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. 744; 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 a new Chapter 97, entitled "Adult Day Health Program", of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules establish standards for adult day program services that govern eligibility criteria for beneficiaries, conditions of participation for providers, and provider reimbursement.

The adult day health program is a new service under the Medicaid State Plan Home and Community-Based Services benefit. These services are designed to encourage older adults to live in the community by offering non-residential medical supports; provide supervised therapeutic activities in an integrated community setting that foster opportunities for community inclusion; and deter more costly facility-based care. These rules: (1) establish eligibility criteria for the receipt of Adult Day Health Program (ADHP) services; (2) establish a process for the development of the participant's person centered service plan in accordance with 42 C.F.R. § 441.725; (3) establish provider guidelines for the delivery of § 1915(i) State Plan Option services in accordance with 42 C.F.R. § 441.700 through § 441.745, including implementation, development and on-going review of each ADHP participant's person-centered plan of care; (4) specify provider monitoring and sanction guidelines; and (5) establish reimbursement rates for providers of ADHP services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of ADHP services. The ADHP will provide older beneficiaries with a safe and nurturing environment during the daytime with access to an array of therapeutic activities and non-residential medical services. These services will be essential in ensuring that older beneficiaries who live in the community are deterred from the need for costly facility-based care. DHCF previously provided adult day treatment services through a model that did not qualify for Medicaid reimbursement. These rules will allow DHCF to implement the § 1915(i) State Plan Option, which qualifies for Medicaid reimbursement. Therefore, to ensure that the ADHP participants' health, safety and welfare are not threatened by the lapse in access to therapeutic and non-residential medical services provided by qualified providers, it is necessary that these rules be published on an emergency basis.

DHCF is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect these changes. The corresponding amendment to the State Plan Amendment was deemed approved by the Council of the District of Columbia (Council) on, August 14th, 2014 (PR 20-0944), and is awaiting approval from the U.S. Department of Health and Human Services,

Centers for Medicare and Medicaid Services (CMS). These rules are contingent upon approval of the corresponding Medicaid § 1915(i) State Plan Option.

The emergency rulemaking was adopted on April 15, 2015, and will become effective for services rendered on or after April 1, 2015, contingent upon approval by CMS of the § 1915(i) State Plan Option. The emergency rules shall remain in effect for one hundred and twenty (120) days, until August 13, 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 rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

A new Chapter 97, ADULT DAY HEALTH PROGRAM SERVICES, is added to Title 29 DCMR, PUBLIC WELFARE, to read as follows:

9700 GENERAL PROVISIONS

9700.1 The purpose of this chapter is to establish the Department of Health Care Finance (DHCF) standards governing Medicaid eligibility for individuals receiving Adult Day Health Program (ADHP) services, to establish conditions of participation for providers of ADHP services, and to set provider reimbursement for ADHP services.

9700.2 ADHP services are designed to:

(a) Encourage older adults to live in the community by offering non-residential medical supports and supervised, therapeutic activities in an integrated community setting;

(b) Foster opportunities for community inclusion; and

(c) Deter more costly facility-based care.

9701 ELIGIBILITY REQUIREMENTS

9701.1 To qualify for ADHP services under these rules, the Medicaid beneficiary shall meet the following criteria:

(a) Be age fifty-five (55) and older;

(b) Be an adult with a chronic medical condition diagnosed by a physician;

(c) Have income up to 150% of the federal poverty level (FPL); and

(d) Be in receipt of an assessment determination authorizing, and specifying the level of need for ADHP services in accordance with Section 9709 of this chapter.

9702 PROVIDER QUALIFICATIONS

9702.1 To be eligible to receive reimbursement for ADHP services, a Provider shall:

(a) Submit a Medicaid Provider Enrollment Application to DHCF, and comply with all requirements set forth under Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR;

(b) Comply with all programmatic, staffing and reporting requirements as set forth in this chapter; and

(c) Have a valid Certificate of Need (CON) determined in accordance with the District of Columbia Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code §§ 44-401 *et seq.*), and implementing regulations.

9702.2 In addition to the requirements described under Subsection 9702.1, DHCF shall verify that a Provider has developed the following programmatic requirements as part of its Provider Readiness Review:

(a) A service delivery plan to render the services described under Section 9705;

(b) Policies and procedures as described in Section 9703.4;

(c) A staffing and personnel training plan that meets the requirements described under Section 9704; and

(d) A plan which demonstrates compliance with all State Plan Home and Community-Based Setting requirements pursuant to 42 C.F.R. § 441.710 (a)(1)(2).

9702.3 DHCF shall conduct an on-site Provider Readiness Review to ensure that all Providers meet the requirements described under Section 9702.

9702.4 DHCF shall also conduct subsequent visits at least annually to ensure providers continue to maintain the requirements described under this chapter.

9702.4 For out-of-state ADHP providers who are serving District of Columbia residents on the effective date of these rules, DHCF may accept the licensure and/or

certification for adult day programs issued by another state if the provider also meets the Provider Readiness Review requirements described under Section 9702.

9703 PROGRAM ADMINISTRATION

9703.1 Each Provider shall have a current organizational chart that clearly identifies the organizational structure, lines of authority, staffing levels, and the use of contracted staff.

9703.2 Each Provider shall have a governing body with oversight responsibility for administrative and programmatic policy development, monitoring and implementation.

9703.3 A Provider shall be prohibited from waiving liability for the delivery of services when they assign contract authority to any other entity for services provided under a participant's ADHP plan of care.

9703.4 Each Provider shall develop and implement written policies and procedures to comport to the following program requirements:

(a) A description of the program's mission statement and goals;

(b) The roles and responsibilities of its governing body;

(c) A fee schedule including a description of the services to be provided and that are included in the Medicaid per diem rates established in accordance with Section 9723;

(d) Participant admission and discharge procedures;

(e) A description of the ADHP's approach for implementing the participant's person-centered plan of care;

(f) Nutritional standards including guidelines for meal preparation, menu planning and meeting the individualized nutritional needs of each participant;

(g) Participant rights and responsibilities procedures consistent with the requirements set forth in Section 9712;

(h) Hours and days of operation;

(i) Personnel standards for hiring, requirements for professional licensure and certification, performance assessments, grievances, and staff training for all staff who deliver services;

(j) ADHP site environmental standards;

(k) Health and wellness standards;

(l) Safety and emergency preparedness procedures;

(m) Medication administration, storage, and record keeping requirements to conform with requirements described under Section 9707;

(n) Quality assurance procedures identifying performance measures to evaluate the ADHP program's effectiveness, and weaknesses;

(o) Processes for reporting, investigating and addressing ADHP participants' incidents, and complaints;

(p) Financial, administrative and participant record keeping requirements;

(q) A compliance plan in accordance with guidance from Department of Health and Human Services, Office of Civil Rights, available at: http://www.hhs.gov/ocr/privacy/hipaa/administrative/combined/hipaa-simplification-201303.pdf to incorporate appropriate administrative, physical, and technical safeguards to protect the privacy of ADHP participants and ensure compliance with the Health Insurance, Portability, and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191, 110 Stat. 1936)(HIPAA); and

(r) A community outreach and education plan which demonstrates how the ADHP will: (1) develop and maintain linkages with other community-based organizations that serve adults with chronic medical conditions; and (2) provide annual outreach for hard to reach populations.

