
Government of the District of Columbia



Department of Health

Testimony of

LaQuandra S. Nesbitt, M.D., M.P.H

Director

Department of Health

Public Hearing B21-0199

The Domestic Partnership Termination Recognition Amendment Act of 2015

Committee on the Judiciary

Kenyan McDuffie, Chairperson

Thursday, October 8, 2015
10:00 a.m.

Council Chambers, Room 120

John A. Wilson Building

Good morning, Chairman McDuffie and members of the Committee on the Judiciary. I am Dr. LaQuandra S. Nesbitt, Director of the District of Columbia Department of Health. On behalf of Mayor Bowser, I am pleased to offer testimony on B21-199, the Domestic Partnership Termination Recognition Amendment Act of 2015,

The Department of Health supports the intent of the bill, which enables domestic partners who formed their partnership outside the District to dissolve that partnership, and have it recognized as dissolved, in the jurisdiction where originally formed. As you know, the Health Care Benefits Expansion Act of 1992 was originally intended to recognize domestic partnerships solely for the purpose of allowing people who could not, or chose not, to be married to add their partners to health insurance plans. Domestic partnerships have been registered only since 2002 because Congress, until that time, refused to allow the District to expend funds to implement the 1992 law. Once implemented, the law allowed, the Council encouraged, and the Department of Health promulgated an expansive definition of domestic partnership to include closely related family members who otherwise would not be permitted to marry one another and generally would not want to be married. That expansive definition of domestic partnership was intended to allow, for example, an adult child caring for an aging parent to add the parent to a health insurance plan. Health insurance coverage is an important determinant of access to health care. The District of Columbia is the only jurisdiction that allows a domestic partnership to be formed between close family members for the purpose of obtaining health insurance benefits for another person and sets the bar in fostering innovative solutions to increasing access to care.

The law for domestic partnerships, and similar legally recognized relationships, is an evolving law where the right to enter a domestic partnership or similar non-marriage relationship

may be created without the corresponding right to terminate the domestic partnership. When this occurred, couples wishing to end their domestic partnerships were prevented from doing so and were effectively trapped in these relationships much like same sex couples, were before divorce was recognized in all the states. The legal right to exit a failed relationship is just as fundamental a right as the legal right to enter a committed relationship. For domestic partnerships that were entered into as an alternative to marriage, the proposed legislation seeks to create parity to traditional same-sex marriages by allowing a legal exit for those wishing to terminate the union.

Since 2002, the Department of Health has registered 2,592 domestic partnerships and terminated 220. Of those, 1,126 were for male/female partners and 1,466 were for partners of the same sex. When we look at trends, in the first year male/female registrations were less than 10% of the registrations and now comprise nearly 75% of registrations. Also, in the first year almost 13% of the registrations were terminated, while this year there have been no terminations recorded and only 2 terminations were recorded in 2014. The largest number of terminations were recorded in 2008, when there were 33 terminations. In total, 37% of all terminations were for male/male partnerships, 40% were for female/female partnerships and 23% were for male/female partnerships. Information regarding the reason for forming the partnership, whether as an alternative to marriage or for the extension of health benefits to another, was not recorded. The Vital Records Division will begin including information on whether the partners are closely-related family members in order to provide better insight and data on these partnerships.

Since implementation of the original purpose of the Health Care Benefits Expansion Act, the Council amended the D.C. Official Code to expand the rights and responsibilities attendant to the formation of a domestic partnership to the extent that it is effectively the same as a marriage. In several cases where the rights or obligation expansion is similar to a right or obligation similar

to a marriage, there is a definition of domestic partnership to distinguish the two types of domestic partnership and exclude domestic partners that are closely related. One such example is in the Vital Records Act, another is in the definition of the parent-child relationship, and yet another in laws regarding adoption proceedings.

Expansion also eventually included recognizing relationships, other than marriage but substantially similar to the District's version of domestic partnership, as if the relationships were formed in the District. Despite the fact that the District recognizes relationships such as domestic partnership and civil union as domestic partnerships in the District, there is no guarantee that the jurisdiction that originally formed that relationship will recognize its dissolution in the District.

With the expansion of domestic partnership to the equivalent of marriage, the dissolution of domestic partnership raises issues of the kind that also arise with divorce:

- What is an appropriate division of property?
- Whether one of the partners is entitled to financial support,
- Whether there should be visitation rights for children resulting from the partnership,
- Which of the partners should be responsible for child support payments? and
- How much financial support is appropriate for those children?

The Vital Records Division is not authorized or equipped to make these types of determinations. Yet, under current law and regulation, the Vital Records Division is the place to which partners must turn to dissolve their partnerships. There is a mechanism for resolving those issues when a domestic partnership is dissolved, but involves engaging in a separate proceeding

in the courts after the dissolution. I support Council's amendment in Bill 21-199 that provides for termination by judicial decree, which allows for resolution of both the dissolution and those attendant issues. I urge Council, however, to go a step further to require that all domestic partnerships that have the characteristics of a marriage be terminated through judicial decree and leave only those relationships formed solely for the purpose of adding another person to health insurance for the Vital Records Division to dissolve.

Given the complications of the District's form of domestic partnership, there may be some unintended consequences to simply adding one more way of terminating a domestic partnership. The bill currently references only the term "domestic partnership" while the District recognizes as equivalents other relationships that use other terms. At a minimum, the bill should be clarified to ensure that civil unions are also covered. Other terms that jurisdictions have used include "designated beneficiary" (Colorado), "reciprocal beneficiary" (Hawaii), and "civil partnership" (Great Britain). For that reason, I recommend that paragraph 2(b)(1) of the bill be amended to read as follows: "(5) A domestic partnership, civil union, or other relationship that is substantially similar to marriage shall be terminated by judicial decree or judgment pursuant to an action for divorce and filed in accordance with Chapter 9 of Title 16 of the D.C. Official Code." That change would allow domestic partnerships that were formed for insurance benefit purposes to continue to be terminated more easily while those relationships that are alternatives to marriage, but like marriage, would be terminated by judicial decree. This change also ensures recognition of the termination in the jurisdiction in which it was formed because of the guarantees of the Full Faith and Credit Clause in Article IV, Section 1, of the Constitution.

Thank you for this opportunity to testify in support of the intent of Bill 21-199, the "Domestic Partnership Termination Recognition Amendment Act of 2015". We look forward to

continuing to work with Council on this sensitive and important topic with the foregoing in mind. I am available to respond to questions at this time.