

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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. & 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 intent to amend Section 989, entitled “Long Term Care Services and Supports Assessment Process” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These proposed rules establish standards governing the assessment process for the level of need for beneficiaries who receive Long Term Care Services and Supports (LTCSS), with the exception of Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IDD) services, and Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver). This includes nursing home services, supports under the Elderly and Persons with Physical Disabilities Home and Community-Based Services Waiver (EPD Waiver), Personal Care Aide (PCA) services available under the District’s Long Term Care Program (Medicaid State Plan and EPD Waiver), Adult Day Health Program (ADHP) services under the 1915(i) Home and Community-based State Plan Option, and other LTCSS not intended to service individuals with intellectual and developmental disabilities such as the Program of All Inclusive Care for the Elderly (PACE). Under the assessment process, a nurse employed by DHCF or its designated agent conducts face-to-face assessments, and reassessments using a standardized needs-based assessment tool to determine a person’s support needs for LTCSS.

LTCSS are designed to assist beneficiaries with a range of services and supports over an extended period of time. These rules amend the previously published standards by: (1) specifying that the face-to-face initial assessments and re-assessments shall be conducted by a Registered Nurse, employed by DHCF or its agent; (2) establishing that requests for an assessment or re-assessment for LTCSS must be made by the person seeking services, the person’s representative, family member, or health-care professional; (3) establishing timelines for conducting face-to-face assessments and issuing assessment determinations; (4) amending the re-assessment period to be once every twelve (12) months instead of once every one hundred and eighty (180) days; (5) adding a link to access the standardized needs-based assessment tool online; (6) establishing that a person shall also qualify for a level of need for PCA services if his/her functional score without medication management is four (4) or higher, or if his/her functional score without medication management is three (3) or higher and a medication management score is at least a one (1); (7) clarifying the request for reconsideration process; (8) clarifying the contents of a reconsideration decision issued if DHCF decides to uphold the assessment determination; (9) clarifying the beneficiary’s timeline for filing an appeal in the event that a reconsideration decision is issued; (10) clarifying terms and phrases used in the Section; and (11) defining terms used in the section.

An initial Notice of Proposed rulemaking was published in the *D.C. Register* on June 6, 2014 at 61 DCR 005781. Numerous comments were received and this second proposed rulemaking is in response to the comments.

The Director also gives notice of the intent to take final rulemaking action to adopt this proposed rule not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 9 MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 989, LONG TERM CARE SERVICES AND SUPPORTS ASSESSMENT PROCESS, is amended to read as follows:**

**989 LONG TERM CARE SERVICES AND SUPPORTS ASSESSMENT PROCESS**

989.1 The purpose of this section is to establish the Department of Health Care Finance (DHCF) standards governing the Medicaid assessment process for Long Term Care Services and Supports (LTCSS) and to establish numerical scores pertaining to the level of need necessary to establish eligibility for a range of LTCSS.

989.2 LTCSS are designed to assist persons with a range of services and supports including assistance with basic tasks of everyday life over an extended period of time. These include, but are not limited to, the Elderly and Persons with Physical Disabilities home and community-based waiver (EPD Waiver), Personal Care Aide (PCA) services under the District's Long Term Care Program (Medicaid State Plan and EPD Waiver), nursing home services, Adult Day Health Program (ADHP) services under the 1915(i) Home and Community-based State Plan Option, and other services not intended to serve individuals with intellectual and developmental disabilities.

989.3 A Registered Nurse (R.N.) employed by DHCF or its designated agent shall conduct an initial face-to-face assessment following the receipt of a request for an assessment for LTCSS. The request shall include any supporting documentation established by program rules. An initial request for an assessment or a subsequent request based upon a change in the person's condition or acuity level, or at the time of re-assessment, may be made by the person seeking services, the person's representative, family member, or health care professional.