9703.5 Each ADHP shall notify the DHCF within twenty-four (24) hours in writing, in the following situations:

(a) Fire, serious accident, serious injury, neglect, abuse or other incidents that impact the health or safety of a participant;

(b) Evidence of serious communicable disease contracted by staff or participants;

(c) The death of a participant at, en route to, or en route from, the program site; and

(d) Changes in professional staff or a reduction of work force that may result in a disruption of service delivery.

9703.6 If a provider intends to relocate to a new program site, each ADHP provider shall obtain DHCF's approval of the new site by undergoing a new Provider Readiness review and notifying the DHCF at least sixty (60) days in advance of the actual move.

9703.7 If a provider intends to withdraw from the Medicaid program, each ADHP provider shall notify DHCF at least ninety (90) days in advance of the provider's intention to withdraw.

9703.8 Each ADHP shall maintain minimum insurance coverage as follows:

(a) Blanket malpractice insurance for all employees in the amount of at least one million dollars ($1,000,000) per incident;

(b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million dollars ($1,000,000) per occurrence; and

(c) Product liability insurance, where applicable.

9704 STAFFING REQUIREMENTS: GENERAL

9704.1 Each ADHP shall develop and maintain a staffing and personnel training plan that ensures adequate personnel in number and skill to meet minimum required staffing levels in accordance with this Section and to deliver required services to each participant in accordance with the ADHP plan of care.

9704.2 Each ADHP program shall maintain the following staffing requirements:

(a) For acuity level 1 (minimum acuity level), each ADHP program shall maintain a minimum staff to participant ratio of at least one (1) Direct Support Professional staff member for every ten (10) participants (1:10 ratio);

(b) For acuity level 2 (maximum acuity level), each ADHP program shall maintain a minimum staff to participant ratio of at least one (1) Direct Support Professional staff member for every four (4) participants (1:4 ratio);

(c) Only Direct Support Professional staff shall be included in calculating the staffing ratios; and

(d) Volunteers shall not be used to fulfill the required staffing ratios nor be counted in calculating the staffing ratios.

9704.3 Each ADHP program shall conduct staff orientation for new employees and in-service training sessions at least quarterly and as needed, in accordance with its

staffing and personnel training plan, which shall include, at a minimum, the following topics:

(a) Infection control;

(b) Developing an ADHP plan of care to implement a participant's person-centered service plan;

(c) Procedures to identify, and report abuse, neglect, and exploitation;

(d) Body Mechanics (including physically assisting in escorting, lifting and transferring participants);

(e) Emergency procedures for evacuation of the building in the case of fire and/or other disaster or emergency; and

(f) Specialized needs of older adults.

9704.4 Each Provider of ADHP services shall employ a full time professional staff member as the Program Director who shall be responsible for the overall management, administration and fiscal operations of the ADHP program including, but not limited to:

(a) Supervising and directing the general administration of the program;

(b) Developing and implementing appropriate programmatic policies pursuant to the requirements under Subsection 9703.4;

(c) Preparing budgets and required financial reports, ensuring sound fiscal administration including billing and payment;

(d) Ensuring that an ADHP plan of care is developed for each participant;

(e) Developing and implementing a community outreach plan to publicize the ADHP's goals, mission, and target population served;

(f) Developing and implementing effective strategies to recruit, employ, supervise, and retain qualified staff, including staff orientation and on-going in-service training;

(g) Developing and implementing an effective quality assurance program;

(h) Overseeing regulatory and reporting requirements in accordance with this chapter; and

(i) Appointing one (1) professional staff member to ensure that there is an Acting Program Director in the absence of the Program Director.

9704.5 An ADHP program director employed pursuant to Subsection 9704.4 shall meet the following qualifications:

(a) Have a bachelor's degree in a human services field from an accredited college or university and a minimum of two (2) years of experience working with older adults in a social services or health care program; or

(b) Have a master's degree in a human services field and a minimum of one (1) year of experience working with older adults in a social service or health care program; or

(c) Is a licensed registered nurse with at least two (2) years working with older adults in a social service or health care program.

9704.6 Each Provider of ADHP services shall employ a full time registered nurse who shall be responsible for, but not limited to:

(a) Coordinating the implementation and on-going review of each participant's ADHP plan of care;

(b) Monitoring the health care needs of each participant and providing or supervising nursing services, including medication administration, for each participant in accordance with the orders of the participant's physician and the participant's ADHP plan of care;

(c) Supervising other nursing personnel;

(d) Providing teaching and instruction about a participant's ADHP plan of care;

(e) Providing guidance and counseling that focus on improving the health, safety and psycho-social needs of each participant;

(f) Assisting, as necessary, in the delivery of other required program services;

(g) Updating each participant's record with progress notes at least monthly or more often if indicated (this activity may be delegated to other nursing personnel); and

(h) Notifying the beneficiary's physician of any significant change in the beneficiary's condition.

9704.8 A registered nurse employed pursuant to Subsection 9704.6 shall meet the following qualifications:

(a) Be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.)); and

(b) Have at least two (2) years of experience working with older adults in a social services or health care program.

9704.9 Each Provider of ADHP services shall employ a full time activities coordinator who shall be responsible for developing and implementing a program of therapeutic activities including, but not limited to:

(a) Developing and scheduling educational, recreational and community integration activities and events;

(b) Supervising activity program assistants;

(c) Assisting personnel who are responsible for providing direct care support to the program participants;

(d) Participating in reviews of each participant's ADHP plan of care;

(e) Ensuring that a comfortable, safe and therapeutic environment for daily program implementation is maintained;

(f) Fostering a participant's freedom of choice, decision making and active participation in daily activities; and

(g) Developing monthly progress notes regarding status updates relative to the participant's engagement and participation in therapeutic activities.

9704. 10 An activities coordinator employed pursuant to Subsection 9704.9 shall have a minimum of one (1) year of experience working at a social service, health care, or therapeutic recreational program that serves older adults.

