DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (DC) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 1939 entitled "Companion Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency rules establish standards governing Medicaid reimbursement of new companion services to be provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and the conditions of participation for providers. Companion services are intended to provide non-medical assistance and supervision at home or in the community to support a person's goals, desires, and needs as identified in the person's Individual Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools.

The current ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. Neither the current ID/DD Waiver approved by CMS in 2012, nor the prior ID/DD Waiver approved by CMS in 2007, included "Companion Services" as this type of service, formerly known in 2004 as "Adult Companion Services," and then set forth at 29 DCMR § 944, was repealed in 2008 by a final rulemaking published in the *D.C. Register* at 55 DCR 002858 (March 21, 2008). Companion Services are included in the pending amendment to the current ID/DD Waiver, which was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date of the emergency rules.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of companion services. This new service is intended to provide needed services to participants in the ID/DD Waiver. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by lack of access to needed companion services provided pursuant to the pending ID/DD Waiver amendment, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on September 14, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or

on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for one hundred and twenty (120) days from the adoption date, or until January 12, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 1939, COMPANION SERVICES, is added to read as follows:

1939 COMPANION SERVICES

1939.1 The purpose of this section is to establish standards governing the eligibility for Medicaid reimbursement of companion services for people enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish the conditions of participation for providers of companion services.

1939.2 Companion services provide non-medical assistance and supervision to support a person's goals, desires, and needs as identified in the person's Individual Support Plan (ISP), and reflected in his or her Person-Centered Thinking and Discovery tools. Goals may be related to the person's safety, promotion of independence, community integration, and/or retirement.

1939.3 To be eligible for Medicaid reimbursement of companion services, the services shall be identified in the person's ISP, Plan of Care and Summary of Supports for each person enrolled in the Waiver, and each person shall:

(a) Demonstrate a need for non-medical support and supervision at home or in the community; and

(b) Have the service recommended by the person's support team, after having considered the appropriateness of other waiver services and the staffing ratio, if any, in the person's home.

1939.4 Companion services may be provided in a person's home or in the community.

1939.5 To be eligible for Medicaid reimbursement, companion services cannot be provided at the same time as In-Home Supports, Periodic Supported Living,

Personal Care Services, Respite, Host Home, and/or Behavioral Supports Non-Professional.

1939.6 To be eligible for Medicaid reimbursement, companion services may be provided outside of regular Monday to Friday daytime hours when supervision or other non-medical support is necessary to ensure the person's safety; provided, however, that companion services may not be used outside of regular Monday to Friday daytime hours in combination with Residential Habilitation or 24-Hour Supported Living or 24-Hour Supported Living with Transportation Services.

1939.7 To be eligible for Medicaid reimbursement, companion services shall not:

(a) Exceed eight (8) hours per twenty-four (24) hour day;

(b) Exceed forty (40) hours per week when used with Residential Habilitation, 24-Hour Supported Living, and 24-Hour Supported Living with Transportation Services, or when used in combination with Personal Care Services or any other Waiver day or vocational support services, including but not limited to Day Habilitation, Employment Readiness, Supported Employment, Small Group Supported Employment, or Individualized Day Supports as part of a person's traditional Monday to Friday day/vocational programming time; and

(c) Include the provider/employee's transportation time to or from the person's home, or the provider employee's break time.

1939. 8 In order to be reimbursed by Medicaid, companion services may be provided in a residential setting at the same ratio as is required of a direct support professional for that setting.

1939.9 In order to be reimbursed by Medicaid, each provider of companion services shall:

(a) Be a Waiver provider agency;

(b) Be certified by the Department on Disability Services (DDS) as a Companion Provider Agency per the DDS Provider Certification Review (PCR) Policy;

(c) Provide verification of passing the DDS PCR for in-home support, supported living, or respite services for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the

provider was enrolled as a waiver provider in the District of Columbia if applicable; and

(d) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1939.10 To be eligible for Medicaid reimbursement, the provider shall:

(a) Use the DDS-approved Person-Centered Thinking and Discovery tools to develop a support plan, based upon what has been identified as important to and for the person. For people who receive companion services during waking hours, this should include a flexible list of proposed leisure and recreational activities at home and in the community, based upon the person's interests. The support plan must be completed within first week of service, and reviewed and revised quarterly, or more frequently, as needed; and

(b) Participate in the person's support team meeting, at the person's preference.

1939.11 In order to be eligible for Medicaid reimbursement each provider/ employee rendering companion services shall:

(a) Be at least eighteen (18) years of age;

(b) Be acceptable to the person for whom they are providing supports;

(c) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;

(d) Complete competency-based training in:

(1) Communication with people with intellectual disabilities;

(2) Infection control procedures consistent with the requirement of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 C.F.R. § 1910.1030; and

(3) Emergency procedures; and incident management;

(e) Possess a high school diploma, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;

(f) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;

(g) Have the ability to communicate with the person to whom services are provided;

(h) Be able to read, write, and speak the English language;

(i) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and

(j) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).

1939.12 An employee may not provide Medicaid reimbursable companion services to a person if he or she is the person's relative; legal guardian; or is otherwise legally responsible for the person.

1939.13 Medicaid reimbursable companion services shall be authorized in accordance with the following provider requirements:

(a) The DDS shall provide a written service authorization before the commencement of services;

(b) The service name and provider delivering services shall be identified in the ISP;

(c) The ISP shall document the amount and frequency of services to be received; and

(d) The provider shall submit each quarterly review to the person's DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1939.14 In order to be eligible for Medicaid reimbursement each provider of companion services shall comply with Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, except that progress notes as described in § 1909.2(m) shall be kept on a daily basis.

1939.15 In order to be eligible for Medicaid reimbursement each provider shall comply with the requirements under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1939.16 Medicaid reimbursable companion services shall be billed at the unit rate. Companion services shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Medicaid reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

(a) The reimbursement rate for companion provided at a one-to-one ratio shall be eighteen dollars and eighty-eight cents ($18.88) per hour billable in units of fifteen (15) minutes at a unit rate of four dollars and seventy-two cents ($4.72).

(b) Companion services provided in a small group of no more than one-to-three shall be reimbursed at eleven dollars and sixty four cents ($11.64) per person, per hour, billable at a unit rate of two dollars and ninety-one cents ($2.91).

Comments on these emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900S, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.