

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF 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 intent to adopt the following new Chapter 96 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled “Money Follows The Person Rebalancing Demonstration Project For Persons With Intellectual and Developmental Disabilities and Persons who are Elderly or have Physical Disabilities.”

Money Follows the Person (MFP) Rebalancing Demonstration Program Services shall be administered pursuant to Section 6071 of the Deficit Reduction Act of 2005, approved February 8, 2006 (Pub. L. No. 109-171; 120 Stat. 102), as amended by Section 2403 of the Patient Protection and Affordable Care Act, approved March 23, 2010 (Pub. L. No. 111-148; 124 Stat. 304), These rules establish standards governing Medicaid eligibility for services under the MFP Rebalancing Demonstration Project and establish conditions of participation for providers of MFP services.

These rules also adopt two new services, Enhanced Primary Care Coordination (EPCC) and Peer Counseling (PC). Both services, like all MFP services, are provided for three hundred and sixty five (365) days to Medicaid beneficiaries currently transitioning from Intermediate Care Facilities (ICFs), nursing facilities and other qualified institutions to qualified residential housing. EPCC services are designed to support and encourage the continuous and comprehensive provision of quality primary care to each participant. The outcomes achieved through this service are expected to increase the level of communication between all members of the health care team, reduce threats to patient safety, including medication error, and reduce reliance on unnecessary emergency services. PC services are designed to allow people to receive peer counseling assistance to make informed choices regarding where they live and types of supports to be received once they transition to a qualified residence.

The MFP Rebalancing Demonstration grant was awarded to the District by the Department of Health and Human Services’ Centers for Medicare and Medicaid Services. Further, the Demonstration is designed to eliminate barriers that prevent or restrict the flexible use of Medicaid funds enabling Medicaid-eligible people to receive support for appropriate and necessary long-term services in the settings of their choice, pursuant to Section 6071 of the Deficit Reduction Act of 2005, approved February 8, 2006 (Pub. L. No. 109-171; 120 Stat. 102).

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 from the date of publication of this notice in the *D.C. Register*.

Title 29 (Public Welfare) of the District of Columbia Municipal Regulations is amended by adding the following new Chapter 96 to read as follows:

**CHAPTER 96 MONEY FOLLOWS THE PERSON REBALANCING
DEMONSTRATION FOR PERSONS WITH
INTELLECTUAL AND DEVELOPMENTAL
DISABILITIES AND PERSONS WHO ARE ELDERLY
OR HAVE PHYSICAL DISABILITIES**

9600 GENERAL PROVISIONS

9600.1 The purpose of this chapter is to establish criteria governing Medicaid eligibility for services under the Money Follows the Person Rebalancing Demonstration (MFP Demonstration) and to establish conditions of participation for providers of MFP services.

9600.2 MFP Demonstration services shall be used to transition individuals who are eligible for the MFP program from a qualified institution to a qualified residence in the community. For purposes of this chapter, these individuals shall be referred to as “person/ persons”.

9600.3 A qualified institution shall include:

- (a) Hospitals licensed in accordance with Chapter 20 of Title 22B of the District of Columbia Municipal Regulations (DCMR);
- (b) Nursing facilities licensed in accordance with Chapter 32 of Title 22B of the DCMR;
- (c) Medicaid eligible Institutions for Mental Diseases as defined in 42 U.S.C.A. § 1396d9(i) and 42 C.F.R. § 435.1010; and
- (d) Intermediate care facilities for people with intellectual disabilities and developmental disabilities (ICF/IID) certified in compliance with federal standards set forth in 42 C.F.R. Part 483, Subpart I.

9600.4 A qualified residence shall include:

- (a) A home owned or leased by the person or the person’s family member;
- (b) An apartment with an individual lease with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the person or the person’s family has domain and control including assisted living facilities as defined in the Centers for Medicare and Medicaid (CMS) policy guidance available at:

<http://www.alfa.org/images/alfa/PDFs/PublicPolicy/MFPGuidanceAHQualifiedResidence.pdf>;

- (c) A community residential facility licensed in accordance with Chapter B-31 of Title 22 of the DCMR, in which no more than four (4) unrelated individuals reside;
- (d) A supported living provider, defined in accordance with Section 1934 (Supported Living Services) of Chapter 19 of Title 29 of the DCMR;
- (e) A host home provider defined in accordance with Section 1915 (Host Home) of Chapter 19 of Title 29 of the DCMR; and
- (f) An individual home or apartment where the care-giver is the housemate.