9704.11 Each ADHP shall employ a full time social service professional who shall be responsible for, but not be limited to the following:

(a) Assisting in developing activities designed to improve a participant's self-awareness, level of functioning and psycho-social needs;

(b) Incorporating the interest and therapeutic needs of participants in the development of the activity programs;

(c) Coordinating and conducting individual, group and family counseling services;

(d) Entering monthly notes in each participant's record;

(e) Referring the participant and the participant's family to appropriate community services and resources, as needed;

(f) Assisting staff with ongoing program services;

(g) Offering guidance through counseling and teaching to the participant and the participant's family on matters related to a participant's health, safety and general welfare;

(h) Assisting in the coordination of non-ADHP services, including but not limited to case management services, medical, personal care assistance services, skilled therapies, waiver services, transportation services, home-delivered meals; and

(i) Assisting participants to access and maintain public benefits.

9704.12 A social service professional(s) employed in accordance with Subsection 9704.11 shall:

(a) Have a master's degree in social work, psychology, counseling, gerontology, sociology, therapeutic recreation or a related field and at least one (1) year of experience working with older adults in social service, health care or therapeutic recreational settings; or

(b) Have a four (4) year degree from an accredited university or college in social work, counseling, psychology, gerontology or therapeutic recreation or a related field and at least two (2) years of experience working with older adults and/or adults with disabilities in a social, health or recreational setting/; and

(c) Obtain the requisite licensure under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01), if required.

9704.13 Each ADHP shall have a medical director who shall be responsible for:

(a) Providing guidance, leadership, oversight and quality assurance for the development and implementation of policies and practices to promote the appropriate medical management and care of participants, including in emergency situations;

(b) Consulting with the participant's physician, when necessary;

(c) Taking professional responsibility for each participant's medical care in emergency situations or when the participant's personal physician is unavailable;

(d) Overseeing the delivery of all required medical services to ensure that needed services are provided in a timely manner by the appropriate personnel, consistent with each participant's ADHP plan of care; and

(e) Participating in support team conferences, care planning and case reviews.

9704.14 A medical director employed by or under contract to an ADHP shall be licensed as a physician 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 §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.));

9704.15 Each ADHP shall have a dietician or nutritionist who shall be responsible for, including but not limited to, the following:

(a) Developing and designing menus for meals and snacks to accommodate daily nutrient requirements of each ADHP participant.

(b) Collaborating with the participant's support team members as described in Subsection 9711.4, to ensure that a participant's nutritional needs are addressed;

(c) Providing nutritional education, training and counseling to each participant, the participant's family and ADHP staff;

(d) Conducting and recording periodic inspections of the food service program and the food service area; and

(e) Ensuring that special or modified diets are developed and offered in accordance with the participant's ADHP plan of care.

9704.16 A dietician or nutritionist employed or under contract to an ADHP shall be licensed 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 §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.)).

9704.17 If required, other health and social service professionals employed or under contract to an ADHP shall be licensed 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 §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.)).

9704.18 Each ADHP shall employ a direct support professional who shall be responsible for, but not be limited to, the following:

(a) Assisting participants with personal care tasks and other activities of daily living;

(b) Providing guidance to participants during group activities;

(c) Supporting and encouraging a participant's participation in scheduled activities;

(d) Monitoring and reporting any change in a participant's health status as appropriate;

(e) Assisting in the implementation of each participant's ADHP plan of care as a member of the participant's support team;

(f) Documenting daily attendance and participation for each participant; and

(g) Assisting participants with maintaining their optimal physical and mental health.

9704.19 A direct support professional employed by an ADHP shall:

(a) Be at least eighteen (18) years of age;

(b) Be a citizen of the United States or a non-citizen who is lawfully authorized to work in the United States;

(c) Be mentally, physically and emotionally competent to provide services;

(d) Be free of tuberculosis and other communicable diseases as certified in writing by a physician on an annual basis;

(e) Be able to read and write the English language at least at the fifth (5^{th}) grade level and carry out instructions and directions in English;

(f) Be certified in cardiopulmonary resuscitation (CPR), and first aid certification and maintain current certifications;

(g) Complete three (3) hours of continuing education at quarterly intervals, in addition to annual CPR re-certification;

(h) Be trained on the participant's ADHP plan of care prior to assisting any participant;

(i) Be able to recognize an emergency and be knowledgeable about emergency procedures;

(j) Pass a reference check and criminal background check pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1988, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code, §§ 44-441 *et seq.* (2005 Repl. & 2012 Supp.)); and

(k) Have at least a high school diploma or General Educational Development certificate.

9705 PROGRAM REQUIREMENTS

9705.1 An Adult Day Health Program shall provide, at minimum, all of the following services:

(a) Nursing services, as described under Subsection 9704.6, including monitoring the participants' health care-needs, providing health counseling, and the coordinating and implementing the ADHP plans of care for each participant;

(b) Individual and group therapeutic activities, including social, recreational and education activities, that:

(1) Are based upon each participant's assessed needs and personal preferences,

(2) Are consistent with the participant's person-centered service plan, and

(3) Are designed to improve each participant's self-awareness, cognitive and physical functional abilities and personal safety;

(c) Individual and group counseling for participants and their families;

(d) Personal care assistance services, including training and assistance in activities of daily living, accident prevention, and the use of special aides provided under the overall supervision of a registered nurse;

(e) Medication administration, assistance and counseling, including education and counseling of participants and family members regarding medication safety, efficacy and adherence, that are provided in accordance with the requirements set forth in Section 9707;

(f) Nutrition services that are provided in accordance with the requirements set forth in Section 9706; and

(g) Coordination of transportation services for therapeutic activities that are scheduled off-site.

9705.2 Transportation for non-emergency medical services including therapeutic activities shall be provided under the DHCF non-emergency medical transportation contract. Each transportation provider shall comply with all applicable business licensing and certification requirements set forth under the District of Columbia Non-Emergency Medical Transportation contract.

9705.3 Each ADHP provider shall develop a safety and emergency preparedness plan which includes procedures for evacuation in the event of an emergency and ensuring staff is trained in CPR and First Aid.

9705.4 An ADHP program may provide or arrange for additional services including but not limited to non-emergency medical transportation services to and from the program site, and other activities not outlined under the participant's ADHP plan of care, psychiatric services and occupational, physical and speech therapies. These services are not included in the reimbursement rates set forth in Section 9723.

9706 NUTRITION SERVICES

9706.1 Nutrition services shall be provided in accordance with the requirements set forth in this Section.

9706.2 All meals and snacks shall be prepared under the direction of a dietician or nutritionist and shall be provided in accordance with the requirements set forth in Subsection 9706.7.

9706.3 All meals shall include hot foods and shall be equivalent to at least one-fourth (1/4) of the recommended daily dietary allowanced established by the Food and Nutrition Board of the National Research Council.

9706.4 The ADHP shall furnish special diets, if required by the participant and prescribed by his or her physician.

9706.5 The ADHP shall ensure that all participants are properly hydrated and that drinking water is provided in a safe and hygienic manner and is accessible to the participants at all times.

