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. & 2014 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 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 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 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 20th, 2012. In-home supports services are essential to ensuring that persons enrolled in the Waiver continue to receive services and supports in the comfort of their own homes or family homes. These rules amend 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.)).

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 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 September 12, 2014 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until January 10, 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 1916, 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 DCMR 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 a person to allow him or her to reside successfully at home. In-home supports include activities in which the person is assisted by a Direct Support Professional (DSP) to achieve the goals set forth in the Individual Support Plan (ISP). Services may be provided 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 Individual Support Plan (ISP) and Plan of Care;

(b) Habilitative in nature; and

(c) Provided to a person living in one of the following types of residences:

(1) The person's own home;

(2) The person's family home; or,

(3) The home of an unpaid caregiver.

1916.4 In-home supports services include a combination of hands-on care, habilitative supports, and assistance with activities of daily living. In-home supports services eligible for reimbursement shall include the following:

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

(b) Training and support to enhance community integration by utilizing community resources, including management of financial and personal affairs and awareness of health and safety precaution;

(c) Training on, and assistance in the monitoring of health, nutrition, and physical condition;

(d) Training and support to coordinate or manage tasks outlined in the Health Management Care Plan;

(e) Assistance in performing personal care, household, and homemaking tasks that are specific to the needs of the person;

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

(g) 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

(h) 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 of the 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; 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 of in-home supports services shall maintain the following documents for monitoring and audit reviews:

(a) The daily progress notes described in Section 1909 of Chapter 19 of Title 29 DCMR, which shall include the following:

(1) A listing of all community activities attended by the person and a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?";

(2) A listing of all habilitative supports provided in the home and a response to the following questions: "What supports worked well for the person?" and "What supports did not work well for the person?";

(3) Any special events attended, and any situation or event in the home that requires follow-up during the delivery of the in-home supports services; and

(4) The dates and times services are delivered.

(b) The documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1916.9 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.

1916.10 Each DSP providing 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.

1916.11 Each DSP providing in-home supports services shall:

(a) Be a member of the person's Support Team;

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

(c) Record daily progress notes; and

(d) Review the person's In-home Supports Plan, ISP, and Plan of Care initially and at least quarterly, and more often as needed once the DSP initiates services.

1916.12 In-home supports services shall only be provided for eight (8) hours per day. DDS may authorize an increase in hours, for an additional eight (8) hours per day up to one hundred and eighty (180) days, in the event of a temporary emergency.

1916.13 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.

1916.14 Payment for in-home supports services shall not be made for routine care and supervision that is normally provided by the family, legal guardian, or spouse.

1916.15 Family members who provide in-home supports services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1916.16 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.

1916.17 In-home supports services shall not be provided to persons receiving the following residential services:

(a) Host Home;

(b) Shared Living;

(c) Residential Habilitation; and

(d) Supported Living.

1916.18 In-home supports services may be used in combination with Medicaid State Plan Personal Care Aide (PCA) services or ID/DD PCA services, provided the services are not rendered at the same time.

1916.19 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.

1916.20 In-home supports services shall be billed at the unit rate. The reimbursement rate shall be twenty-two dollars and seventy-two cents ($22.72) per hour billable in units of fifteen (15) minutes at a rate of five dollars and sixty-eight cents ($5.68), 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.

1916.21 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;

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

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

(e) Costs associated with the DSP engaging in community activities with the individuals.

Section 1999 (DEFINITIONS) is amended by adding the following:

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

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.