989.4 The R.N. employed by DHCF or its designated agent shall be responsible for conducting the face-to-face assessment of each person using a standardized needs-based assessment tool within five (5) calendar days of the receipt of a request for an assessment, unless the person's condition requires that an assessment be conducted sooner to expedite the provision of LTCSS to that person, or the person has requested a later date. The assessment shall:

- (a) Confirm and document the person's functional limitations, cognitive/behavioral and skilled care support needs;
- (b) Be conducted in consultation with the person and his/her representative and/or support team;
- (c) Determine and document the person's unmet need for services taking into account the current utilization of informal supports and other non-Medicaid resources required to meet the applicant's need for assistance; and
- (d) Determine the person's level of need for LTCSS.

989.5 The standardized needs-based assessment tool shall be available on DHCF's website at [www.dhcf.dc.gov/publication/long-term-care-assessment-tool](http://www.dhcf.dc.gov/publication/long-term-care-assessment-tool).

989.6 The face-to-face assessment using the standardized needs-based assessment tool to determine each person's level of need for LTCSS shall result in a total numerical score which includes three (3) separate scores pertaining to his/her assessed functional, cognitive/behavioral, and skilled care needs. The functional assessment score includes an assessment and corresponding score correlated to the person's ability to manage medications.

989.7 The total numerical score consists of a value between zero to thirty-one (0-31); which may include a score of up to twenty-three (23) on the functional assessment, a score of up to three (3) on the cognitive/behavioral assessment, and a score of up to five (5) on the skilled care needs assessment.

989.8 The total numerical scores indicating a person's need for LTCSS are as follows:

- (a) Four (4) or higher for personal care aide services;
- (b) Four (4) or five (5) for adult day health acuity level 1 services;
- (c) Six (6) or higher for adult day health acuity level 2 services; and
- (d) Nine (9) or higher for nursing home, Elderly and Persons with Physical Disabilities Home and Community-based Services Waiver (EPD Waiver), or other programs/services that require a nursing home level of care.

989.9 A person shall only be deemed to have a level of need for Personal Care Aid (PCA) services under Subsection 989.8, if his/her functional score without medication management is four (4) or higher, or if his/her functional score without medication management is three (3) or higher and a medication management score is at least a one (1).

- 989.10 Based upon the results of the face-to-face assessment, DHCF or its authorized agent shall issue to the person an assessment determination that specifies his/her level of need for a range of LTCSS for which the person is eligible.
- 989.11 The assessment determination shall be issued to the person no later than forty-eight (48) hours after the assessment is completed, unless the person's condition necessitates that services be authorized and provided earlier.
- 989.12 An R.N. employed by DHCF or its designated agent shall conduct a face-to-face re-assessment of each person's need for the receipt of LTCSS at least every twelve (12) months, or when there is a significant change in the person's condition or acuity level.
- 989.13 DHCF may extend the level of need reauthorization period pursuant to the face-to-face reassessment for a timeframe not to exceed eighteen (18) months to align the level of need assessment date with the person's Medicaid renewal date.
- 989.14 Requests to conduct re-assessments shall be made in accordance with the requirements under Subsection 989.3.
- 989.15 If the person meets the level of need as determined by a numerical score affiliated with each long-term care service in accordance with Subsection 989.8, and chooses to participate in a long-term care program, DHCF or its authorized agent shall refer the person to the long-term care service provider of his/her choice.
- 989.16 The person shall choose a provider based upon the level of need and the ability of the provider to safely care for him/her in the least restrictive setting.
- 989.17 DHCF or its authorized agent shall maintain the completed standardized assessment tool and documentation reflecting that the person was given a free choice of providers from a list of qualified providers.
- 989.18 If the person has not made a choice, or needs further assistance, DHCF or its authorized agent shall refer the person to the Aging and Disability Resource Center for additional assistance, options counseling, and person-centered planning as appropriate.
- 989.19 DHCF, or its agent, shall issue a Beneficiary Denial or Change of Services Letter if, based upon the assessment or re-assessment conducted pursuant to this section, a person is found to be ineligible for, or does not meet the level of need for, LTCSS. The Beneficiary Denial or Change of Services Letter shall inform the person of the following:
- (a) The right to request DHCF to reconsider its decision and the timeframes for making a request for reconsideration; and

- (b) The right to appeal the denial, reduction, or termination of services in accordance with federal and District law and regulations.