9706.6 Program staff members, under the supervision of the dietician, nutritionist, or registered nurse, shall provide nutrition counseling and consumer shopping advice to participants and, if necessary, to their families or guardians.

9706.7 The ADHP shall adhere to the following requirements to determine the number of meals and snacks to be provided to each participant:

(a) Participants who are in attendance for less than three (3) hours shall be provided with a minimum of one (1) meal or one (1) snack which shall constitute one-fourth (1/4) of the participant's daily nutritional allowance;

(b) Participants who are in attendance for a total of three (3) to four (4) hours per day shall be provided with a minimum of one (1) meal and one (1) snack which shall constitute one-third (1/3) of the participant's daily nutritional allowance; and

(c) Participants who are in attendance for a total of five (5) to eight (8) hours per day shall be provided with a minimum of two (2) meals and two (2) snacks, or one (1) meal and two (2) snacks, which shall constitute one-half (1/2) of the participant's daily nutritional allowance.

9706.8 Each ADHP shall ensure that all meals are prepared and served in accordance with the food safety requirements set forth in Title 25 DCMR.

9707 MEDICATION ADMINISTRATION, ASSISTANCE AND COUNSELING

9707.1 The ADHP shall provide medication administration, assistance and counseling in accordance with the requirements of this Section.

9707.2 Medication administration and counseling services shall be supervised by a registered nurse.

9707.3 Medications, including over the counter medications, shall not be administered without a written order signed by a physician or an advance practice registered nurse, acting within the scope of his or her license.

9707.4 Medications, including injectable medications, shall only be administered as ordered by the physician or advance practice registered nurse and may only be administered by a physician, registered nurse, or licensed practical nurse.

9707.5 An individual authorized under Subsection 9707.4 to administer medications to a participant under these rules shall personally prepare the dosage, observe the act of swallowing oral medicines, and record each dosage given in each participant's medication administration record (MAR). The MAR shall clearly identify each individual who administers each dose.

9707.6 A registered nurse or a direct support professional working directly with the participant and employed by the ADHP shall provide assistance to participants who are able to self-administer medications.

9707.7 The ADHP shall provide counseling to participants and their families regarding medication safety, efficacy, and adherence, and shall assist participants to order medications or obtain a prescription or prescription refill.

9707.8 All medications, including those for participants who are able to self-administer, shall be stored in a safe, secure, locked storage area.

9707.9 The ADHP shall develop and implement internal quality controls to ensure that medications are stored properly and administered in accordance with the physician's orders.

9707.10 No controlled substances shall be administered or stored on the premises in violation of the Controlled Substances Act, approved October 27, 1970 (Pub. L. No. 113-234, 84 Stat. 1242; 21 U.S.C. §§ 801 *et seq.*), and its implementing federal regulations.

9707.11 The ADHP shall adhere to any applicable Federal or District of Columbia law, rules and/or regulations related to medication administration.

9708 SAFETY AND ENVIRONMENTAL REQUIREMENTS

9708.1 Each provider rendering ADHP services shall ensure that the physical site where services are rendered is in compliance with safety and accessibility standards for disabled persons in accordance with the Americans with Disabilities Act of 1990 (ADA), approved July 26, 1990 (Pub. L. No. 101-336, 104 Stat. 327), as amended and supplemented by the American Disabilities Amendments Act of 2008, approved September 25, 2008 (Pub.L. No. 110-325, 122 Stat. 3554; 42 U.S.C. §§ 12101 *et seq.*), and its implementing federal regulations, ADA standards for accessible design, 28 C.F.R. Ch. I, parts 35 and 36.

9708.2 Each provider rendering ADHP services shall maintain a Certificate of Occupancy from the Department of Consumer and Regulatory Affairs (DCRA) to ensure that the site is in compliance with the applicable zoning regulations and construction codes including electrical, plumbing, mechanical, and fire prevention requirements in accordance with the Construction Codes Supplement of 2013 under Title 12 DCMR.

9708.3 Each ADHP program site shall have:

(a) At least one (1) large room where all participants can gather for activities, socialization and meals;

(b) Separate areas for small group activities including a quiet area that permits participants to rest; and

(c) A room with a bed or medical examination table with adequate provision for privacy for medical examination, treatment in the event of illness or accident, or individualized programming or instruction.

9708.4 Each ADHP program site shall have sufficient toilet facilities at each site to accommodate participants with physical disabilities that comply with ADA standards for accessible design, 28 C.F.R. Ch. I, parts 35 and 36, also available at www.ada.gov.

9708.5 Each ADHP provider shall ensure adequate heating and cooling systems to ensure that room temperatures are maintained at comfortable levels.

9708.6 Each provider shall ensure that there are operating fire extinguishers and smoke and carbon monoxide detectors available on each building level.

9708.7 Each provider shall properly maintain walkways, ramps, steps and outdoor landscaping, and display clearly identifiable evacuation routes for safe means of exit in the event of an emergency.

9708.8 Each provider shall ensure that the program site is free of rodents, pests and insects.

9708.9 Each provider shall ensure that there is a first aid kit on site.

9708.10 Each provider shall have procedures for emergency care, infection control and reporting of accidents and incidents.

9708.11 Each provider shall ensure that participants have access to the private use of a telephone, on-site and at no charge, and that is easily and readily accessible.

9708.12 The minimum space requirements for each ADHP program site, exclusive of office space, bathrooms, storage space, examination rooms, food preparation areas and dining areas (unless also used for activities) shall be as follows:

(a) One hundred (100) square feet for each of the first five (5) participants;

(b) Eighty (80) square feet for each of the next ten (10) participants; and

(c) Thereafter, sixty (60) square feet for each ten (10) participants.

9709 SERVICE AUTHORIZATION REQUEST REQUIREMENTS

9709.1 ADHP services shall not be initiated or provided on a continuing basis by a provider without an approved assessment determination and an authorization for the receipt of ADHP services from DHCF or DHCF's designated agent to authorize the receipt of ADHP services.

9709.2 A Medicaid beneficiary who is seeking ADHP services for the first time shall submit his or her request for an assessment and a certification from the beneficiary's physician or advance practice registered nurse that he or she has a chronic medical condition in accordance with Subsection 9710.2 to DHCF or its designated agent in writing.

9709.3 DHCF or its designated agent shall be responsible for conducting a face-to-face assessment of each beneficiary using a standardized needs-based assessment tool to determine each beneficiary's need for ADHP services. The assessment shall:

(a) Confirm and document the beneficiary's functional limitations, behavioral and medical support needs and personal goals with respect to long-term care services and supports;

(b) Be conducted in consultation with the beneficiary and/or the beneficiary's representative and/or support team;

(c) Document the beneficiary's unmet need for services taking into account the contribution of informal supports and other resources in meeting the beneficiary's needs for assistance; and

(d) Document the amount, frequency, duration, and scope of long-term care services and support services needed.

