

## 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 (2016 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, and the intent to adopt on a permanent basis, of an amendment to amend Chapters 9 (Medicaid Program) and 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), operates the Medicaid Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) under the supervision of DHCF. The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012, and ending November 19, 2017. An amendment to renew the ID/DD Waiver for another five-year period beginning November 20, 2017, and ending November 19, 2022, was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2017, effective July 20, 2017 (D.C. Act 22-0104; D.C. Official Code § 1-307.02(a)(11)(D) (2017 Supp.)), and subsequently was sent by DHCF to CMS for its approval. DHCF anticipates that CMS will approve the renewal amendment effective November 20, 2017.

This rulemaking repeals Section 926 (Environmental Accessibility Adaptation Services), Section 1914 (Vehicle Modifications), and Section 1927 (Personal Emergency Response System (PERS) Services), and makes amendments to Sections 1901, 1904, 1906, 1909, 1910, 1913, 1915, 1916, 1920, 1922, 1924, 1925, 1928, 1929, 1931, 1936, 1938, 1941, 1942, and 1999. These emergency and proposed rules are necessary to amend the twenty-eight (28) provisions that govern participation in the ID/DD Waiver because of changes, clarifications, or other improvements to the language. The renewal application: (a) continues all utilized services and supports for people currently enrolled in the ID/DD Waiver; (b) eliminates two (2) services that were not utilized – Environmental Accessibility Adaptation Services (29 DCMR § 926) and Vehicle Modification Services (29 DCMR § 1914); (c) eliminates Personal Emergency Response System (PERS) Services (29 DCMR § 1927) and incorporates it into a new service known as Assistive Technology Services (29 DCMR § 1941); and (d) includes new Parenting Support Services (29 DCMR § 1942). In this emergency and proposed rulemaking, twenty-three (23) current rules are being amended, three (3) rules are being repealed, and two (2) new rules are being created as follows:

- (1) Environmental Accessibility Adaptation Services, 29 DCMR § 926, is being repealed;
- (2) Covered Services and Rates, 29 DCMR § 1901, is amended to reflect the addition of two (2) new services and the repeal of three (3) former services, and to clarify service authorization requirements and DHCF reimbursement rules;
- (3) Provider Qualifications, 29 DCMR § 1904, is amended to align with DDS's current policies and to clarify the requirement for providers to comply with DDS's procedures, transmittals and issued guidance;
- (4) Provider Enrollment Process, 29 DCMR § 1905, is amended to align with the current DHCF and DDS provider enrollment process;
- (5) Requirements for Direct Support Professionals, 29 DCMR § 1906, is amended to add qualifications for peer supporters for Parenting Support Services and Family Training Services, to allow a Certificate of Individualized Education Program (IEP) Completion as an alternative to a high school diploma for Direct Support Professionals (DSPs), and to clarify the right to accommodations under the Americans with Disabilities Act of 1990, effective July 26, 1990 (Pub. L. No. 101-336, 104 Stat. 328);
- (6) Records and Confidentiality of Information, 29 DCMR § 1909, is amended to update requirements for record-keeping and storage;
- (7) Personal Care Services, 29 DCMR § 1910, is amended to align with Medicaid State Plan requirements regarding provider qualifications and to clarify that such services may occur at home, in the day setting, at school or work, or in the community;
- (8) One-Time Transitional (OTT) Services, 29 DCMR § 1913, is amended to clarify the definitions of essential household furnishings and services necessary for the person's health, safety and wellbeing, to ensure OTT providers' use of Person-Centered Thinking skills/tools, and to limit the service to a one-time, non-recurring expense;
- (9) Vehicle Modification Services, 29 DCMR § 1914, is being repealed;
- (10) Host Home Without Transportation Services, 29 DCMR § 1915, is amended to require use of Person-Centered Thinking and Discovery tools and skills, to realign and add requirements for the ID/DD waiver provider and the principal care provider, to describe provider requirements for Medicaid reimbursement, and to require compliance with the HCBS settings rule;
- (11) In-Home Supports Services, 29 DCMR § 1916, is amended to clarify where a person may receive in-home support services; to allow services to be provided in person, by phone or by any other technology device that supports the use of video-audio communication, subject to limitations and the person's Individual Support Plan; to add a new High Intensity In-Home Supports Services tier; and to require an In-Home Supports Plan;
- (12) Day Habilitation Services, 29 DCMR § 1920, is amended to include requirements for Small Group Day Habilitation; to require the use of the Learning Log for certain notes; and to require any new settings to fully comply with the requirements of the HCBS settings rule; and to add daily census limitations, and service limitations based on age and Level of Need day composite scores;

