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 (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 Section 1927, entitled "Personal Emergency Response System Services" of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development 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 emergency response system 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 Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (Aug. 1, 2014)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Personal Emergency Response System (PERS) is an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency. The person may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once the "help" button is activated. Trained professionals staff the response center. PERS services are available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision. The Notice of Final Rulemaking for 29 DCMR § 1927 (Personal Emergency Response System Services) was published in the *D.C. Register* on March 21, 2014, at 61 DCR 002470. These rules amend the previously published final rules by (1) clarifying the requirements that the criteria set forth in Section 1906 of Title 29 DCMR, Chapter 19 only apply to responders who are employed by a provider agency; (2) correcting the identification of the agency for incident reporting; (3) allowing PERS to be delivered concurrently with Supported Living Periodic services and Supported Living with Transportation Periodic services; (4) eliminating the prohibition from PERS being provided for a person receiving Host Home services; and (5) changing the rate for monthly rental, maintenance, and service fee.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments

clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on April 24, 2015, but these rules shall become effective for services rendered on or after June 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of June 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment. The emergency rules shall remain in effect for one hundred and twenty (120) days or until August 22, 2015 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules 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 on 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:

Subsections 1927.11, 1927.14, 1927.18 and 1927.20 of Section 1927, PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES, are amended to read as follows:

1927 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS) SERVICES

1927.11 If the responder who will be in direct contact with the person is an employee of a Medicaid Waiver provider agency, he or she shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1927.14 Each provider of Medicaid reimbursable PERS services shall follow the DDS Developmental Disabilities Administration (DDA) incident reporting process within twenty four (24) hours of an emergency response. Emergency responses shall not include test signals or activations made by a person.

1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence. PERS shall not be provided to persons receiving Residential Habilitation services, Supported Living or Supported Living with Transportation services, with the exception of Supported Living Periodic and Supported Living with Transportation Periodic services.

1927.20 Medicaid reimbursement for PERS services shall be as follows:

(a) Fifty dollars ($50.00) for the initial installation, training, and testing; and

(b) Thirty dollars and thirty-nine cents ($30.39) for the monthly rental, maintenance, and service fee.

Comments on the 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, Washington, D.C. 20001, by telephone on (202) 442-8742, by 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 rules may be obtained from the above address.