## DEPARTMENT OF HEALTH CARE FINANCE

## NOTICE OF SECOND 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. 744; D.C. Official Code § 1-307.02 (2012 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 an amendment to Section 1915, entitled "Host Home 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 and proposed rules establish standards governing reimbursement of host home services provided to participants in the Home and Community-Based Services Waiver 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. Host home without transportation services provide essential supports whereby a homeowner assists the person with multiple activities, including activities of daily living, to enable him/her to live successfully in the community.

A Notice of Emergency and Proposed rulemaking was published in the *D.C. Register* on October 3, 2014 at 61 DCR 10377, amending the previously published final rules by increasing the rates, using the approved rate methodology, to reflect the increase in the D.C. Living Wage to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq*. (2012 Repl.)). Comments were received and these emergency and proposed rules revise the previously published emergency and proposed rules by: (1) updating requirements for the health care monitoring of persons in host homes by a registered nurse to occur at least every one hundred twenty days (120) for a person not on medication; and (2) clarifying requirements about weekly progress notes.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of host home without transportation services. The ID/DD Waiver serves some of the District's most vulnerable residents. The rate increase is necessary to ensure a stable workforce and provider base. In order to ensure that the residents' health, safety, and welfare are not threatened, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on January 7, 2015 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until May 7, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF 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 1915, HOST HOME, of Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended to read as follows:**

**1915 HOST HOME WITHOUT TRANSPORTATION SERVICES**

1915.1 The purpose of this section is to establish standards governing Medicaid eligibility for host home without transportation services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver), and to establish conditions of participation for providers of host home services.

1915.2 Host home without transportation services enable a person to retain or improve skills related to: health; activities of daily living; money management; community mobility; recreation; cooking; shopping; use of community resources; community safety; and to develop other adaptive skills needed to live in the community.

1915.3 To be eligible for Medicaid reimbursement of host home without transportation services, each person shall demonstrate a need for support for up to twenty-four (24) hours per day, and the services shall be:

(a) Provided in a private home, referred to as "host home", which may be leased or owned by the principal care provider; and

(b) Identified as a need in the person's Individual Support Plan (ISP) and Plan of Care.

1915.4 The total number of persons living in the host home (including those served in the ID/DD Waiver), who are unrelated to the principal care provider cannot exceed three (3).

1915.5 In order to be reimbursed by Medicaid, the principal care provider shall:

(a) Use the Department of Disabilities Services ("DDS") approved person-centered thinking tools to develop an assessment that includes what is important to and for the person, within the first month of the person residing in the home;

(b) Participate in the development of the ISP and Plan of Care to ensure the ISP goals are clearly defined;

(c) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are included in the current ISP;

(d) Develop a support plan with measurable outcomes using the information from the DDS approved person-centered thinking tools, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving their goals; and

(e) Review the person's ISP and Plan of Care goals, objectives, and activities at least quarterly, and more often as necessary, and submit quarterly reports to the person, family, as appropriate, guardian, and DDS Service Coordinator in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1915.6 In order to be reimbursed by Medicaid, the principal care provider shall provide personal supports and assistance to the person in the host home. These services shall include, but are not limited to, the following:

(a) Room and board (not included in the ID/DD Waiver reimbursement rate);

(b) Assistance with eating and food preparation;

(c) Assistance with personal hygiene;

(d) Assistance with dressing;

(e) Assistance with monitoring the person's health and physical condition;

(f) Assistance with the administration of medication;

(g) Assistance with communication between the person and other health care providers;

(h) Assistance with interpersonal and social skills;

(i) Assistance with household chores;

(j) Assistance with mobility;

(k) Assistance with motor and perceptual skills;

(l) Assistance with problem-solving and decision-making;

(m) Maintenance of medical records;

(n) Maintenance of financial records;

(o) Assistance with attending health care appointments, by the coordination of transportation to and from the person's appointments;

(p) Assistance with planning and attending events;

(q) Habilitative support in activities of daily living and/or therapeutic goals and objectives as described in the ISP and Plan of Care;

(r) Assistance with enhancing the person's opportunities for social, recreational, and religious activities utilizing community resources; and

(s) Assistance with ensuring that the person's adaptive equipment is appropriate and functioning.

1915.7 In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall coordinate the delivery of professional services to each person residing in a host home that may include, but are not limited to, the following disciplines or services:

(a) Medical Care;

(b) Dentistry;

(c) Education;

(d) Nutrition;

(e) Nursing;

(f) Occupational therapy;

(g) Physical therapy;

(h) Behavioral support;

(i) Community supports;

(j) Social work;

(k) Speech, hearing and language therapy; and

(l) Recreation.

