

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. & 2013 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 repeal of Section 907 and adoption, on an emergency basis, of a new Section 1927, entitled "Personal Emergency Response System Services" of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

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. Personal Emergency Response System (PERS) is an electronic device that enables certain individuals at high risk for institutionalization to secure help in emergency situations. These rules amend the previously published rules by: (1) deleting Section 907 and codifying the rules in Section 1927; (2) specifying criteria for individual responders who will be in direct contact with the person receiving services; (3) specifying the documents to be maintained for monitoring and audit reviews; (4) specifying reports to be submitted to DDS; and (5) specifying the service authorization requirement for PERS services under the approved Waiver.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of PERS services. Based upon current service authorization requirements, there are insufficient safeguards in place to confirm that Medicaid providers of PERS services are taking the necessary steps to ensure that beneficiaries are receiving high quality and appropriate PERS services. Therefore, in order to ensure that the Waiver participant's health, safety, and welfare are not threatened by the lapse in access to PERS services pursuant to the updated service authorization and delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 23, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until April 18, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director 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 907 (Personal Emergency Response System) of Chapter 9(Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1927 (Personal Emergency Response System Services) is added to Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1927 PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES

- 1927.1 This section establishes the conditions of participation for Medicaid providers enumerated in §§ 1927.7 and 1927.8 ("Medicaid Providers") to provide Personal Emergency Response System (PERS) services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1927.2 PERS is an electronic device that enables certain individuals at high risk for institutionalization to secure help in emergency situations by activating a system connected to the person's phone that is programmed to signal a response when a portable "help" button is activated.
- 1927.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) prior to providing PERS services. The request for prior authorization shall include a written justification demonstrating how the services will aid the person in requesting emergency assistance because the person lives alone or is alone for significant parts of the day, or the person has no regular caregiver for extended periods of time and would otherwise require extensive routine supervision without the provision of the service.
- 1927.4 Medicaid reimbursable PERS services shall consist of the following activities:
- (a) In-home installation of equipment;
 - (b) Person, caregiver, and responder instruction on usage, and maintenance of system;
 - (c) Equipment maintenance, testing, and monitoring; and
 - (d) Twenty-four (24) hour, seven (7) day per week response center services.
- 1927.5 The PERS electronic device consists of a console or receiving base, which is connected to the person's telephone, a portable emergency response activator or "help" button, and a response center that monitors calls.
- 1927.6 The PERS electronic device shall:
- (a) Have activation by a remote wireless device, such as a portable "help" button to allow for mobility;

- (b) Have hands-free voice-to-voice communication with the response center through the PERS console unit;
- (c) Be repaired or replaced by the provider within twenty-four (24) hours after the provider has been notified of a malfunction;
- (d) Have an emergency response activator that:
 - (1) Is activated by touch or breath and is usable by persons who have vision or hearing impairments or have a physical disability; and
 - (2) Will operate during a power failure for a minimum of twenty-four (24) hours.

- 1927.7 Each provider of Medicaid reimbursable PERS services shall be an approved home and community based services provider such as an emergency response center and shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1927.8 Each provider of Medicaid reimbursable PERS services shall have a current license, certification or registration with the District of Columbia as appropriate for the electronic system being purchased. Each provider shall also demonstrate knowledge of applicable standards of manufacture, design and installation.
- 1927.9 In order to be eligible for Medicaid reimbursement, the twenty four (24) hour seven (7) day a week emergency response center shall be monitored by trained operators capable of determining if an emergency exists and notifying emergency services and the person's responder.
- 1927.10 The person for whom PERS services are provided shall choose the responder who will answer emergency calls through the PERS. Responders may be relatives, friends, neighbors, or medical personnel.
- 1927.11 The responder who will be in direct contact with the person shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1927.12 Each responder who will be in direct contact with the person shall have the language and communication skills to respond to emergency contacts (*i.e.*, calling 911 on behalf of the person).
- 1927.13 If the person chooses a medical professional to serve as a responder, the professional shall be licensed to practice medicine, registered nursing, practical nursing, or as a physician assistant in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law

6-99; D.C. Official Code § 3-1205.01), or be licensed to practice their respective profession within the jurisdiction where they provide service.

- 1927.14 Each provider of Medicaid reimbursable PERS services shall follow the Department of Disability 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.
- 1927.15 In order to be eligible for Medicaid, all PERS equipment shall comply with applicable Federal Communication Commission laws, rules, and the applicable underwriter's Laboratories, Inc. standards.
- 1927.16 Each provider of Medicaid reimbursable PERS services shall maintain the following documents for monitoring and audit reviews:
- (a) A written report detailing, at a minimum, the date and time of each emergency response;
 - (b) Documentation verifying maintenance of the PERS equipment such as an invoice;
 - (c) A written service authorization provided by DDS; and
 - (d) Any records required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.
- 1927.17 Each provider of Medicaid reimbursable PERS services shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) under Chapter 19 of Title 29 DCMR.
- 1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence and shall not be provided to persons receiving supported living services, residential habilitation services, or host home services.
- 1927.19 The billable units for PERS services shall be:
- (a) The initial installation and testing; and
 - (b) The monthly rental and service fee.
- 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 (\$30.00) for the monthly rental, maintenance, and service fee.

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC, 20001, via telephone on (202) 442-9115, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.