9600.5 The MFP Demonstration shall consist of:

- (a) Pre-transition services that are provided by the Department on Disability Services (DDS) Developmental Disabilities Administration (DDA), DC Office on Aging/Aging and Disability Resource Center (DCOA/ADRC), and the Department of Health Care Finance (DHCF) staff, which include program outreach/education, obtaining the person's or the person's substitute decision-maker's signed consent to transition from a qualified institution to a qualified residence, and program assessment and enrollment; and
- (b) Transition services that ensure that appropriate services are in place on day one (1) and for three hundred and sixty-four (364) days thereafter in the qualified residence including services to prepare for day three hundred and sixty-six (366) to enable continuity of care after the MFP demonstration period.

9600.6 MFP Demonstration transition services shall only be provided for a three hundred and sixty-five (365) day period, referred to as the MFP demonstration period.

9600.7 In the event that a person is re-institutionalized during the MFP demonstration period for more than thirty (30) days, the person will be dis-enrolled from the MFP Demonstration. If dis-enrolled, DHCF or its agent shall issue a notice which complies with Federal and District law and rules.

9600.8 A dis-enrolled person may seek to re-enroll for the remainder of the three hundred and sixty-five (365) day MFP demonstration period.

9601 ELIGIBILITY

- 9601.1 A person transitioning from a qualified institution shall be eligible for DDA-operated MFP Demonstration services when:
- (a) The person resides in a qualified institution for at least ninety (90) consecutive days;
 - (b) The person has been receiving Medicaid benefits for inpatient services in the qualified institution;
 - (c) The person would continue to require the level of care provided in the qualified institution if discharged;
 - (d) The person is eligible for the Home and Community-based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) in accordance with Section 1902 of Chapter 19 of Title 29 of the DCMR; and
 - (e) An ID/DD Waiver slot is available.
- 9601.2 A person transitioning from a qualified institution shall be eligible for DHCF/DCOA-operated MFP Demonstration services when:
- (a) The person resides in a qualified institution for at least ninety (90) consecutive days;
 - (b) The person has been receiving Medicaid benefits for inpatient services in the qualified institution;
 - (c) The person would continue to require the level of care provided in the qualified institution if discharged;
 - (d) The person is eligible for the Home and Community-based Services Waiver for the Elderly and People with Disabilities (EPD Waiver) in accordance with the requirements set forth in Chapter 42 of Title 29 of the DCMR; and
 - (e) An EPD Waiver slot is available.
- 9601.3 Eligible residents from qualified institutions shall be selected for participation in MFP Demonstration in accordance with DHCF policy (DHCF Transmittal No. 12-32) set forth at *Money Follows the Person Demonstration-Selection of Participants for the Elderly and Physically Disabled Home and Community-Based Services Waiver Population*, available at <http://dhcf.dc.gov/page/2011-listing>.

9601.4 When the EPD Waiver is at its service capacity, MFP Demonstration shall implement a lottery system to select those people participating in the program who intend to transition from qualified institutions to a qualified residence from the pool of people who have met the eligibility requirement set forth in Subsection 9601.2(d).

9601.5 Participation in the MFP Demonstration is contingent on the execution of a written agreement between the DDA or DHCF and the person, and the verification and confirmation of the person's eligibility for MFP services in the DDA's and DHCF's respective electronic database systems.

9602 PROGRAM ROLES AND RESPONSIBILITIES

9602.1 For persons receiving DDA-operated MFP Demonstration services, the DDA Service Coordinator shall:

- (a) Refer a person who receives support through DDA to the MFP Project Coordinator;
- (b) Consult with the person who is entering the MFP Demonstration about selecting members of his or her support team;
- (c) Facilitate the person's Individual Support Plan (ISP) meeting including the MFP transition plan;
- (d) Request authorization for Enhanced Primary Care Coordination (EPCC) and Peer Counseling services;
- (e) Assist the person to select a qualified residence and qualified residential service provider under the ID/DD Waiver;
- (f) Enroll the person in the MFP Demonstration;
- (g) Ensure implementation and revision of the person's ISP during the pre-transition and MFP demonstration period;
- (h) Hold an ISP meeting at least sixty (60) days prior to the expiration of the person's MFP demonstration period to begin preparing the new ISP and service range, with an emphasis on continuity of supports; and
- (i) Ensure that the person's Medicaid program eligibility code is changed by Economic Security Administration (ESA) from a long term care institutional program code to the ID/DD Waiver code on the day of discharge.