989.20 A request for reconsideration, pursuant to § 989.19(a), must be submitted in writing, by mail, fax, or in person, to DHCF's Office of the Senior Deputy Director/Medicaid Director, within twenty-one (21) calendar days of the date of the notice of denial, termination, or reduction of LTCSS services. The request for reconsideration shall include information and documentation as follows:

- (a) A written statement by the person, or the person's designated legal representative, describing the reason(s) why the decision to deny, terminate, or reduce LTCSS services should not be upheld;
- (b) A written statement by a physician familiar with the person's health care needs; and
- (c) Additional, relevant documentation.

989.21 For beneficiaries currently receiving services, a timely filed request for reconsideration will suspend the reduction or termination of services until a reconsideration decision is issued.

989.22 DHCF shall issue a reconsideration decision no more than forty-five (45) calendar days from the date of receipt of the documentation required in § 989.20.

989.23 If DHCF decides to uphold the assessment determination, the reconsideration decision shall contain the following:

- (a) A description of all documents that were reviewed;
- (b) The justification(s) for the intended action(s);
- (c) An explanation of the beneficiary's right to request a fair hearing; and
- (e) The circumstances under which Medicaid LTCSS is provided during the pendency of a fair hearing.

989.24 A right to appeal the reconsideration decision, pursuant to § 989.23, must be submitted within ninety (90) calendar days of the date of issuance of the reconsideration decision by filing a written request, by mail, fax, or in person, for a fair hearing with the District of Columbia Office of Administrative Hearings.

989.25 A right to appeal the denial, reduction, or termination of services, pursuant to § 989.19(b), must be submitted within ninety (90) calendar days of the date of the Beneficiary Denial or Change of Services Letter by filing a written request, by mail, fax, or in person, for a fair hearing with the District of Columbia Office of Administrative Hearings.

989.26 DHCF shall not reduce or terminate LTCSS services while a fair hearing is pending if a beneficiary who was receiving services files the hearing request within thirty (30) calendar days from the date of issuance of the reconsideration decision, or the Beneficiary Denial or Change of Services letter, whichever is later.

**989.99 DEFINITIONS**

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

**Acuity level** - The intensity of services required for a Medicaid beneficiary wherein those with a high acuity level require more care and those with lower acuity level require less care.

**Beneficiary** - A person deemed eligible to receive Medicaid services.

**Face-to-face assessment** - An assessment that is conducted in-person by a registered nurse to determine an applicant's need for long-term care services.

**Informal supports** - Assistance provided by the person's family member or another individual who is unrelated to the person.

**Level of Need** - A determination used to assess a person's need for supports for the purposes of allocating Medicaid resources or services.

**Non-Medicaid Resources** - The person's utilization of resources including but not limited to legal services, housing assistance, vocational rehabilitation or job help, and transportation.

**Person** - An applicant who submits a service assessment request to DHCF and/or its designated agent to determine his/her level of need for long-term care services and supports.

**Person-centered plan** - A person-driven plan of care focusing on the person's strengths, weaknesses, needs, and goals.

**Provider** - The individual, organization, or corporation, public or private, that provides long-term care services and seeks reimbursement for providing those services under the Medicaid program.

**Representative**- Any person other than a provider:

- (a) Who is knowledgeable about the applicant's circumstances and has been designated by that applicant to represent him or her; or
- (b) Who is legally authorized either to administer an applicant's financial or personal affairs or to protect and advocate for his/her rights.

**Support Team-** A team including, but not limited to, the person's family, friends, community social worker, and/or medical providers.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director and State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, NW, Suite 900 South, Washington DC 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://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.