living wage for DCWs. Under this legislation, the minimum wage for DCSPs will be set at 120% of the District's living wage so that it will be annually adjusted based on the District's living wage annual adjustment. Further, DHCF rates paid to provider agencies will be updated to reflect the wage that the agencies must pay their employees.

Overall, the streamlining of certification and licensure for DCWs and establishment of a minimum wage will move the District forward in addressing the long-term care workforce challenges. As the population ages, the District must be prepared to support our residents that need assistance with their daily needs.

I look forward to working with my colleagues to move this legislation forward.

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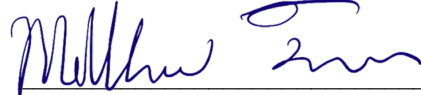
2 Councilmember Charles Allen



Councilmember Christina Henderson

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5 Councilmember Brianne K. Nadeau



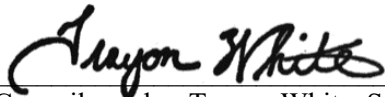
Councilmember Matthew Frumin

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9 Councilmember Janeese Lewis George



Councilmember Zachary Parker

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12 Councilmember Trayon White, Sr.



Councilmember Brooke Pinto

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16 A BILL

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20 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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25 To establish a new credential for direct care workers to replace the home health aide and certified
26 nursing assistant certifications; to lower the age requirement for direct care workers to 16
27 years of age; to eliminate barriers to certified apprenticeship programs for direct care
28 workers; to allow direct care workers certified in Maryland or Virginia to practice in the
29 District; and to establish a minimum wage for direct support services at 120% of the
30 District's living wage.

31
32 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
33 act may be cited as the "Direct Care Worker Amendment Act of 2023".

34 **TITLE I. DIRECT CARE WORKERS.**

35 Sec. 101. Definitions.

36 For purposes of this title, the term:

37 (1) "Direct care worker" means an individual who, working under the supervision
38 of a nurse or other licensed health professional in the District of Columbia, has demonstrated
39 competency to assist with the delivery of direct nursing and nursing related services and to
40 provide direct hands-on care and assistance to individuals who are elderly and/or have cognitive,
41 physical, behavioral, intellectual, or developmental disabilities in any care settings.

42 Sec. 102. Requirements

43 (a) Within one year of enactment of this Act, the Mayor shall:

44 (1) Replace existing certifications for certified nurse aides and home health aides
45 with a certification for direct care workers.

46 (2) Enact competency-based standards for the certification of direct care workers
47 that combine competencies for home health aides and certified nursing assistants and are
48 consistent with requirements established under 42 C.F.R. § 483.152 and 42 C.F.R. § 484.80.

49 (b) An individual shall be certified as a direct care worker upon demonstration that they
50 possess the competencies to perform the tasks of a direct care worker.

51 (1) Competency evaluations shall be performed by an approved entity or any
52 licensed health care entity in good standing that regularly employs direct care workers, home
53 health aides or certified nursing assistants.

54 (2) An individual seeking certification shall have obtained or be enrolled and
55 actively pursuing a high school equivalency diploma as that term is defined in section 561(6) of
56 the District of Columbia Public Assistance Act of 1982, effective October 27, 1995 (D.C. Law
57 11-72 § 101; D.C. Official Code § 4-205.61(6)).

58 (3) The Mayor shall review and eliminate barriers to the development and support
59 of on-the-job training programs and registered apprenticeship programs that can certify the
60 competency of direct care workers.

61 (c) Individuals certified as a direct care worker may refer to themselves as a certified
62 nurse aide, certified nursing assistant, CNA, home health aide, or direct care worker.

63 (d) Individuals currently certified as home health aides and certified nursing assistants
64 shall automatically qualify for certification as a direct care worker able to work in any care
65 setting by demonstrating that they possess the competencies to practice as a direct care worker.

66 (e) An individual licensed or certified as a certified nursing assistant or home health aide
67 in Maryland or Virginia and in good standing shall be permitted to work as a direct care support
68 professional in any care setting.

69 **TITLE II. AMENDMENTS.**

70 Sec. 201. Section 503 of the District of Columbia Health Occupations Revision Act of
71 1985, effective March 25, 1986 (D.C. Law 6-99 § 503; D.C. Official Code §3-1205.03 is
72 amended as follows:

73 Subsection (a)(2) is amended by striking the phrase “age;” and inserting the phrase “age;
74 except that individuals applying for certification as certified nursing assistants or nurse aides,
75 home health aides, trained medication employees, certified medication aides or direct care
76 workers shall be at least 16 years of age provided that a certified individual shall not practice in a
77 patient’s home until they have reached 18 years of age;” in its place.

78 Sec. 202. The Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C.
79 Official Code §2-220) is amended as follows:

80 (a) Section 102 is amended by adding a new subsection (2A) to read as follows:

81 “(2A) “Direct Care Services” means home health or personal care assistance provided by
82 a direct care worker as that term is defined in section 101 of the Direct Care Worker Amendment
83 Act of 2023.”

84 (b) Section 103 is amended as follows:

85 (1) Subsection (a) is amended by striking the phrase “\$100,000 or more, shall”
86 and inserting the phrase “\$100,000 or more, except for contracts or government assistance for
87 direct care services to seniors or individuals with disabilities, shall”;

88 (2) A new subsection (a1) is inserted that to read:

89 “(a1) Effective October 1, 2024:

90 “(1) The Department of Health Care Finance, the Department of Aging and
91 Community Living, and any other District agency that provides, contracts, or pays for direct care
92 services shall:

93 “(A) Use 120% of the living wage defined in section 102(4) of this Act, as
94 adjusted annually for inflation, to establish reimbursement rates for contractors and providers of
95 direct care services;

96 “(B) Adjust reimbursement rates annually for contractors and providers to
97 reflect the annual inflation adjustment applied to the living wage; and

98 “(C) Amend all contracts and provider agreements to ensure that Medicaid
99 contractors and providers that provide direct care services to seniors and people with disabilities
100 agree to pay at least 120% the living wage as a condition of participation in the program.

101 “(2) Medicaid contractors and providers that provide direct care services to
102 seniors and people with disabilities shall pay their affiliated employees and subcontractors no
103 less than 120% of the living wage as annually adjusted for inflation.

104 (c) Section 105 is amended by repealing subsection (9).

105 **TITLE III. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.**

106 Sec. 301. Fiscal impact statement.

107 The Council adopts the fiscal impact statement in the committee report as the fiscal
108 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
109 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

110 Sec. 302. Effective date.

111 This act shall take effect following approval by the Mayor (or in the event of veto by the
112 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
113 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
114 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
115 Columbia Register.