- 9602.2 For persons receiving DDA-operated MFP Demonstration services, the MFP Project Coordinator shall:
- (a) Explain the MFP Demonstration's purpose, risks, benefits, and person's rights and responsibilities under the program;
 - (b) Administer an intake interview to confirm the person's desire to transition to the community;
 - (c) Obtain the informed consent to transition from the person or person's substitute decision-maker; and
 - (d) Obtain a signed residential referral form to determine the person's housing needs.
- 9602.3 For persons receiving DHCF/DCOA operated MFP Demonstration services, the DCOA/ADRC shall:
- (a) Refer people from qualified institutions to the MFP Project Coordinator who coordinates MFP services for DHCF;
 - (b) Explain the MFP Demonstration's purpose, risks, benefits, and the person's rights and responsibilities under the program;
 - (c) Administer an intake interview to confirm the person's desire to transition to the community pursuant to Subsection 9601.2 and determine his or her housing needs;
 - (d) Refer selected persons to the MFP Project Coordinator for assignment to a Transition Coordinator once the person has been selected in accordance with the process referenced under Subsection 9601.3;
 - (e) Refer people who do not meet MFP Demonstration selection criteria referenced under Subsection 9601.3 to the DCOA\ADRC Nursing Home Transition Unit;
 - (f) Provide information to each qualified institution to facilitate the coordination of related services for each person; and
 - (g) Appoint a staff member to assist residents who desire to transition to the community as indicated in the Long-Term Care Minimum Data Set.
- 9602.4 For persons receiving DCHF/DCOA-operated MFP Demonstration services, the MFP Project Coordinator shall:

- (a) Review DCOA/ADRC's intake interviews to verify appropriateness of the MFP Demonstration for each person's needs; and
- (b) Assign a Transition Coordinator to each person selected for participation in the MFP Demonstration.

9602.5 For persons receiving DHCF/DCOA-operated MFP Demonstration services, the Transition Coordinator shall:

- (a) Consult the person about selecting members of the person's support team to assist in transition planning;
- (b) Co-facilitate the person's MFP transitional planning meeting with staff from the qualified institution;
- (c) Assist the person to select a qualified residence, case management agency, and other providers under the EPD Waiver;
- (d) Assist the person to select other community-based providers as needed;
- (e) Address any barriers that may prevent a person from transitioning into the community;
- (f) Work collaboratively with the DCOA/ADRC MFP Case Manager to implement the responsibilities described under Subsection 9602.5(a)-(e); and
- (g) Ensure that the person's Medicaid program eligibility code is changed by ESA from the long term care institutional program code to the EPD Waiver code on the day of discharge.

9602.6 For persons receiving DHCF/DCOA-operated MFP Demonstration services, the DCOA/ADRC MFP Case Manager shall:

- (a) Manage the implementation and revision of the person's ISP during the pre-transition and MFP demonstration period with the EPD Waiver case manager; and
- (b) Ensure that the person's code is changed by ESA from an MFP EPD Waiver program code to the EPD Waiver code on day three hundred and sixty-six (366).

9603 SERVICES

9603.1 Persons receiving DDA-operated MFP Demonstration services shall receive the following services:

- (a) Services available under the ID/DD Waiver as set forth in Section 1901 of Title 29 of the DCMR;
- (b) Medicaid State Plan services;
- (c) Enhanced Primary Care Coordination;
- (d) Peer Counseling;
- (e) Household-setup funds not to exceed five thousand dollars (\$5,000) to facilitate community transition; and
- (f) Community Integration funds not to exceed one thousand five hundred dollars (\$1,500) to ease the person's transition to the community, if included in the ISP.

