

## 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 1913, entitled “One-Time Transitional 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 for one-time transitional 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 (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. The corresponding 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.

One-time transitional services are one-time, non-recurring start-up expenses for persons in the ID/DD Waiver who are transitioning from an institution or provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for their own living expenses. The current Notice of Final Rulemaking for 29 DCMR § 1913 (One-Time Transitional Services) was published in the *D.C. Register* on February 28, 2014, at 61 DCR 001647. These rules amend the previously published final rules by: (1) specifying requirements for lease agreements; (2) clarifying that furniture purchases must match the person’s preference; (3) eliminating the requirement that providers comply with Section 1909 of Chapter 19 of Title 29 DCMR; (4) eliminating the requirement that providers comply with Section 1908 of Chapter 19 or Title 29 DCMR; and (5) adding a requirement for reporting to the Department on Disability Services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of one-time transitional services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the person’s health, safety, and welfare are not threatened by lack of access to one-time transitional services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on August 6, 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 December 4, 2015, 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 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 1913, ONE-TIME TRANSITIONAL SERVICES, is deleted in its entirety and amended to read as follows:**

**1913 ONE-TIME TRANSITIONAL SERVICES**

- 1913.1 This section establishes the conditions of participation for Medicaid providers enumerated in § 1913.6 (Medicaid Providers) to provide one-time transitional (OTT) services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1913.2 OTT services are one-time, non-recurring start-up expenses for persons enrolled in the ID/DD Waiver who are transitioning from an institution or provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses.
- 1913.3 In order to be eligible for reimbursement, each Medicaid provider shall obtain prior authorization from the Department on Disability Services (DDS) before providing OTT services. The request for prior authorization shall include a written justification that demonstrates how the services will aid the person in transitioning to their own living arrangements; their ability to pay for the expenses; or their inability to obtain the services from other sources.
- 1913.4 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's Individual Support Plan (ISP) and Plan of Care:
- (a) The date when OTT funds were provided; and
  - (b) A description and amount of each expense as described in § 1913.5.

- 1913.5 Medicaid reimbursable OTT services may include the following:
- (a) Security deposits that are required to obtain a lease for an apartment or home. In order to qualify for OTT services, the lease or other written residency agreement shall include all of the responsibilities and protections from eviction that apply under the jurisdiction's landlord-tenant laws.
  - (b) Essential household furnishings, which reflect the person's preferences, and other expenses required to occupy or maintain an apartment or home;
  - (c) Start-up fees or deposits for utility or service access, including telephone, gas, electricity, and water;
  - (d) Services necessary for the person's health, safety and wellbeing, such as pest eradication and one-time cleaning prior to occupancy;
  - (e) Home accessibility adaptations including carpeting, one-time general home repair, including roof repair, painting and fence repair; and
  - (f) Moving expenses related to transporting personal belongings.
- 1913.6 Medicaid reimbursable OTT services shall be provided by the following types of providers who possess a human care agreement with DDS:
- (a) A provider of supported living services as described under Section 1934 of Chapter 19 of Title 29 DCMR; and
  - (b) A provider of residential habilitation services as described under Section 1929 of Chapter 19 of Title 29 DMCR.
- 1913.7 Each provider of Medicaid reimbursable OTT services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1913.8 Each provider of Medicaid reimbursable OTT services shall maintain the following documents for monitoring and audit reviews: Copy of receipts documenting the date, item, amount expended, and any related warranty.
- 1913.9 Each provider of Medicaid reimbursable OTT services shall submit a written report, thirty (30) days after the service has been completed, that includes an itemized list of all expenses tied to the person's ISP goal, referencing the receipts provided, and indicating the process used to support the person to select items and set up their new home.

- 1913.10 Each provider of Medicaid reimbursable OTT services shall comply with the requirements described under Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR, as applicable.
- 1913.11 Medicaid reimbursement for OTT services shall not be available for:
- (a) Monthly rental or mortgage expenses;
  - (b) Food;
  - (c) Regular utility charges;
  - (d) Household appliances or items that are intended for purely recreational purposes (*e.g.*, television, cable or satellite installation for television programming, stereo or other audio equipment, or computerized gaming equipment);
  - (e) Environmental accessibility adaptation services that are of direct medical or remedial benefit to the person including specialized electric and plumbing systems necessary to accommodate medical equipment and supplies; and
  - (f) Any durable medical equipment.
- 1913.12 Medicaid reimbursement for OTT services shall be limited to a maximum of five thousand dollars (\$5,000) per person for the duration of the ID/DD Waiver period as a one-time, non-recurring expense.

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 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at [DHCFFPublicComments@dc.gov](mailto:DHCFFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://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.