9709.4 DHCF or its designated agent shall conduct the initial face-to-face assessment following the receipt of a request for an assessment and shall conduct a reassessment at least every twelve (12) months or upon significant change in the participant's condition. A request for a reassessment or a change in acuity level may be made by a Medicaid beneficiary, the beneficiary's representative, or a provider.

9709.5 Based upon the results of the face-to-face assessment conducted in accordance with Subsection 9709.3, DHCF or its authorized agent shall issue an assessment determination that specifies the beneficiary's acuity level.

9709.6 If the beneficiary meets the acuity level for ADHP services and chooses to participate in an ADHP program, DHCF or its authorized agent shall refer the beneficiary to the Aging and Disability Resource Center (ADRC) which shall be

responsible for developing the person-centered service plan in accordance with federal regulations under 42 C.F.R. § 441.725.

9709.7 Consistent with 42 C.F.R. § 441.725(c), the person-centered service plan must be reviewed, and revised upon reassessment of functional need as required in § 441.720, at least every twelve (12) months, and/or when the beneficiary's circumstances or needs change significantly in accordance with Subsection 9709.4.

9709.8 The ADRC shall assist the beneficiary to select an ADHP provider, and shall refer the beneficiary to other available services of his or her choice.

9709.9 If, based upon the assessment or reassessment conducted pursuant to this section, a beneficiary is found to be ineligible for ADHP services, DHCF or its agent shall issue a letter informing the beneficiary of his or her ineligibility, or change in acuity for ADHP services, including information about his or her right to appeal the denial, reduction or termination of services in accordance with federal and District of Columbia law and regulations. The notice shall also contain information regarding the beneficiary's right to request DHCF to reconsider its decision and the timeframes for making a request for reconsideration.

9710 ADMISSION REQUIREMENTS

9710.1 With respect to each new admission, an ADHP provider shall:

(a) Obtain the ADHP assessment determination that authorizes the need for ADHP services, as described in Section 9709, establishing that the participant meets the level of care for admission to an ADHP;

(b) Obtain a medical release form, signed by the participant's physician or advanced practice registered nurse, that addresses the participant's general medical condition, restrictions on activity, diet modifications, any instructions relative to health care, absence of infectious diseases, a list of current medications and treatment documenting the participant's medical history;

(c) Conduct a pre-admission interview with the participant and his or her family, and support team, to gather information on the participant's health characteristics, psycho-social condition, nutritional habits, and other relevant data pertaining to the participant's home or community support system;

(d) Develop and execute an agreement between the ADHP provider and the participant which shall include, but not be limited to, the following information:

(1) The program's operating business hours and schedule of holidays;

(2) The announcement procedures for unexpected closing of the program due to disaster or inclement weather;

(3) Participant rights and responsibilities;

(4) The Provider's HIPAA compliance policy;

(5) The Provider's safety and emergency preparedness policy and plan which outlines who the provider should contact in case of an emergency;

(6) The financial obligations of the participant, if any; and

(7) Other pertinent information; and

(e) Implement the participant's ADHP plan of care in accordance with Section 9711.

9710.2 The signed medical release form referenced in Subsection 9710.1(b) shall be accompanied by a report from the beneficiary's physician or advance practice nurse indicating that the physician or advance practice nurse has physically examined the applicant and certified that the beneficiary has a chronic medical condition within the past ninety (90) days and the results of that physical examination;

9711 ADHP PLAN OF CARE

9711.1 An ADHP plan of care shall:

(a) Be completed within fourteen (14) business days of the participant's admission to the ADHP;

(b) Be developed in consultation with the participant, or the participant's representative and the participant's Support Team;

(c) Incorporate the participant's person-centered service plan and take into account the assessment conducted in accordance with Subsection 9709.3, as well as any other information relevant to a comprehensive understanding of the participant's clinical and support needs;

(d) Specify how the ADHP will provide the services and supports that will assist the participant to achieve his or her identified goals as identified in the person-centered service plan;

(e) Reflect the participant's preferences as to the types and scheduling of ADHP services to be provided as identified in the participant's person-centered service plan ; and

(f) Indicate any other supportive services that the participant is receiving away from the ADHP such as homemaker services, other therapies and services.

9711.2 The ADHP plan of care shall be reviewed by the support team and the participant or the participant's representative at least once every ninety (90) days, and whenever there has been a significant change in the participant's conditions, and shall be updated or modified as needed.

9711.3 The initial ADHP plan of care, as well as any updates or changes made, shall be approved and signed by the participant and/or the participant's representative, the registered nurse in charge of the participant's care and all support team members who participate in its development.

9711.4 A support team includes the clinical and non-clinical staff who shall be responsible for providing or arranging for services and supports for the participant. At minimum, for purposes of developing an ADHP plan of care for each participant, the Support Team shall include:

(a) The Registered Nurse;

(b) The Social Worker;

(c) The Dietician/Nutritionist;

(d) The Activities Coordinator;

(e) The direct support professional(s) who worked directly with the participant; and

(f) Any other person chosen by the participant

9712 PARTICIPANT RIGHTS AND RESPONSIBILITIES

9712.1 Each ADHP provider shall develop a written statement of the participant's rights and responsibilities consistent with the requirements of this section, which shall be given to each participant in advance of receiving services.

9712.2 The written statement of the participant's rights and responsibilities shall be prominently displayed at the provider's business location and available at no cost upon request by the general public.

9712.3 Each participant shall have the following rights:

(a) To be treated with courtesy, dignity and respect;

(b) To participate in the planning of his or her care and treatment;

(c) To receive treatment, care, and services consistent with the person-centered service plan and to have the ADHP plan of care modified for achievement of outcomes;

(d) To receive services by competent provider personnel who can communicate with the participant in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.*);

(e) To refuse all or part of any treatment, care, or service and be informed of the consequences;

(f) To be free from mental and physical abuse, neglect and exploitation from persons providing services;

(g) To be assured of the privacy of protected health and financial information in accordance with all the provisions of applicable District and federal laws;

(h) To voice a complaint or grievance about treatment, care, or lack of respect for personal property by persons providing services without fear of reprisal;

(i) To have access to his or her records; and

(j) To be informed orally and in writing of the following:

(1) Services to be provided, including any limits;

(2) Amount charged for each service, the amount of payment required from the participant and the billing procedures, if applicable;

(3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party sources;

(4) Acceptance, denial, reduction or termination of services;

(5) Complaint and appeal procedures;

(6) Name, address and telephone number of the Provider;

(7) Telephone number of the District of Columbia Medicaid fraud hotline;

(8) Participant's freedom from being forced to sign for services that were not provided or were unnecessary; and

(9) A statement, provided by DHCF, defining health care fraud and ways to report suspected fraud.