9603.2 Persons receiving DHCF/DCOA-operated MFP Demonstration services shall receive the following services:

- (a) Services available under the EPD Waiver as set forth in Chapter 42 of Title 29 of the DCMR;
- (b) Medicaid State Plan services;
- (c) Household-setup funds not to exceed five thousand dollars (\$5,000) to facilitate community transition;
- (d) Community Integration funds not to exceed one thousand five hundred dollars (\$1,500) to ease the person's transition to the community, if included in the ISP;
- (e) EPCC; and
- (f) Peer Counseling.

9603.3 EPCC services are designed to ensure coordination and continuity of care consistent with the person's ISP.

9603.4 EPCC services shall be determined by an assessment pursuant to guidance issued by DHCF and included in the person's ISP.

9603.5 EPCC services include:

- (a) Completion and uploading of the person's care coordination checklist to the DDA's and DHCF's respective electronic management systems;

- (b) Management, coordination, and monitoring of the person's health care services, specifically between and among the person's health care providers to ensure information sharing and integrated health management;
- (c) Identification of gaps and opportunities for improvement in the person's health care services;
- (d) Reporting of enhanced care coordination to the MFP Transition Coordinator every ninety (90) days;
- (e) Development and implementation of additional actions to reduce health care service gaps; and
- (f) Development and implementation of a primary care plan or modification of an existing plan.

9603.6 Peer counseling services shall be determined by an assessment pursuant to guidance issued by DHCF and included in the person's ISP.

9603.7 Peer counseling services shall be provided by individuals with intellectual or developmental disabilities, individuals who are elderly, and individuals with physical disabilities to support the person's transition into the community.

9603.8 Peer counseling shall include the following services:

- (a) Assist the person to make informed choices about his/her choice of possible living arrangements from the list of qualified residences;
- (b) Assist the person to make informed choices about additional services and supports that the person may need and the providers who can deliver those services and supports;
- (c) Support the person's transition into the community; and
- (d) Accompany the person to any activities in the community.

9604 PROVIDER PARTICIPATION CRITERIA AND REIMBURSEMENT

9604.1 Providers who deliver DDA-operated MFP Demonstration services shall qualify by submitting to DDS a Medicaid provider enrollment application and organizational information in accordance with Section 1904 of Title 29 of the DCMR.

- 9604.2 Providers who deliver DHCF/DCOA-operated MFP Demonstration services shall qualify by submitting to DHCF a Medicaid provider enrollment application and any necessary information in accordance with Section 4215 of Title 29 of the DCMR.
- 9604.3 EPCC service providers include the following:
- (a) A clinic;
 - (b) A home care agency; or
 - (c) A physician's practice.
- 9604.4 Each EPCC provider entity shall have a valid Medicaid provider agreement.
- 9604.5 The EPCC Coordinator hired by a provider entity shall be:
- (a) A physician licensed to practice medicine in accordance with the requirements of Chapter 46 of Title 17 of the DCMR;
 - (b) A registered nurse licensed to practice registered nursing in accordance with the requirements of Chapter 54 of Title 17 of the DCMR;
 - (c) A nurse practitioner licensed to practice registered nursing in accordance with the requirements of Chapter 59 of Title 17 of the DCMR;
 - (d) A clinical social worker licensed to practice social work in accordance with the requirements of Chapter 70 of Title 17 of the DCMR; or
 - (e) A physician's assistant licensed to practice as a physician assistant in accordance with the requirements of Chapter 49 of Title 17 of the DCMR.
- 9604.6 The EPCC Coordinator shall have a minimum of two (2) years of clinical experience providing services to persons with intellectual and developmental disabilities or the elderly and persons with physical disabilities.
- 9604.7 EPCC services shall be reimbursed at one hundred and eight dollars (\$108.00) per hour by a provider entity at a maximum of twenty (20) hours per year per participant. The billable unit of services shall be thirty (30) minutes at a rate of fifty-four dollars (\$54.00) per billable unit. A provider shall provide a minimum of sixteen (16) minutes of services in a span of thirty (30) continuous minutes to qualify for a billable unit of service.
- 9604.8 Medicaid enrolled providers delivering Peer Counseling services shall be non-profits or community-based organizations offering independent living services or supporting persons with physical and/or intellectual and developmental disabilities.

