

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 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. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) 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 an amendment to Section 1910 (Personal Care Services) of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of personal care services provided to participants in the Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Personal care services assist waiver participants with activities of daily living including bathing, toileting, transferring, dressing, eating, feeding, and assisting with incontinence. These rules amend the previously published rules by: (1) specifying the service authorization requirements for personal care services; (2) establishing service utilization and monitoring criteria by identifying documents to be maintained for audit reviews; (3) establishing plan of care development criteria; and (4) establishing criteria by which a home care agency may subcontract with a staffing agency to provide personal care services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of personal care services. The ID/DD Waiver serves some of the District's most vulnerable residents. Many of the persons enrolled in the ID/DD Waiver receive personal care services. Under current service utilization and delivery requirements there are insufficient safeguards in place to ascertain that providers are taking the necessary steps to ensure that beneficiaries are receiving high quality and appropriate services from qualified providers. In addition, specifying criteria and administrative procedures for providers in the event that a person chooses to transfer to another provider ensures that there will be no lapse in care. Therefore, in order to ensure that the ID/DD Waiver enrollees' health, safety, and welfare are not threatened by the lapse in access to personal care services under the waiver, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on February 4, 2014, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until June 3, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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*.

Section 1910, PERSONAL CARE SERVICES, of Chapter 19, HOME AND COMMUNITY-BASED WAIVER SERVICES FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29, PUBLIC WELFARE, of the DCMR, is amended as follows:

1910 **PERSONAL CARE SERVICES**

- 1910.1 The purpose of this Section is to establish standards governing Medicaid eligibility for personal care services for individuals enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers of personal care services.
- 1910.2 Personal care services are the activities that assist the person with activities of daily living including bathing, toileting, transferring, dressing, eating, feeding, and assisting with incontinence.
- 1910.3 To be eligible for Medicaid reimbursement for personal care services under the ID/DD Waiver, the person shall:
- (a) Exhaust all available personal care services provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving personal care services under the ID/DD Waiver;
 - (b) Be unable to independently perform one or more activities of daily living for which personal care services are needed;
 - (c) Be in receipt of a written order for PCA services by a physician in accordance with Subsections 5006.1 and 5006.2 of Title 29 DCMR; and
 - (d) Be authorized for personal care services based on a comprehensive assessment of the person's support needs and risk screening using the DDA Level of Need Assessment and Screening Tool (LON), or its successor, and reflected in the person's Individual Support Plan (ISP) and Plan of Care.
- 1910.4 Persons eligible for personal care services under the ID/DD Waiver shall be exempt from the requirement to obtain an authorization for services from DHCF or its agent under Section 5003 of Chapter 50 of Title 29 of the DCMR.

- 1910.5 Personal care services eligible for Medicaid reimbursement shall include, but not be limited to the activities identified under Subsection 5006.7 of Chapter 50 of Title 29 of the DCMR.
- 1910.6 Medicaid reimbursable personal care services shall not include:
- (a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);
 - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary and shopping for items not used by the person receiving services ; and
 - (c) Money management.
- 1910.7 Personal care services delivered by a personal care aide shall be supervised by a registered nurse. The registered nurse shall review the person's health management care plan, if available, in order to make the initial assessment for personal care services
- 1910.8 The registered nurse shall conduct an initial assessment with the person enrolled in the ID/DD Waiver within seventy two (72) hours of receiving authorization for personal care services from DDS.
- 1910.9 A plan of care for the delivery of personal care services shall be developed in accordance with Subsection 5005.2 of Chapter 50 of Title 29 of the DCMR.
- 1910.10 In order to be eligible for Medicaid reimbursement for personal care services, the provider shall review the plan of care at least once every sixty (60) days, and shall update or modify the plan of care as needed. The registered nurse shall notify the person's physician of any significant change in the beneficiary's condition.
- 1910.11 If an update or modification to the plan of care requires any change in the frequency, duration, or scope of personal care services provided to the person enrolled in the ID/DD Waiver, the provider shall obtain an updated authorization for personal care services from DDS in accordance with § 1910.3(d).
- 1910.12 To be eligible for Medicaid reimbursement for personal care services, a provider shall:
- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24,

1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.* (2005 Repl. & 2012 Supp.)), and implementing rules;

- (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891 (e) of the Social Security Act and 42 CFR § 484; and
- (c) Comply with the requirements under Section 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

- 1910.13 A home care agency shall meet the requirements described under Section 5008 (Staffing) and Section 5010 (Staffing Agencies) of Chapter 50 of Title 29 of the DCMR.
- 1910.14 In order to be eligible for Medicaid reimbursement, each direct support professional (DSP) including personal care aides providing personal care services shall comply with Section 1906 (Requirements of Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1910.15 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1910.16 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR, and Section 5013 of Chapter 50 of Title 29 of the DCMR.
- 1910.17 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall comply with the denial, suspension, reduction or termination of services requirements under Section 5007 of Chapter 50 of Title 29 of the DCMR.
- 1910.18 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall develop contingency staffing plans to provide coverage for a person receiving personal care services if the assigned personal care aide cannot provide the service or is terminated by the provider.
- 1910.19 If person receiving personal care services seeks to change providers, the DDS service coordinator shall assist the person in selecting a new provider. In order to be eligible for Medicaid reimbursement for personal care services, the current provider shall continue to provide services until the transfer to the new provider has been completed.

- 1910.20 Personal care services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement that includes personal care as part of the reimbursed service.
- 1910.21 Personal care services may be provided by family members other than the person's spouse, parent, guardian, or any other individual legally responsible for the person receiving services who ordinarily would perform or be responsible for performing services on the person's behalf.
- 1910.22 Family members who provide personal care services, with the exception of those listed under Subsection 1910.21, shall meet the requirements for direct support professionals referenced under Subsection 1910.14.
- 1910.23 In order to be eligible for Medicaid reimbursement, personal care services shall not be provided concurrently with the following ID/DD Waiver services:
 - (a) Residential Habilitation;
 - (b) Supported Living;
 - (c) Host Home; and
 - (d) Shared Living.
- 1910.24 The Medicaid reimbursement rate for personal care services shall be four dollars and eight cents (\$4.08) per fifteen (15) minutes and sixteen dollars and thirty two cents (\$16.32) per hour for Personal Care services.

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-9115, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.