9712.4 Each participant shall be responsible for the following:

(a) Treating all ADHP personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing provider personnel when instructions are not understood or cannot be followed;

(d) Cooperating in making a safe environment for care within the ADHP site; and

(e) Reporting suspected fraud, waste and abuse.

9712.5 Each provider shall take appropriate steps to ensure that each participant, including participants who cannot read or those who have a language or a communication barrier, has received the information required pursuant to this section.

9712.6 Each Provider shall document in the participant's records, described under Section 9713, the steps taken to ensure that each participant has received the information.

9713 RECORDKEEPING

9713.1 Each ADHP provider shall maintain complete and accurate participant records for each participant that documents the specific ADHP services provided to each participant for a period of ten (10) years or until all audits are completed, whichever is longer.

9713.2 Each participant's record shall include, but not be limited to, the following information:

(a) General information including the participant's name, Medicaid identification number, address, telephone number, age, sex, name and telephone of emergency contact person, authorized representative (if

applicable), and primary care physician's or advanced practice registered nurse's name, address, and telephone number;

(b) The approved ADHP assessment determination, certification of chronic medical condition, and the Medical Release Form;

(c) Notes from the participant's pre-admission interview;

(d) An emergency care form to include the name and contact information for at least three people to be notified in case of emergency;

(e) ADHP HIPAA Privacy Act Statement and signed acknowledgement in accordance with the HIPAA Privacy Act of 1996, approved August 21, 1996 (Pub. L. 104-191, 110 Stat. 1936);

(f) The participant's person-centered service plane, the ADHP plan of care, and all monthly updates;

(g) The results of the participant's initial and any revised needs-based assessment;

(h) A copy of the written agreement between the ADHP provider and the participant;

(i) All physician orders including all orders for medications;

(j) Other assessments and consultations;

(k) Documentation of services received, how often and by whom;

(l) Progress notes and quarterly updates;

(m) Incident and accident reports;

(n) Copies of any written notices given to the participant; and

(o) Discharge summary, if applicable.

9713.3 Each provider shall maintain the following fiscal records:

(a) Daily attendance roster;

(b) The program inspection reports (health, fire, safety, food), if applicable;

(c) An annual ADHP program evaluation report including program enrollment and discharge data;

(d) Current copies of all fully executed contracts pertaining to the delivery of ADHP services;

(e) Current and projected budgets, including specific cost allocations;

(f) General ledger and books of original entry showing receipts and expenditures with supporting documentation;

(g) The fee schedule and fee charges;

(h) The daily schedule of activities;

(i) The daily menus for meals and snacks for each thirty (30) day period;

(j) Any audits by Centers for Medicare and Medicaid Services (CMS) and/or DHCF;

(f) The discharge planning form/report;

(k) The number of individuals waiting for admission to the program, if any;

(l) The community outreach materials that shall include:

(1) A program brochure;

(2) Letters to physicians, health facilities, senior centers, and social service agencies informing them of the services provided by the program;

(3) Strategies for participation and involvement with community service agencies and community leaders to develop referral mechanisms;

(4) Notices posted in community facilities; and

(5) Schedule of events held for the general public and various community groups.

9713.4 Individual personnel records shall be maintained on all program staff and consultants.

9713.5 Individual personnel records shall include the following:

(a) Name, address, telephone number, age and sex;

(b) Educational background;

(c) Employment history and notes on references;

(d) Evaluation of performance and attendance;

(e) Certification that the staff member is free of tuberculosis and other communicable diseases;

(f) CPR certification(s);

(g) Results of reference and criminal background checks including proof of compliance with 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.*) for the following employees or contract workers:

(1) Individuals who assist licensed health professionals in providing direct patient care or common nursing tasks, but are not licensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code;

(2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and

(3) Housekeeping, maintenance, and administrative staff who may have direct contact with participants.

(h) Evidence of participation in continuing education; and

(i) Copies of all professional licenses held by employees or any contractor utilized by the Provider for the delivery of ADHP services.

9713.6 All ADHP participant, personnel and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by DHCF, CMS, and other authorized government officials or their agents, as requested.

9714 TERMINATION AND ALTERNATIVE SANCTIONS FOR ADHP NONCOMPLIANCE

9714.1 In order to qualify for Medicaid reimbursement, ADHP providers shall comply with programmatic requirements as part of its Provider Readiness Review. The programmatic requirements include adherence to acceptable standards in the following areas:

(a) Service delivery;

(b) Program administration as governed under mandated policies and procedures;

(c) Staffing and training; and

(d) Home and Community Based Services (HCBS) setting requirements.

9714.2 An ADHP that fails to maintain compliance with the programmatic requirements and any requirements set forth in this chapter may be subject to alternative sanctions and/or termination of its participation in the Medicaid program.

9714.3 If DHCF initiates an action to terminate, DHCF shall follow the procedures set forth in Chapter 13 of Title 29 DCMR governing termination of the Medicaid provider agreement.

9714.4 If DHCF initiates an action to impose an alternative sanction, a written notice shall be issued to each ADHP provider notifying the provider of the imposition of an alternative sanction.

9714.5 The written notice shall inform the provider that DHCF intends to impose an alternative sanction.

9714.6 The written notice shall also include the following:

(a) The basis for the proposed action;

(b) The specific alternative sanction that DHCF intends to take;

(c) The provider's right to dispute the allegations and to submit evidence to support his or her position; and

(d) Specific reference to the particular sections of the statutes, rules, provider's manual, and/or provider's agreement involved.

9714.7 Within thirty (30) days of the date of the notice, an ADHP provider may submit documentary evidence to DHCF's Long Term Care Administration, 441 4th St., NW, Ste. 1000, Washington, DC 20001 to refute DHCF's argument for imposition of the alternative sanction.

9714.8 On a case-by-case basis, DHCF may extend the thirty (30) day period prescribed in Subsection 9714.7.

9714.9 If DHCF determines to impose an alternative sanction against the ADHP provider after the provider has issued a response under Subsection 9714.7, DHCF will send a written notice at least fifteen (15) days before the imposition of the alternative sanction. The notice shall include the following:

(a) The reason for the decision;

(b) The effective date of the sanction; and

(c) The provider's right to request a hearing by filing a notice of appeals with the District of Columbia Office of Administrative Hearings.

9714.10 If the ADHP provider files a notice of appeal within fifteen (15) days of the date of the notice of the alternative sanction under Subsection 9714.9, then the effective date of the proposed sanction shall be stayed until the District of Columbia Office of Administrative Hearings has rendered a final decision.

9714.11 The Director of DHCF shall consider modifying the alternative sanction upon the occurrence of one of the following:

(a) Circumstances have changes and resulted in alterations of the programmatic requirement violation(s) in such a manner as to immediately jeopardize a participant's health, and safety; or

(b) The ADHP makes significant progress in achieving compliance with the programmatic requirements through good faith efforts.

