DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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.& 2015 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Section 4216 of Chapter 42 (Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The Centers for Medicare and Medicaid Services (CMS) issued regulations governing conflict-free standards for the delivery of case management services and the person-centered service planning process in its Home and Community-Based regulations, at 42 C.F.R. §§ 441.301(c)(1) – (3). These standards became effective on March 17, 2014.

These final rules achieve the following: (1) require the case management service providers to ensure that they have completed self-attestation forms on file no later than July 1, 2016; (2) establish that all case managers shall ensure that all Individual Support Plan (ISPs) shall utilize DHCF's template for person-centered-planning available at the DHCF website detailed within this section, and conform to all the person-centered planning requirements by November 1, 2016; (3) require that transition plans submitted by case management service providers must include sufficient safeguards to protect a beneficiary who may experience gaps in services due to an interruption of case management services; (4) establish that case managers shall complete and submit the beneficiary's ISP to DHCF or its designee for review and approval within ten (10) business days of conducting the beneficiary's assessment; and (5) require case managers to take the required steps detailed within this section to ensure that a beneficiary's care is coordinated.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on July 10, 2015 at 62 DCR 009490. Comments were received and taken into account in the publication of a Notice of Second Emergency and Proposed Rulemaking. The Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on January 22, 2016 at 63 DCR 000937. No comments were received and no changes have been made.

These rules were adopted by the Director on March 16, 2016 and shall become final upon publication of this notice in the *D.C. Register*.

Chapter 42, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 4216, SPECIFIC PROVIDER REQUIREMENTS: CASE MANAGEMENT AND RELATED WAIVER SERVICES, is amended as follows:

4216 SPECIFIC PROVIDER REQUIREMENTS: CASE MANAGEMENT

4216.1 Each individual providing case management services shall meet the following requirements:

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

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

(c) Provide proof of the supporting documents for the Immigration and Naturalization Service's Form I-9 requirements;

(d) Be able to read and write English;

(e) Be acceptable to the person using the Waiver service;

(f) Confirm, on an annual basis, that he or she is free of active tuberculosis by undergoing an annual purified protein derivative (PPD) skin test;

(g) Confirm, on an annual basis, that he or she is free of communicable diseases by undergoing an annual physical examination by a physician, and obtaining written and signed documentation from the examining physician that confirms he or she is free of communicable diseases; and

(h) Provide to each case management service provider for whom he or she works:

(1) Evidence of acceptance or declination of the Hepatitis vaccine; and

(2) A completed Department of Health Care Finance Conflict-Free Case Management Self-Attestation Form described under Subsection 4216.2.

4216.2 Except as provided in Subsection 4216.3, on or after the effective date of these rules, an individual providing case management services, who is employed or under contract to a Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities (EPD Waiver) case management service provider shall self-attest to meeting the CMS conflict-free standards in accordance with 42 C.F.R § 441.301(c)(1)(vi) using the DHCF Conflict-Free Case Management Self-Attestation Form. Under these standards, individual case managers shall not:

(a) Be related by blood or marriage to the person receiving services, or to any paid caregiver of the person;

(b) Be financially responsible for the person, or be empowered to make financial or health decisions on the person's behalf;

(c) Have a financial relationship, defined under 42 C.F.R § 411.354, with any entity that is paid to provide care for the person; and

(d) Be employed by any entity that is a provider of a person's personal care aide (PCA) services or any other direct services under the EPD Waiver.

4216.3 An individual providing EPD waiver case management services shall meet the requirements of Subsection 4216.1(h)(ii) no later than July 1, 2016.

4216.4 EPD Waiver case management service providers shall ensure they have a copy of the DHCF Conflict-Free Case Management Self-Attestation Form on file for each case manager prior to submission of any claims for case management services provided by that case manager on or before July 1, 2016. DHCF Conflict-Free Case Management Self-Attestation Forms are subject to inspection and audit and must be produced upon request.