- 9604.9 The Peer Counselor hired by the provider entity shall:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the person to whom services are provided;
 - (c) Be employed by a Medicaid enrolled provider;
 - (d) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
 - (e) Have an intellectual, developmental and/or physical disability; and
 - (f) Have experience with at least two (2) of the following:
 - (1) Participating in advocacy meetings;
 - (2) Advocating on behalf of people with disabilities;
 - (3) Be trained in advocacy on behalf of people with disabilities by an advocacy organization; or
 - (4) Be trained and certified in peer counseling by a certified peer counseling program.
- 9604.10 Peer counselors shall be exempt from the DDA's competency based training requirements as it relates to DDA's Direct Support Professional Training Policy, but shall be trained on DDA Incident Management and Enforcement Unit and Human Rights policies.
- 9604.11 Peer counseling services shall be reimbursed at twenty dollars (\$20) per hour by a provider entity at a maximum of ten (10) hours per month per participant. The billable unit of services shall be thirty (30) minutes at a rate of ten dollars (\$10) per billable unit. A provider shall provide a minimum of sixteen (16) minutes of services in a span of thirty (30) continuous minutes to qualify for a billable unit of service

9605 NOTICE AND HEARING RIGHTS

- 9605.1 Each person enrolled in the MFP Demonstration shall be entitled to a fair hearing in accordance with 42 C.F.R. § 431 and D.C. Official Code § 4-210.01 if the Department or its agent:
- (a) Denies participation in the MFP Demonstration;
 - (b) Discontinues a waiver service requested by the person; or
 - (c) Terminates, suspends, or reduces a waiver service.
- 9605.2 The Department or its agent shall be responsible for issuing each legally required notice to the person enrolled in the MFP Demonstration or their representative regarding the right to request a hearing as described under Subsection 9605.1.
- 9605.3 The content of the notice issued pursuant to Subsection 9605.1 shall comply with the requirements of 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55.
- 9605.4 The hearing process shall be conducted in accordance with D.C. Official Code §§ 4-210.01 *et seq.*

9699 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Community Integration Funds- A one-time support fee in an amount not to exceed one thousand five hundred dollars (\$1,500) that may be used during the person's first transition year to cover expenses relating to community integration activities.

Department- The Department of Health Care Finance

DDA Service Coordinator - An employee of DDS DDA responsible for helping people and their families receive DDA services, and find, utilize, and coordinate available resources and opportunities in the community on the basis of individual needs.

Home and Community-based Services Waiver- Services for individuals with intellectual and developmental disabilities and individuals who are elderly or have physical disabilities outside the scope of approved state plan services which allow them to reside in community-based, non-institutional settings.

Household Set-Up Funds- Funds in an amount not to exceed five thousand dollars (\$5,000) to assist people transitioning from a nursing facility or

other qualified institution and limited to expenses incurred up to sixty (60) days after discharge from the qualified institution.

Individual Support Plan (ISP) – The document describing the results of the person-centered planning process which addresses the strengths, preferences, needs and aspirations described by the person and the ISP team. The ISP also serves as the home and community-based services waiver plan of care to authorize waiver services by type, amount and duration.

The Long-Term Care Minimum Data Set (MDS) - A standardized, primary screening and assessment tool of a person's physical and psychological functioning to form the foundation of the comprehensive assessment for all residents in a Medicare and/or Medicaid-certified long-term care facility.

MFP Demonstration Period - The three hundred and sixty-five (365) days beginning on the date that an MFP participant is discharged from a qualified institution to receive qualified home and community-based services.

Primary Care Plan - A plan that results from MFP enhanced primary care coordination services to coordinate a person's primary care with their other support needs.

Qualified Residential Service Provider - A Medicaid enrolled and DDA certified provider that provides housing and services and, when appropriate, overnight supports to people living in group homes, apartments, or single family dwellings. The group home residential programs are operated by DDA provider agencies whose programs are certified by DDA and licensed by Department of Health, Health Regulation and Licensing Administration.

Transitional planning meeting- Meeting held during the person's ISP year to discuss his/her transition into the community.

Comments on the proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D, Interim Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900 South, Washington, DC 20001, via email at DHCFPublicComments@dc.gov, online at www.dcregs.dc.gov, or by telephone at (202) 442-8742, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the above address.