9714.12 When a participant's health or safety is in immediate jeopardy, the provider must implement the safety and emergency preparedness plan. One the participant is safe and is no longer in immediate jeopardy, the ADHP shall submit a corrective action plan to DHCF within one (1) business day with specific timelines for implementation.

9714.13 The Director of DHCF may also modify the denial of payment sanction in accordance with Section 9716.

9715 ALTERNATIVE SANCTIONS FOR ADHPs

9715.1 DHCF may impose alternative sanctions against an ADHP when that provider fails to meet the programmatic requirements or any requirements set forth in this Chapter, but the violation does not place an ADHP participant's health or safety in immediate jeopardy.

9715.2 In lieu of terminating the Medicaid provider agreement, DHCF may impose one (1) or more alternative sanctions against ADHPs as set forth below:

(a) Denial of payments related to new admissions, as described in § 9716;

(b) Directed Plan of Correction (DPoC), as described in § 9717;

(c) Directed In-Service Training (DIST), as described in § 9718; or

(d) State Monitoring, as described in § 9719.

9715.3 DHCF shall make a determination to terminate a provider from the Medicaid program, or to impose an alternative sanction based on the following factors:

(a) Seriousness of the violation(s);

(b) Number and nature of the violation(s);

(c) Potential for immediate and serious threat(s) to ADHP participants;

(d) Potential for serious harm to ADHP participants;

(e) Any history of prior violation(s) and/or sanction(s);

(f) Mitigating circumstances; and

(g) Other relevant factors, including failing to achieve satisfactory scores during the annual Provider Readiness Review process.

9715.4 DHCF shall issue a written notice to each ADHP notifying the provider of the imposition of an alternative sanction. The written notice shall comply with the requirements outlined in Section 9714.

9715.5 All costs associated with the imposition of an alternative sanction against an ADHP pursuant to these rules shall be borne by the provider.

9716 DENIAL OF PAYMENT RELATING TO NEW ADMISSIONS

9716.1 In lieu of termination in situations where participants are not in immediate jeopardy, DHCF may initiate a one-time denial of payment for claims associated with new admissions at the ADHP site that fail to comply with one (1) or more of the programmatic requirements for Medicaid enrollment.

9716.2 The denial of payment term shall be eleven (11) months in duration, beginning on the first day of the month after DHCF imposes the denial of payments.

9716.3 DHCF shall notify the ADHP that it is subject to denial of payment in accordance with the notice requirements described under Section 9714.

9716.4 DHCF shall monitor the provider's progress in improving cited violation(s) throughout the eleven (11) month period.

9716.5 The Director of DHCF shall consider modifying or rescinding the denial of payment, for reasons stated under Subsection 9715.1, or if the ADHP achieves full compliance with the programmatic requirements in fewer than eleven (11) months.

9716.6 DHCF shall terminate the Medicaid provider agreement of an ADHP that has been unable to achieve compliance with the programmatic requirements during the full eleven (11) month period of denial of payment.

9716.7 An ADHP Medicaid provider agreement that is subject to denial of payment shall be automatically extended for the eleven (11) month period if the provider agreement does not lapse on or before the effective date of denial of payments.

9716.8 ADHP Medicaid provider agreements that are subject to denial of payment may only be renewed when the denial period expires or is rescinded.

9717 DIRECTED PLAN OF CORRECTION (DPoC)

9717.1 In lieu of termination in situations where the ADHP is not in compliance with the programmatic requirements, and ADHP participants are not in immediate jeopardy, DHCF may require an ADHP to take prompt, or immediate action specified by DHCF to achieve and maintain compliance with programmatic requirements and other District of Columbia Medicaid requirements. These actions specified by DHCF shall constitute a Directed Plan of Correction (DPoC).

9717.2 The DPoC shall be developed by DHCF's Long Term Care Administration in coordination with the quality team of DHCF's Health Care Delivery Management Administration (HCDMA) and approved by, DHCF, incorporating findings from the provider's annual Providers Readiness Review.

9717.3 The DPoC shall specify:

(a) How corrective action shall be accomplished for participants found to have been affected by the deficient practice and include remedies that shall be implemented;

(b) How the provider shall identify other participants who may have been affected by the same deficient practice but not previously identified, and how the provider shall act to remedy the effect of the deficient practices for these participants;

(c) What measures and actions shall be put into place to ensure that the deficient practice(s) is/are being corrected and future noncompliance prevented;

(d) Timelines, including major milestones for completion of all corrective action in the DPoC;

(e) How compliance shall be determined; and

(f) How the DPoC relates to other alternative sanctions.

9717.4 A monitor from DHCF's HCDMA shall oversee implementation of the DPoC and evaluate compliance with the plan.

9717.5 DHCF may terminate the Medicaid provider agreement of an ADHP that is unable to meet the timeline for completion of all corrective actions in the DPoC.

9718 DIRECTED IN-SERVICE TRAINING (DIST)

9718.1 In lieu of termination in situations where the ADHP is not in compliance with programmatic requirements, but participants are not in immediate jeopardy, DHCF may require an ADHP to implement Directed In-Service Training (DIST) for deficiencies determined by the District to be correctable through education. This alternative sanction shall require the staff and relevant employees of the ADHP to attend in-service trainings and demonstrate competency in the knowledge and skills presented during the trainings.

9718. 2 DHCF shall develop the areas for ADHP staff and employee training by incorporating the findings from the annual Provider Readiness Review.

9718.3 Providers shall use training programs developed by well-established organizations with prior experience and expertise in training adult day providers, services. All programs and personnel used to deliver the training shall be approved by DHCF prior to their use.

9718.4 The ADHP shall bear the expense of the DIST.

9718.5 A monitor from DHCF's HCDMA shall oversee implementation of DIST, and shall ensure compliance with the requirements.

9718.6 DHCF may terminate the provider agreement of an ADHP that is unable to meet the timeline for full and successful completion of the DIST.

9719 PROGRAM COMPLIANCE MONITORING

9719.1 Program compliance monitoring shall be the District of Columbia's oversight of efforts made by the ADHP to correct cited deficiencies. State monitoring shall be a safeguard against the ADHP provider's further noncompliance.

9719.2 The following entities may serve as the District of Columbia's Monitor:

(a) DHCF; or

(b) A District of Columbia contractor that meets the following requirements:

(1) Is not a designee or current contractor of the monitored provider;

(2) Does not have an immediate family member who is a participant of the provider;

(3) Is not a person who has been terminated for cause by the provider; and

(4) Is not a former contractor who has had a contract canceled, for cause, by the provider.

