



**Testimony of Sandy Bernstein, Legal Director
Disability Rights DC at University Legal Services
Before the Council of the District of Columbia
Committee on Facilities**

DC Department on Disability Services Oversight Hearing

February 26, 2026

Good morning, Councilmember Lewis George and members of the Committee on Facilities. My name is Sandy Bernstein and I am the Legal Director at Disability Rights DC (DRDC) at University Legal Services. DRDC is the federally-mandated Protection and Advocacy Program for people with disabilities in D.C. As the Protection and Advocacy Program, DRDC has represented hundreds of individuals supported by the Developmental Disabilities Administration (DDA) and the Rehabilitation Services Administration (RSA) and has assisted even more through our systemic advocacy and investigations. My testimony will focus on DDA.

DDS' Cuts to Waiver Services

DRDC understands there are budget pressures in the District government and within DDS itself. DRDC is very troubled, however, that DDS is using those

pressures to reduce and terminate necessary waiver services for people with intellectual and developmental disabilities, without an individualized review and assessment, against clinical recommendations and without due process. DRDC has heard from individuals supported by DDA, families, clinicians, and providers about waiver service cuts DDS has put in place against the opinion and desire of individuals and their support teams and without ensuring comparable services are in place.

People supported by DDA have had their waiver services terminated, especially fitness services and nutrition services, because DDA believes comparable services are available in the community either for no cost or under the Medicaid State Plan. DDS states in their oversight responses to the Council that some individuals' waiver services were terminated due to "intentional rightsizing toward community resources."¹ They state that in Fiscal Year 2025, 38 people had their fitness services terminated and 36 people had their nutrition services terminated.² In the first quarter of Fiscal Year 2026, eight people had their fitness services terminated and six people had their nutrition services terminated.³

¹ See DDS' Responses to DC City Council's Standard Questions, Question No. 77.

² See DDS' Responses to DC City Council's Standard Questions, Question No. 76.

³ Id.

DRDC has seen firsthand what occurs when these services are terminated. DDA service coordinators tell the person supported or their family member their fitness and nutrition services will be terminated, and they are provided a list of local gyms where they can exercise or local hospitals or community centers where they can allegedly find a nutritionist as waiver services are the payer of last resort. DRDC does not dispute that waiver funds should be used only after community resources are exhausted but handing a person with an intellectual or developmental disability or an overwhelmed family member a list of gyms and hospitals is not coordinating services. Fitness services are not the same as a gym membership.

According to DC regulations, waiver fitness services must be performed by professional fitness trainers who have been certified by national or international certifications such as the American Fitness Professionals and Associates, the National Athletic Training Association, the National Academy of Sports Medicine, the Aerobics and Fitness Association of America, and the American College of Sports Medicine; or professional fitness trainers who have a bachelor's degree in physical education, health education, exercise, science or kinesiology; or recreational therapists.⁴ While going to a gym or a recreational center may be

⁴ D.C. MUN. REGS. tit. 29, §1935.15(b).

necessary or important to implement recommendations received in fitness services, visiting such places does not replace the fitness services themselves. And if DDA wants individuals to receive nutrition services from a local hospital or community center, then they need to establish relationships with these entities BEFORE terminating services.

DRDC is currently representing a client who had her nutrition services terminated⁵ and her service coordinator provided a list of places for her parent to contact to replace these services. The parent called the places on the list and was told they do not have a nutritionist or dietician on staff, they couldn't confirm whether her insurance would be accepted, or simply did not call her back. The client's parent reported to DDA being unable to connect with DDA's recommendations for nutrition services but that did not change DDA's position on the termination nor did it result in the service coordinator assisting in finding appropriate nutrition services in the community. It makes us wonder what services the service coordinator is actually coordinating. This case is currently before the Office of Administrative Hearings (OAH).

