DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FOURTH 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 (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 an amendment to Section 1916, entitled "In-Home Supports," 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 fourth emergency and proposed rules establish standards governing reimbursement of in-home supports 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 (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, for a five (5) year period beginning November 20, 2012. An amendment to the ID/DD Waiver 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 for the emergency rulemaking.

In-home supports services are essential to ensuring that persons enrolled in the ID/DD Waiver continue to receive services and supports in the comfort of their own homes or family homes. The current Notice of Final Rulemaking for 29 DCMR § 1916 (In-Home Supports Services) was published in the *D.C. Register* on March 21, 2014, at 61 DCR 002464. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 3, 2014, at 61 DCR 010388, 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.)). DHCF received and considered comments in response to the first emergency and proposed rulemaking and promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on March 20, 2015, at 62 DCR 003436. The second emergency and proposed rules amended the previously published emergency and proposed rules by: (1) increasing the rates, using the approved rate methodology, to reflect the anticipated increase in the D.C. Living Wage for 2015 to comply with the Living Wage Act of 2006; (2) changing language in Subsection 1916.8(a)(1) to clarify that providers of in-home supports services shall "provide evidence" of the community activities a person attends; (3) clarifying that daily progress notes should provide information to incoming staff about any follow-up needed at end of a shift; (4) clarifying language regarding the maximum daily hours

and calendar year timeframe for in-home supports; and (5) adding a new subsection to provide clarity on rates for in-home supports services if they are extended in the event of a temporary emergency. The second emergency and proposed rulemaking was adopted on January 7, 2015, became effective on that date, and remained in effect until May 7, 2015. No comments were received, and DHCF then promulgated a Notice of Third Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on May 15, 2015, at 62 DCR 006089. The third emergency and proposed rules further amended the previously published second emergency and proposed rules by: (1) clarifying words and/or phrases to reflect more person-centered language and to simplify interpretation of the rule; (2) clarifying service definitions; (3) requiring the use of Department of Disability Services (DDS)-approved person-centered thinking and discovery tools; (4) requiring that supports are aimed at skill building and include opportunities for community integration and competitive integrated employment; (5) adding requirements for the In-Home Supports Plan; (6) removing references to Shared Living services; and (7) adding that n-home supports can be provided with, but not at the same time as, Companion services. The third emergency and proposed rulemaking was adopted on May 4, 2015, became effective on that date, and remained in effect until September 1, 2015. DHCF did not receive any comments in response to the third emergency and proposed rulemaking, but is promulgating this Notice of Fourth Emergency and Proposed Rulemaking to continue the changes reflected in the third notice of emergency and proposed rulemaking described above.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of in-home support services. The ID/DD Waiver serves some of the District's most vulnerable residents. The cumulative changes include a rate increase that is necessary to ensure a stable workforce and provider base. In order to ensure that the person's 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 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 not longer than 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*.

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*.

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:

Section 1916, IN-HOME SUPPORTS SERVICES, is deleted in its entirety and amended to read as follows:

1916 IN-HOME SUPPORTS SERVICES

1916.1 The purpose of this section is to establish standards governing Medicaid eligibility for in-home supports services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver), and to establish conditions of participation for providers of these services.

1916.2 In-home supports are services provided to people enrolled in the Waiver who have an assessed need for assistance with acquisition, retention or improvement in skills related to activities of daily living that are necessary to enable the person to reside successfully at home in their community and participate in community activities based upon what is important to and for the person as documented in his or her Individual Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools. Services may be provided to people in the home or community, with the place of residence as the primary setting.

1916.3 To be eligible for reimbursement, in-home supports services shall be:

(a) Included in a person's ISP and Plan of Care and related to the person's ISP goals;

(b) Habilitative in nature; and

(c) Provided to a person living independently or with family or friends and not receiving other residential supports such as supported living, supported living with transportation, residential habilitation, or host home support services.

1916.4 In-home supports services include a combination of hands-on care, habilitative supports, skill development and assistance with activities of daily living. Supports provided shall be aimed at teaching the person to increase his or her skills and self-reliance.

1916.5 In-home supports eligible for reimbursement shall include the following:

(a) Training and support in activities of daily living and independent living skills;

(b) Support to enhance opportunities for meaningful adult activities and skills acquisition that support community integration and a person's independence, including management of financial and personal affairs and awareness of health and safety precaution;

(c) Support to enhance opportunities for community exploration aimed at discovery of new and emerging interests and preferences, including

activities aimed at supporting the person to have one or more new relationships;

(d) Support to build community membership;

(e) Training on, and assistance in the monitoring of health, nutrition, and physical wellness;

(f) Implementation of a home therapy program under the direction of a licensed clinician;

(g) Training and support to coordinate or manage tasks outlined in the Health Care Management Plan, if applicable;

(h) Assistance in performing personal care, household, and homemaking tasks that are specific to the needs of the person, except that this may not comprise the entirety of the service;

(i) Assistance with developing the skills necessary to reduce or eliminate behavioral episodes by implementing a Behavioral Support Plan (BSP) or positive strategies;

(j) Opportunities for the person to seek employment and vocational supports to work in the community in a competitive and integrated setting;

(k) Assistance with the acquisition of new skills or maintenance of existing skills based on individualized preferences and goals identified in the In-Home Supports Plan, ISP, and Plan of Care; and

(l) Coordinating transportation to participate in community events consistent with this service.