1915.8 In order to be reimbursed by Medicaid, each ID/DD Waiver provider that oversees a person's host home placement shall:

(a) Receive and review packets submitted by DDS requesting development of a host home for a particular applicant;

(b) Respond to inquiries for host home development in a timely manner;

(c) Recruit a principal care provider to deliver host home services;

(d) Identify and develop on-going relationships with local medical professionals (*e.g.*, dentist, physician, psychiatrist, psychologist, occupational therapist, physical therapist, etc.);

(e) Coordinate a minimum of one (1) visit by the person to the prospective principal care provider's home, one of which may be an overnight stay;

(f) Coordinate transportation with the DDS Service Coordinator for visits to the prospective host home of the principal care provider;

(g) Participate in a person centered planning process to develop the person's ISP and Plan of Care;

(h) Arrange for essential supports, including training, supplies and equipment to be in place prior to the person's move into a host home setting;

(i) Arrange for non-essential, but recommended and necessary supports to be put into place subsequent to a person's move into a host home setting; and

(j) Provide information as needed to the person, the person's family or authorized representative, support team, DDS Service Coordinator, and the principal care provider.

1915.9 In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall:

(a) Coordinate the use of transportation for each person residing in a host home to their day programs, places of employment, and/or community outings as needed;

(b) Coordinate general support monitoring at least twice per month to review conditions in the host home, the person's health status, implementation of the ISP, update activity schedules, review medical and other appointments, and draft progress notes;

(c) Coordinate health care monitoring for each person residing in the host homes including, at a minimum, monitoring by a registered nurse at least

every one hundred twenty (120) days for persons with no medications, and at least monthly for persons on medications; and complete monthly progress notes during each visit, as appropriate;

(d) Provide respite to the principal care provider for up to a total of fourteen (14) days per year. If respite care and emergency support is provided in the host home, Medicaid reimbursement payments for host home services shall continue for fourteen (14) days. If respite is provided in another location, the host home services percentage of the reimbursement rate shall be paid to the ID/DD Waiver provider;

(e) Provide emergency support to the person enrolled in the ID/DD Waiver, in the event that an emergency renders a principal care provider unable to provide supports;

(f) Coordinate compliance with DDS policies and procedures;

(g) Provide training to ensure that the principal care provider is knowledgeable about DDS policies and procedures;

(h) Ensure that the principal care provider is trained on medication administration; and

(i) Accompany the person to annual review court hearings and provide reports to be utilized during court hearings.

1915.10 In order to be reimbursed by Medicaid, the principal care provider may be a family member who is not a parent, spouse or other legally responsible relative of the person enrolled in the ID/DD Waiver.

1915.11 In order to be reimbursed by Medicaid, the host home residence and the ID/DD Waiver provider shall meet the DDS Certification Standards as set forth in the Human Care Agreement between the principal care provider, the ID/DD Waiver provider, and DDS, if applicable.

1915.12 In order to be reimbursed by Medicaid, host home without transportation services shall be administered by supported living service providers or residential habilitation service providers, which in this section shall be referred to as the ID/DD Waiver provider.

1915.13 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home services without transportation shall demonstrate verification of passing the DDS Provider Certification Review with experience providing In-Home Supports or Respite for at least three (3) years, unless waived by a designated DDA staff.

1915.14 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall agree to the following:

(a) Be a member of the person's support team;

(b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment) of Chapter 19 of Title 29 of the DCMR;

(c) Maintain a signed, current Human Care Agreement with DDS when deemed necessary by DDS;

(d) Demonstrate that the owner(s)/operator(s) has at least five (5) years of experience in a leadership role with a residential provider that support adults with an intellectual disability, unless waived by the DDS Director or Deputy Director or their designee.

1915.15 In order to be reimbursed by Medicaid, each host home residence and supporting ID/DD Waiver provider located out-of-state shall be licensed and/or certified in accordance with the host state's laws and regulations and/or consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state host home and ID/DD Waiver provider shall comply with the following additional requirements:

(a) Remain in good standing in the jurisdiction where the program is located;

(b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action to DDS;

(c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and

(d) Successfully meet the certification review requirements of DDS.

1915.16 Each principal care provider and direct support professional (DSP) providing host home without transportation services shall meet all of the requirements in Section 1906 (Requirements for direct support professionals) of Chapter 19 of Title 29 of DCMR.

1915.17 In order to be reimbursed by Medicaid, each principal care provider providing host home services shall agree to cooperate and attend mandatory training sessions provided by DDS and the ID/DD Waiver provider, and to allow DDS Service Coordinator and other DDS employees' reasonable access to the Host Home.

1915.18 In order to be reimbursed by Medicaid, services shall be authorized for reimbursement in accordance with the following provider requirements:

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

(b) The provider shall conduct an assessment and develop a host home assessment plan with training goals and techniques that will assist the principal care provider, within the first thirty (30) days of service delivery;

(c) The service name and the ID/DD Waiver provider delivering services shall be identified in the ISP and Plan of Care;

(d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and

(e) Services shall not conflict with the service limitations described under Subsection 1915.25.