DDS also fails to provide the due process notice required under federal and DC law when they terminate or reduce waiver services. Federal law is clear

⁵ This client also had her fitness services terminated but that decision was overturned after DRDC represented the client in DDS' internal appeals process.

when Medicaid services are denied—it requires DDS to provide notice of the action being taken, a clear statement of the reason for the denial, the regulation that supports the denial, information on appeal rights with deadlines and the circumstances when benefits can be continued if an appeal or hearing is requested.⁶ The Waiver Appeal Rights Notification Form DDS created in March 2025⁷ does not meet these requirements as service coordinators simply check boxes and provide very little information or the form is inaccurate or incomplete. For example, DRDC was contacted by someone who received DDS’ form with the wrong name on it. One of our clients received a form terminating his occupational therapy and fitness services and reducing his in-home support services and companion services and the only portion of the form the service coordinator completed was his name, the notification date and the effective date. The service coordinator included no information regarding why our client’s services were terminated, no regulation was cited, and no information regarding how to keep his services pending an appeal was provided. As a result, this client did not receive services for three months until DRDC became involved, appealed to OAH and the case was resolved with his services restored. And just last Friday, a DRDC client received an email from a DDA service coordinator stating the

⁶ 42 C.F.R. § 431.210; D.C. MUN. REGS. tit.29, §1912.10.

⁷ See DDS’ Responses to DC City Council’s Standard Questions, Question No. 78.

client's fitness and nutrition services would be terminated even though there was much discussion and agreement during his ISP meeting that he needed these services to address his weight gain and serious health conditions including psychotropic medication that causes weight gain and a diagnosis of fatty liver disease. In the email, the client was told to go to a local gym or recreational center and to contact a hospital for nutrition services (with no phone numbers provided). The service coordinator attached the waiver notice appeal form and it was blank—no name, no information about when to appeal, no effective date for the termination, no information on how to keep his services pending during an appeal. After his mother stated she wanted to appeal, the service coordinator resent the form with it completed—with two different effective dates and incorrectly stating he cannot request benefits pending appeal.

Providing people supported by DDA with adequate written notice when denied a Medicaid waiver service is not optional or simply a nice thing to do, it is required under federal and DC law. DDA's haphazard way of providing people with their federal constitutional right to due process is unacceptable. DRDC has heard reports and DDS admits in its responses to City Council that no written notice was provided prior to sometime in 2025 when they developed their appeal

form.⁸ People with intellectual and developmental disabilities were simply told at ISP meetings that their waiver services would be terminated or reduced, maybe they were told they could appeal, maybe they weren't, but it is not adequate notice if it is not in writing and does not meet the clear requirements under federal and DC law. These individuals had their critical community-based services reduced or terminated without written notice of their right to appeal. These services included in home supports, which is provided for people who live in natural homes, leaving family caregivers responsible for picking up where the government has failed to meet their needs.

DDS states in its responses that there were 152 reductions and 507 terminations in Fiscal Year 2025 but only 10 appeal notice forms distributed.⁹ Fiscal Year 2026 appears a bit better with 83 appeal forms distributed to account for 29 reductions and 235 terminations.¹⁰ Even if one were to assume some of those terminations were changes to a new provider, that would not account for the majority of cases. That statistic makes clear that DDS reduced or terminated many individuals' Medicaid waiver services without due process—without notice

⁸ See DDS' Responses to DC City Council's Standard Questions, Question No. 78. DDS states, "DDS has a longstanding practice of explaining how persons supported may file an appeal or request a fair hearing if they disagree with any aspect of their plan during the annual ISP meeting." This statement indicates that DDA 's practice was not to provide written notice as required under federal law but to simply tell people at their ISP meetings.

⁹ See DDS' Responses to DC City Council's Standard Questions, Question Nos. 76 and 78.

¹⁰ Id.

of their appeal rights and without notice that they could continue receiving their services pending appeal. In Fiscal Year 2025, no appeals were filed through DDA's internal appeals process¹¹ despite the 659 reductions and terminations¹², yet in the first quarter of Fiscal Year 2026, there has already been 11 appeals¹³ filed through that process. The difference in the number of appeals filed once DDS created the form shows people would appeal if they knew they had the right to do so, how to do it and that they can receive benefits pending appeal.