1916.5 Each provider rendering in-home supports services shall:

(a) Be a Waiver provider agency; and

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

1916.6 Each Direct Support Professional (DSP) rendering in-home supports services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1916.7 In-home support services shall be authorized in accordance with the following provider requirements:

(a) The Department on Disability Services (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 and Plan of Care;

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

(d) The In-Home Supports Plan, ISP, and Plan of Care shall be submitted to and authorized by DDS annually or as needed; and

(e) 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.

1916.8 Each provider shall comply with the requirements under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR, Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR and Section 1938 (HCBS Setting Requirements) except that the progress notes as described in Subsection 1909.2(m) shall be maintained on a per visit basis.

1916.9 Each provider of Medicaid reimbursable in-home support services shall assist each person in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the person to reside in the community. To accomplish these goals, the provider shall:

(a) Use the DDS-approved person-centered thinking tools and the person's Positive Personal Profile and Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first thirty (30) calendar days of providing services. This assessment shall be reviewed and revised annually or more frequently as needed;

(b) Assist with and actively participate in the development of the person's In-Home Supports Plan, ISP, and Plan of Care, at the person's preference;

(c) Review the person's In-home Supports Plan, ISP and Plan of Care goals, DDS-approved person-centered thinking tools, Positive Personal Profile and Job Search and Community Participation plan, objectives, and activities at least quarterly, and more often as necessary and submit quarterly reports to the person, family or representative, as appropriate, guardian, and the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter or each subsequent quarter

thereafter and 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.

1916.10 An In-Home Supports Plan shall be maintained in the home where services are provided with a copy also maintained at the Provider's main office. The In-Home Supports Plan shall include:

(a) Activities and supports that will be provided during the service, based upon what is important to and important for the person, as identified in the Person Centered Thinking and Discovery tools and reflected in the person's ISP;

(b) A staffing plan and schedule;

(c) A list of licensed non-medical professionals who will be providing services, if applicable; and

(d) Emergency and contingency plans to address potential behavioral, health or emergency events.

1916.11 In-home supports services shall only be provided for up to eight (8) hours per day unless there is a temporary emergency. In the event of a temporary emergency, DDS may authorize up to sixteen (16) hours per day for up to one hundred and eighty (180) days, during the person's ISP year.

1916.12 In the event of a temporary emergency, a written justification for an increase in hours shall be submitted with the In-Home Supports Plan, ISP, and Plan of Care by the provider to DDS. The written justification must include:

(a) An explanation of why no other resource is available;

(b) A description of the temporary emergency;

(c) An explanation of how the additional hours of in-home supports services will support the person's habilitative needs;

(d) A revised copy of the in-home Supports Plan, ISP, and Plan of Care reflecting the increase in habilitative supports to be provided; and

(e) The service authorization from the Medicaid Waiver Supervisor or other Department on Disability Services Administration designated staff.

1916.13 All Direct Support Professionals, including family members, who provide in-home supports services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1916.14 Family members who provide in-home supports services and reside in the same home as the person receiving services may only be paid for in-home support services that are in accordance with the person's ISPs goals.

1916.15 In-home supports services shall not be provided to persons receiving the following residential services:

(a) Host Home;

(b) Residential Habilitation;

(c) Supported Living; and

(d) Supported Living with Transportation.

1916.16 In-home supports services may be used on the same day, or in combination with Medicaid State Plan Personal Care Aide (PCA) services, ID/DD PCA services, and Companion services, provided the services are not rendered at the same time.

1916.17 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.

1916.18 In-home supports services, including those provided in the event of a temporary emergency shall be billed at the unit rate. The reimbursement rate shall be twenty-three dollars and twenty-eight cents ($23.28) per hour, billable in units of fifteen (15) minutes at a rate of five dollars and eight-two cents ($5.82), and 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. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

1916.19 Reimbursement for in-home supports services shall not include:

(a) Room and board costs;

(b) Routine care and general supervision normally provided by the family or unpaid individuals who provide supports, or for services furnished to a minor by the child's parent or step-parent or by a person's spouse;

(c) Services or costs for which payment is made by a source other than Medicaid;

(d) Travel or training of travel skills to Supportive Employment, Day Habilitation, Individualized Day Supports, or Employment Readiness; and

(e) Costs associated with the DSP engaging in community activities with the people they support.

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

Medical Professionals- Individuals who are trained clinicians and deliver medical services.

Temporary Emergency – A sudden change in the medical condition or behavioral status of a person receiving in-home supports services or their caregiver that warrants additional hours of in-home supports services.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor South, 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.