1915.19 Each ID/DD Waiver provider of host home without transportation services shall maintain the following documents for monitoring and audit reviews:

(a) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR;

(b) A copy of the person's most recent DDS approved ISP and Plan of Care;

(c) A current written staffing plan, if In-Home Supports are needed;

(d) A written explanation of staffing responsibilities when the principal care provider is unavailable to provide support to the person enrolled in the ID/DD Waiver;

(e) Current financial records of expenditures of public and private funds for each person;

(f) The records of any nursing care provided pursuant to a physician ordered protocol and procedure, charting, and other supports provided in accordance with a physician's order relating to the development and management of the Health Management Care Plan.

(g) The progress notes written by the principal care provider on a weekly basis and archived at the ID/DD Waiver provider's central office, which contain the following information:

(1) The progress in meeting each goal in the ISP;

(2) Any unusual health or behavioral events or change in status;

(3) Notes or other documentation of all community activities in which the person participated, including a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?". DDS encourages the use of the Learning Log, a Person-Centered Thinking tool, which may be used to record detailed information about a person's activities and what was learned about the person through his/her experience, and any matter requiring follow-up on the part of the service provider or DDS.

1915.20 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall comply with Sections 1908 (Reporting Requirements) and 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1915.21 Host home without transportation services shall not be reimbursed by Medicaid if they are billed for the same day of service that the following ID/DD Waiver services are provided to the person:

(a) Supported Living;

(b) Residential Habilitation;

(c) Personal Care;

(d) Skilled Nursing;

(e) Environmental Accessibility;

(f) Transportation;

(g) Respite;

(h) Personal Emergency Response System (PERS); and

(i) In-Home Supports.

1915.22 In order to be eligible for Medicaid reimbursement, host home without transportation services shall not include a day when the person is hospitalized, on vacation, or other days during which the person is not residing at the host home, with the exception of days when the person is on vacation with the principal care provider.

1915.23 In order to be eligible for Medicaid reimbursement, host home without transportation services shall not include a day when the person is not residing at

the host home, with the exception of days when the person is temporarily residing in a hotel or other facility due to an emergency situation.

1915.24 The following individuals shall not be authorized to enroll as an ID/DD Waiver provider of host home without transportation services for the person:

(a) The person's legal guardian;

(b) The person's parent; or

(c) The person's spouse.

1915.25 Reimbursement for host home without transportation services shall not include:

(a) Cost of room and board;

(b) Cost of facility maintenance, upkeep, and improvement;

(c) Activities for which payment is made by a source other than Medicaid; and

(d) Time when the person is in school or employed.

1915.26 The reimbursement rate for host home without transportation services is a daily inclusive rate based on the person's acuity level. The acuity level shall be determined by DDS based on the results of the Level of Need Assessment and Screening Tool or as documented in the person's ISP.

1915.27 The basic support rate that Medicaid will reimburse shall be one hundred forty-two dollars ($142.00) per day; the moderate support rate shall be one hundred sixty-one dollars ($161.00) per day; and the intensive support rate shall be two hundred ten dollars ($210.00) per day. The host home without transportation services reimbursement rate shall include:

(a) All training for host home workers;

(b) Programmatic supplies;

(c) Oral/topical medication management;

(d) General and administrative fees for ID/DD Waiver services;

(e) Relief of the caregiver and emergency support;

(f) All direct support costs based on the needs of the person; and

(g) Additional supports provided by a DSP for up to twenty (20) hours per week.

1915.28 In the event that additional DSP supports are requested, the ID/DD Waiver provider shall submit to the DDS Service Coordinator, the following documents:

(a) A written justification; and

(b) A summary of the responsibilities of the DSP who is scheduled to provide the additional supports.

1915.29 Persons with extraordinary needs may be eligible to receive a specialized reimbursement rate not to exceed five hundred dollars ($500.00) per day, subject to DDS approval.

1915.30 Forty percent (40%) to fifty percent (50%) of the daily reimbursement rate shall be paid to the host home by the ID/DD Waiver provider for support services. The remaining fifty percent (50%) to sixty percent (60%) of the daily reimbursement rate shall be retained by the ID/DD Waiver provider for training, additional in-home support services based on the needs of the person, medication management, general and administrative fees for ID/DD Waiver services, general supervision, and relief and emergency coverage. The actual percentage of the daily reimbursement rate allocated between the host home and the ID/DD Waiver provider shall be negotiated between the parties based on the specific support needs of the person.

1915.31 The person receiving host home services shall contribute an amount based on their Social Security benefits to the principal care provider to pay towards their room and board expenses.

**Section 1999, DEFINITIONS, is amended by adding the following:**

**Homeowner -** A person(s) who is (are) the primary owner or renter of a residential property and who provides supports to assist the person enrolled in the ID/DD Waiver.

**Host Home -** The residence owned or leased by the homeowner or principal care provider who provides host home services to the person enrolled in the ID/DD Waiver.

**Principal care provider-** The person who owns and/or leases the host home and provides host home services and supports to the person enrolled in the ID/DD Waiver.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Acting Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor, Washington, D.C. 20001, via telephone on (202) 442-8742, via 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 rule may be obtained from the above address.