Until DDS can develop adequate written notice, DDS should reverse all unwanted reductions and terminations, dating back to at least Fiscal Year 2025. DDS' Waiver Appeal Rights Notification Form does not provide adequate notice and certainly providing no written notice at all is woefully inadequate. Service coordinators should not be terminating any services without ensuring comparable services are in place so people are not left without the services they need and are recommended by clinicians and their ISP team.

People with I/DD Who Are Incarcerated

DRDC remains troubled that DDS continues to refuse to accept applications from people with intellectual and developmental disabilities until they have a

¹¹ See DDS' Responses to DC City Council's Standard Questions, Question No. 79.

¹² See DDS' Responses to DC City Council's Standard Questions, Question No. 76.

¹³ See DDS' Responses to DC City Council's Standard Questions, Question No. 79.

release date. DDS states it cannot accept applications, something they did for many years, because individuals incarcerated are not “Medicaid-eligible.”¹⁴ Incarcerated individuals are Medicaid-eligible, their Medicaid is just suspended while they are in prison and it must be reactivated or they must reapply once they are ready to be released. And while it is accurate that Medicaid eligibility is necessary to receive Medicaid waiver services, it is not necessary to determine eligibility for DDA services—that relies on residency and whether there is evidence that the person has an intellectual or developmental disability.¹⁵ As DRDC has stated previously, DDS’ position violates Title II of the Americans with Disabilities Act and the *Olmstead* integration mandate, as it denies people with disabilities access to even apply for services that can enable them to be released from an institution.¹⁶

¹⁴ See DDS’ Responses to DC City Council’s Standard Questions, Question No. 110 (b).

¹⁵ Applicants can check on DDA’s intake application that they need DDA’s assistance in applying for Medicaid. <https://dds.dc.gov/node/1448686>.

¹⁶ DDS states, “given DDS’s limited resources and the need to establish a waiting list for the IDD HCBS waiver because of the reduction in its FY 26 budget, it would be entirely inappropriate for DDS to prioritize individuals where it is not known whether they will be released from a correctional facility over District residents who are already Medicaid eligible and available to receive DDS supports and services.” See DDS’ Responses to DC City Council’s Standard Questions, Question No. 110 (c). Finding an individual eligible for DDA services does not provide them with a waiver slot as that would not occur until after an ISP meeting and when more information would be known about the individual’s possible release. Also, priority should be given to individuals who are in institutional placements, whether that is incarceration, a nursing facility, psychiatric facility, residential treatment center or other facility.

Waiting List for I/DD Waiver

DDS reports that the \$1.68 million reduction by City Council in Fiscal Year 2026 will result in a waiting list for the I/DD Waiver in the near future. DRDC questions the need for DDA to establish a waiting list as there is a significant number of available slots in the I/DD Waiver. DDS submitted an application to the Centers for Medicare and Medicaid Services (CMS), indicating DDS would have 2003 available slots in the I/DD Waiver in Fiscal Year 2026 and as of the first quarter of Fiscal Year 2026, there are 94 slots available.¹⁷ Despite years of reporting to the public and the Council about available waiver slots and capacity to serve additional individuals, DDS now claims the number of available slots requested from CMS is meaningless as DDS does not have the resources available to fill the spots due to the Council's reduction. That argument, however, does not make mathematical sense. Since the average cost per user in the I/DD Waiver in Fiscal Year 2025 was \$180,464,¹⁸ with a reduction of \$1.68 million, the number of waiver slots should only need to be reduced by 9 or 10 to address the budget shortfall. District residents with intellectual and developmental disabilities should not be denied or forced to wait for the community-based services they need.

Thank you for the opportunity to provide this testimony.

¹⁷ See DDS' Responses to DC City Council's Standard Questions, Question No. 71.

¹⁸ See DDS' Responses to DC City Council's Standard Questions, Question No. 123.