4216.5 Individuals conducting case management services shall meet one of the following educational requirements:

(a) Have a current appropriate license, have a Master's degree in social work, psychology, counseling, rehabilitation, nursing, gerontology, or sociology, and have at least one (1) year of experience working with the elderly or individuals with physical disabilities;

(b) Have a current appropriate license, have a Bachelor's degree in social work, psychology, counseling, rehabilitation, nursing, gerontology, or sociology, and have two (2) years of experience working with the elderly or individuals with physical disabilities; or

(c) Have a current license as a Registered Nurse (RN), have an Associate degree in nursing, and have at least three (3) years of experience working with the elderly and individuals with physical disabilities.

4216.6 Case management service providers shall not provide medical, financial, legal, or other services or advice for which they are not qualified or licensed to provide (except for providing referrals to qualified individuals, agencies, or programs).

4216.7 Except as provided in Subsection 4216.8, on or after the effective date of these rules, in accordance with 42 C.F.R. § 441.301(c)(1)(vi), the following providers shall not be eligible to provide case management services:

(a) An entity that is a Medicaid provider of PCA services or any other direct services under the EPD Waiver; or

(b) An entity that has a financial relationship, as defined under 42 C.F.R § 411.354, with a Medicaid provider of PCA services or any other direct services under the EPD Waiver.

4216.8 An entity that is enrolled to provide case management services on the effective date of these rules that is also a Medicaid provider of PCA services or any other direct services under the EPD Waiver; or has a financial relationship, as defined under 42 C.F.R § 411.354, with a Medicaid provider of PCA services or any other direct services under the EPD Waiver, shall have until July 1, 2016 to come into compliance with Subsection 4216.7.

4216.9 An entity described in Subsection 4216.8 shall notify DHCF of its election to continue or discontinue providing case management services no later than September 1st, 2015. An entity that chooses to discontinue case management services shall submit a transition plan to DHCF no later than October 1st 2015, and shall cooperate with DHCF to effectuate the orderly and timely transition of its enrollees to other case management providers that meet the conflict-free case management standards. These transition plans shall include sufficient safeguards to protect individuals who may experience gaps in services during transitions, including demonstrating efforts to ensure compliance with any notice or due process rights governed under local and federal law in case of service suspensions, or terminations.

4216.10 Each case management service provider shall conduct a comprehensive intake within forty-eight (48) business hours of receiving the waiver referral and prior to the development of the individual service plan (ISP). All initial ISPs and all renewal ISPs shall conform to the person-centered planning requirements under 42 C.F.R §§ 441.301(c)(1) – (3) by November 1, 2016, and case managers shall use DHCF's person-centered-planning template, available at http://dhcf.dc.gov/release/person-centered-planning, to develop each beneficiary's ISP.

4216.11 Each case management service provider shall complete and submit the ISP to DHCF or its designee for review and approval within ten (10) business days of conducting the comprehensive intake.

4216.12 Each case management service provider shall include the person whose plan is being developed, other contributors chosen and invited by the person, and representatives of the person's interdisciplinary team, as possible, in the initial

assessment and in the development and implementation of the ISP. The person or authorized representative shall have access to the ISP and shall be involved in the periodic review of the ISP.

4216.13 It is the responsibility of the case management service provider to ensure that all other professional disciplines, as identified for resolution of identified needs, are incorporated into the ISP. Specifically, each case management service provider shall coordinate a beneficiary's care by sharing information with all other health care and service providers identified in the ISP, as applicable, to ensure that the beneficiary's care is organized and to achieve safer and more effective health outcomes.

4216.14 Each case management service provider shall maintain, follow, and continually update a training and supervision program to ensure the individual delivering case management services is fully trained and familiar with the waiver policies and procedures, including CMS's conflict-free case management standards as set forth under this section.

4216.15 Each provider of case management services shall ensure that individuals providing case management services are appropriately supervised and that the case management service provided is consistent with the person's ISP.