9719.3 Program compliance monitoring shall be discontinued under the following circumstances:

(a) The provider's Medicaid provider agreement is terminated;

(b) The provider has demonstrated to the satisfaction of the District of Columbia that it substantially complies with the DPoC as described in § 9717; or

(c) The provider has demonstrated to the satisfaction of the District of Columbia that it has substantially implemented the DIST as described in § 9718.

9720 DISCHARGE AND REFERRAL

9720.1 A participant shall be discharged from the ADHP program under one (1) of the following conditions:

(a) If the participant is found upon reassessment that his/her acuity is below the level of need described under Section 9709;

(b) If the participant requires long term placement in an institutional setting; or

(c) If the participant wishes to discontinue participation in the program.

9720.2 Upon discharge, the ADHP shall develop and maintain a participant discharge plan that shall include the following:

(a) The reasons for discharge;

(b) The post-discharge goals for the participant; and

(c) The list of community resources including service agencies to promote continuity of care; and if follow-up services are desired.

9720.3 The provider shall submit the discharge plan to DHCF within one (1) week of the person's discharge from the ADHP program.

9720.4 If the discharge is related to a failure to meet the level of need, a beneficiary denial or change of services letter will be issued, consistent with Federal and District of Columbia law.

9721 SERVICE LIMITATIONS

9721.1 A person shall not receive ADHP services if they reside in an institutional setting or any setting that is not in compliance with the HCBS setting requirements consistent with 42 C.F.R. § 441.301 and 42 C.F.R. § 441.710.

9721.2 A provider shall not be reimbursed for ADHP services under these rules if the participant is concurrently receiving the following services:

(a) Day Habilitation and Individualized Day Supports under the Section 1915 (c) Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD);

(b) Intensive day treatment or day treatment mental health rehabilitative services (MHRS);

(c) Personal Care Aid (PCA) services (State Plan and 1915 (c) waivers); or

(d) Services funded by the Older Americans Act of 1965, approved July 14, 1965 (Pub. L. No. 89-73, 79 Stat. 218), as amended by the Older Americans Act Amendments of 2000, approved November 13, 2000 (Pub. L. No. 106-501, 114 Stat. 2226), as amended by the Older Americans Act Amendments of 2006, approved October 17, 2006 (Pub. L. No. 109-365, 120 Stat. 2522).

9721.3 A provider shall not be reimbursed for ADHP services if the participant is receiving intensive day treatment mental health rehabilitation services during a twenty-four (24) period that immediately precedes or follows the receipt of

ADHP services, to ensure that the participant is receiving services in the setting most appropriate to his/her clinical needs.

9721.4 If a person is also receiving PCA services under the State Plan for Medical Assistance on the same day that ADHP services are delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day.

9721.5 ADHP services shall not be provided for more than five (5) days per week and for more than eight (8) hours per day.

9722 COST REPORTING

9722.1 Each ADHP site shall report direct services, treatment, and plant and capital costs on an annual basis to DHCF no later than ninety (90) business days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception in writing.

9722.2 All costs reports shall cover a twelve (12) month cost reporting period unless the provider obtains advance written permission from DHCF to allow an alternative reporting period, for good cause.

9722.3 The costs described in Subsection 9722.1 shall be reported on a cost report template designed by DHCF.

9722.4 The cost report instructions shall include, but not be limited to, guidelines and standards for determining and reporting allowable costs.

9722.5 DHCF shall issue a delinquency notice to any provider who fails to submit a cost report within the required ninety (90) business day timeframe or who submits an incomplete cost report.

9722.6 The delinquency notice shall be issued within thirty (30) business days of the last day of the required timeframe, and shall urge the provider to submit, or amend the submitted cost report or face the risk of a withholding of provider payments

9722.7 Issuance of a delinquency notice shall result in the withholding of an amount equal to seventy-five percent (75%) of the provider's total payment for the month that the cost report was due, and the same amount shall be withheld each month until the cost report is received.

9722.8 The amounts withheld pursuant to Subsection 9722.7 shall be refunded upon submission of complete cost reports that address all delinquencies.

9722.9 All cost reports are subject to audit and adjustment.

9722.10 All providers shall retain all accounting records for a period of not less than ten (10) years after the filing of a cost report.

9723 REIMBURSEMENT POLICY

9723.1 Reimbursement rates shall be based on a uniform per diem rate that is differentiated based on the participant's acuity level as established by the standardized need- based assessment tool and process described under Section 9709, as follows:

(a) Acuity Level One (1) represents the health and support needs of a beneficiary whose needs based assessment reflects a minimum score of four (4) or five (5); and

(b) Acuity Level Two (2) represents the health and support needs of a beneficiary whose needs based assessment reflects a score of six (6) or higher.

9723.2 Beginning on the effective date of these rules, the reimbursement rate for ADHP services shall be as follows:

(a) Acuity Level One (1): The daily rate for a program serving participants with minimum acuity levels with at least one staff member during all hours shall be ninety eight dollars and seventy cents ($98.70) per day; and

(b) Acuity Level Two (2): The daily rate for a program serving participants with a maximum acuity level with at least one staff member shall be one hundred and twenty five dollars and seventy eight cents ($125.78) per day.

9723.3 Effective October 1, 2015 (fiscal year 2016) and thereafter, the uniform per-diem rates, shall be inflated by the corresponding CMS Market Basket Index for Nursing Facilities for that period.

9799 DEFINITIONS

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

Acuity level - A participant's level of health and support needs determined by the assessment tool.

ADHP plan of care - A written plan developed by the provider to implement ADHP services in accordance with the individual's person-centered service plan.

Aging and Disability Resource Center (ADRC) - The D.C. ADRC is housed at the D.C. Office on Aging, and provides a single, coordinated system of information and access for individuals seeking long-term services and supports. This is accomplished through the provision of unbiased, reliable information, counseling, and service access to older adults (60 years and older), individuals with disabilities (18 to 59 years old), and their caregivers. The ADRC facilitates the acquisition of services individualized to the unique needs and desires expressed by each person.

Body Mechanics - The field of physiology that studies muscular actions and the function of muscles in maintaining body posture.

Chronic Medical Condition - A medical condition that lasts a year or more and requires ongoing medical attention and/or limit activities of daily living.

Person-centered Service Plan – A plan of care developed by the Aging and Disability Resource Center (ADRC) that meets the requirements of 42 C.F.R. § 441.725.

Provider - the individual, organization, or corporation, public or private, that provides adult day health program services and seeks reimbursement for providing those services under the Medicaid program.

Support Team - A group of people providing support to a person receiving ADHP services, who have the responsibility of performing a comprehensive person-centered evaluation to support the development, implementation and monitoring of the person's person-centered plan of care.

Site - The location of the adult day health program. If an adult day health provider operates a program in two (2) or more separate locations, each location is considered to be a separate site.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.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) 442-8742, 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.