



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Statement for the Hearing Record
Legislative Proposals for Paid Family and Medical Leave
United States House Committee on Ways and Means
January 28, 2020

February 11, 2020

Thank you for the opportunity to submit the following statement for the record of the Committee's January 28, 2020 hearing on "Legislative Proposals for Paid Family and Medical Leave." The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

The co-chairs of the CCD Working Group on Paid Leave thank you for holding a hearing on this topic of great importance to people with disabilities and their families. Access to paid family and medical leave is vital for workers with disabilities, parents with disabilities, and family members of people with disabilities. The CCD Paid Leave Working Group has recently finalized principles detailing what a disability-inclusive paid leave program would look like and we are excited to include those principles with this statement.

These CCD Principles for Paid Leave also allow us to assess the legislative proposals presented at the hearing from a disability perspective. After reviewing the research and available state data, we determined that for paid family and medical leave to work for people with disabilities, it must be inclusive, comprehensive, and flexible and carefully integrated into existing programs and policies. The three proposals being discussed today, the New Parents Act of 2019 (H.R. 1940), the Advancing Support for Working Families Act (H.R. 5296), and the FAMILY Act (H.R. 1185) are very different and seem designed to achieve different goals. We will consider each in turn.

1) New Parents Act of 2019 (H.R. 1940)

As we said in our statement for the record in response to the May 8, 2019 hearing on *Paid Family and Medical Leave: Helping Workers and Employers Succeed*, we oppose any paid leave proposal that pays for the leave by asking workers to take a cut in their future Social Security benefits.¹ Our Paid Leave Principles reiterate this opposition. Our Social Security system is a

¹ CONSORTIUM FOR CITIZENS WITH DISABILITIES, STATEMENT FOR THE RECORD, PAID FAMILY AND MEDICAL LEAVE:

foundation of economic security for workers and their families in the event of a worker's retirement, disability, or death. Asking workers to choose between parental leave and then being unable to retire or access disability insurance later in life breaks the promise of Social Security. Unfortunately, the New Parents Act asks workers to make exactly this trade off and we oppose this legislation.

2) Advancing Support for Working Families Act (H.R. 5296)

For the same reasons that we reject proposals that break the promise of Social Security, our Principles oppose efforts to repurpose child- or low-income tax credits to pay for leave. The Child Tax Credit helps working parents provide for their children—it lifts millions of families and children out of poverty.² Asking low-income parents to borrow against that tax credit to partially cover family expenses following the birth or adoption of a child is unacceptable. Giving low-income people longer to pay back the loan they have taken out will not solve the problem that their wages are not being replaced during a period of necessary leave. As such, we also oppose the Advancing Support for Working Families Act (H.R. 5296).

While we oppose both of these bills due to the fact that they borrow their funding from other crucial programs, we are also extremely concerned that both fail to be inclusive of different purposes for leave. Exclusive focus on parental leave fails to consider the needs of people with disabilities who require medical leave and people with disabilities who provide care to their families, in addition to caregivers for people with disabilities. It also fails to consider the needs of millions of Americans without disabilities—in 2012, the last year for which we have data available, 55% of unpaid leave taken under the Family and Medical Leave Act (FMLA) were taken because of the worker's own medical condition, while caregiving leave accounted for another 18% and parental leave for 21%.³ We urge Members of the Committee to focus on ensuring that all bills considered capture all three purposes of leave and the needs of people with, and without, disabilities.

Many of our other principles are not relevant in the consideration of the first two bills since they are so limited in scope. We note that neither bill captures all workers nor ensures progressive wage replacement, job protection, or anti-retaliation protections.

HELPING WORKERS AND EMPLOYERS SUCCEED (2019), <http://c-c-d.org/fichiers/CCD-Statement-Paid-Leave-May-8-Ways-and-Means-Hearing-Final.pdf>.

² THE CENTER ON BUDGET AND POLICY PRIORITIES, CHILD TAX CREDIT AND EARNED INCOME TAX CREDIT LIFTED 10.6 MILLION PEOPLE OUT OF POVERTY IN 2018 (2019), <https://www.cbpp.org/research/federal-tax/policy-basics-the-child-tax-credit>.

³ U.S. DEPARTMENT OF LABOR, FAMILY AND MEDICAL LEAVE IN 2012: TECHNICAL REPORT (2014), <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/FMLA-2012-Technical-Report.pdf>

3) FAMILY Act (H.R. 1185)

In contrast, the FAMILY Act provides a comprehensive vision for ensuring that many workers have access to paid leave, building on the baseline definitions within the FMLA. We believe this more inclusive vision represents the direction paid leave legislation should pursue. At the same time, when we crosswalk the FAMILY Act with our principles, we are concerned that the baseline definitions are insufficient; that certain details are not sufficiently inclusive, comprehensive, or flexible; and that the resources intended for implementation are dangerously inadequate. Given the more comprehensive scope, we have included a detailed analysis based on our principles below.

A) Inclusive

Our principles define inclusive paid leave as a program that allows leave for medical, parental, and caregiving purposes; has a broad definition of family; and is available to all workers. We are pleased that the FAMILY Act would allow for leave for all three purposes. We are concerned to see that the FAMILY Act largely borrows the FMLA's definition of family. We understand that this issue is not squarely within the jurisdiction of the Ways and Means Committee, but reusing FMLA definitions with minor additions will not work for many people with disabilities, who may rely on a sibling, grandparent, cousin, or other family member for care. CCD strongly supports expanding this definition of family to ensure that caregiving leave is available to care for all loved ones, including spouses, domestic partners, parents, children of any age, siblings, grandparents, grandchildren, and any other individual related by blood or affinity whose close association is the equivalent of a family relationship.⁴

We are very glad to see that the FAMILY Act includes part-time workers and self-employed workers. Workers with disabilities are more likely to be part-time workers than people without disabilities and workers with family members with disabilities are also more likely to be working part-time.⁵ It is crucially important to include these workers. However, we also are concerned that the FAMILY Act excludes from coverage individuals who receive Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI). Since the FAMILY Act covers part-time workers, we do not understand this exclusion. People with disabilities may be able to work part time while still receiving SSDI or SSI. By definition, these workers cannot engage in substantial gainful activity, but the part time work that they perform can be a crucial supplement to their disability benefits, especially those living on SSI. Paid leave for these workers would incentivize work and should be available if other criteria is met.

⁴ CONSORTIUM FOR CITIZENS WITH DISABILITIES, STATEMENT ON THE FAMILY MEDICAL LEAVE MODERNIZATION ACT (2020), <http://c-c-d.org/fichiers/FMLA-CCD-Testimony-for-the-record-Feb-11-2020.pdf>.

⁵ CENTER ON POVERTY AND INEQUALITY AT GEORGETOWN LAW AND THE ARC, SECURITY & STABILITY PAID FAMILY AND MEDICAL LEAVE AND ITS IMPORTANCE TO PEOPLE WITH DISABILITIES AND THEIR FAMILIES (2017), https://thearc.org/wp-content/uploads/forchapters/Georgetown_PFML-report_Dec17.pdf

For similar reasons, we believe that a more inclusive eligibility standard for the entire paid leave program is necessary that is not limited to the current SSDI definition and could be created using currently available data on workers' labor force participation.

B) Comprehensive

Our principles define comprehensive paid leave as a program that has progressive wage replacement, job protection, and continuing access to benefits for workers on leave. We are concerned that the wage replacement provided in the FAMILY Act is not sufficient to ensure that low wage workers can afford to take leave. People with disabilities live in poverty and in long-term poverty at higher rates than people without disabilities. If a paid leave program fails to provide sufficient wage replacement, it can impact use of the leave, especially in low income communities and have a disproportionate impact on people with disabilities. We are also concerned about the lack of job protection and continued access to employer-provided health insurance for workers, although we are aware that this is outside of the scope of the Committee's jurisdiction. Discrimination against people with disabilities is unfortunately prevalent and all workers receiving benefits should have the right to return to work following leave and protection against retaliation for exercising their rights under the law. It is also crucially important to ensure that workers maintain their health insurance while on leave, as they do under the FMLA.

C) Flexible

Our principles define flexible paid leave as a program that allows for intermittent use and provides paid leave which is of sufficient duration, responsive to unpredictable disabilities, and easy to use. Intermittent use is clearly contemplated by the FAMILY Act and we strongly support this inclusion so that leave can be responsive to the unpredictability of many disabilities and caregiving needs. While we are glad that one of the purposes of the Office of Paid Family and Medical Leave is to conduct culturally and linguistically competent education and outreach, we believe that one of their purposes should also be ensuring that the system is easy for people applying for leave to use.

D) Integrated with other federal programs: no borrowing, have administrative resources, and carefully implemented.

Our final principles focus on ensuring that a paid leave program would be well integrated with other federal programs and laws. As we said in our prior statement for the record in response to the May 8, 2019 hearing on Paid Family and Medical Leave: Helping Workers and Employers Succeed, we are extremely concerned about the burden that implementing a new program would place on the Social Security Administration (SSA). SSA currently lacks the resources to operate and strengthen its existing core programs. From 2010 to 2019, SSA's operating budget

shrank by nearly 11 percent while workloads rose.⁶ As a result, customer service has been eroded across the agency. Today, more than 600,000 people are waiting an average of nearly 500 days for a hearing before an SSA Administrative Law Judge. These historic waits lead to extreme hardship: while awaiting a hearing, many people with disabilities struggle to pay rent or meet basic needs. Some lose their homes or go into bankruptcy, and in Fiscal Year 2017 approximately 10,000 people with disabilities died while waiting for a hearing.⁷ SSA cannot afford to repurpose existing limited resources to implement a new program and even with its own funding, any new program would further burden the agency, creating additional and unacceptable delays. The FAMILY Act fails to consider this serious concern.

Finally, we are concerned that the FAMILY Act does not address the interaction between the Americans with Disabilities Act and the proposed paid leave law nor ensure that the privacy of people receiving care from a worker on leave or who is taking medical leave is sufficiently protected.

All of these concerns aside, the FAMILY Act is by far the most inclusive, comprehensive, and flexible paid family and medical leave proposal under consideration by the Committee. We thank the Ways and Means Committee for hosting a hearing on such an important issue for people with disabilities and we stand ready to work with the Committee to address our concerns and move this legislation forward.

Sincerely,

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⁶ CENTER ON BUDGET AND POLICY PRIORITIES, SENATE BILL WOULD CUT SOCIAL SECURITY OPERATIONS AGAIN (2019), <https://www.cbpp.org/blog/senate-bill-would-cut-social-security-operations-again>.

⁷ The Washington Post, *597 days. And still waiting.* (2017), <https://www.washingtonpost.com/sf/local/2017/11/20/10000-people-died-waiting-for-a-disability-decision-in-the-past-year-will-he-be-next/>.