- (13) Employment Readiness Services, 29 DCMR § 1922, is amended to describe when a person can receive this service along with Vocational Rehabilitation services, to include requirements for Medicaid reimbursement, to describe requirements for 1:1 staffing, to add daily census limitations, to time limit this service, and to require all Employment Readiness providers to become Rehabilitation Services Administration providers;
- (14) Family Training Services, 29 DCMR § 1924, is amended to include a small group option and to allow peer supporters as an alternative to professional providers;
- (15) Individualized Day Supports Services, 29 DCMR § 1925, is amended to clarify that the service may be used for employment discovery and exploration; to change qualifications for certain direct support professionals; and to allow a person to start and end their day at their place of residence if preferred;
- (16) Personal Emergency Response System (PERS) Services, 29 DMCR § 1927, is being repealed;
- (17) Physical Therapy Services, 29 DCMR § 1928, is amended to clarify where services may be delivered;
- (18) Residential Habilitation Services, 29 DCMR § 1929, is amended to limit the size to not more than four (4) people per setting with grandfathering for current residents; to require compliance with the HCBS settings rule; to clarify staffing ratios and requirements;
- (19) Skilled Nursing Services, 29 DCMR § 1931, is amended to align with the Medicaid State Plan requirements regarding provider qualifications and to clarify where services may be delivered and when Medicaid reimbursement is available for additional skilled nursing services;
- (20) Speech, Hearing and Language Services, 29 DCMR § 1932, is amended to clarify where services may be delivered and to include a new small group option;
- (21) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933, is amended to require compliance with the Home and Community-Based Services (HCBS) settings rule; limit the size of small groups to two (2) to four (4) workers; to require benefits counseling for participants; to allow services to be provided in person, by phone or by any other technology device that supports the use of video-audio communication, subject to limitations and the person’s Individual Support Plan; and to describe requirements for Medicaid reimbursement eligibility;
- (22) Supported Living Services, 29 DCMR § 1934, is amended to require compliance with the requirements of the HCBS settings rule; to require a daily schedule; to describe requirements for Medicaid reimbursement for twenty-four (24) hour one-to-one Supported Living Services in a single occupancy supported living residence; clarify staffing requirements; and to allow Supported Living Periodic services to be provided in person, by phone or by any other technology device that supports the use of video-audio communication, subject to limitations and the person’s Individual Support Plan;
- (23) Wellness Services, 29 DCMR § 1936, is amended to be more person-centered; to clarify provider qualifications for professionals delivering wellness services; and to modify service limitations;

- (24) Cost Reports and Audits, 29 DCMR § 1937, is amended to rename it as Cost Reports, Audits, and Oversight Monitoring; to set forth the DHCF Division of Program Integrity's audit review processes; to establish the DHCF Long Term Care Administration's oversight and monitoring responsibilities; and to update the subsections on provider cost reporting;
- (25) Home and Community-Based Setting Requirements, 29 DCMR § 1938, is amended to detail requirements for compliance with the HCBS settings rule, for example, the person's right to choice, privacy, dignity, opportunities to seek employment, and full access to the greater community;
- (26) Assistive Technology Services, 29 DCMR § 1941, is a new regulation which includes eligibility requirements, provider qualifications, and service limitations for Assistive Technology Services;
- (27) Parenting Supports Services, 29 DCMR § 1942, is a new regulation which includes eligibility requirements, provider qualifications, individual and small group services, and service limitations for Parenting Supports Services; and
- (28) Definitions, 29 DCMR § 1999, is amended to delete ten (10) terms and phrases that are no longer used in the ID/DD Waiver; to amend eight (8) terms and phrases in order to, among other things, better use People First language and to update the definition of Qualified Intellectual Disabilities Professionals to align with the ID/DD waiver renewal; and to include one (1) new term.

To facilitate stakeholder input, copies of this Notice of Emergency and Proposed Rulemaking and a redlined version of these regulatory changes are available on the DDS website at <https://dds.dc.gov/page/waiver-amendment-information> and on the DHCF website at <https://dhcf.dc.gov>.

The ID/DD Waiver serves some of the District's most vulnerable residents. In order to prevent impediments that adversely affect access to quality Medicaid services delivered by eligible Medicaid providers, DHCF is taking emergency action for the immediate preservation of the health, safety and welfare of persons receiving these services. These rules must be in place upon the effective date of the renewal amendment.

The emergency rulemaking was adopted on November 8, 2017, and will become effective on the date CMS approves the renewal amendment or November 20, 2017, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until March 8, 2018, 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 proposed rules in 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 926, ENVIRONMENTAL ACCESSIBILITY ADAPTATION SERVICES, is deleted in its entirety and amended to read as follows:**

926 [REPEALED].

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, is amended as follows:**

**Section 1901, COVERED SERVICES AND RATES, is amended to read as follows:**

**1901 COVERED SERVICES AND RATES**

1901.1 Services available under the Waiver shall include the following:

- (a) Assistive Technology Services, 29 DCMR § 1941;
- (b) Behavioral Support Services, 29 DCMR § 1919;
- (c) Companion Services, 29 DCMR § 1939;
- (d) Creative Arts Therapies Services, 29 DCMR § 1918;
- (e) Day Habilitation Services, 29 DCMR § 1920;
- (f) Dental Services, 29 DCMR § 1921;
- (g) Employment Readiness Services, 29 DCMR § 1922;
- (h) Family Training Services, 29 DCMR § 1924;
- (i) Host Home without Transportation Services, 29 DCMR § 1915;
- (j) Individualized Day Supports Services, 29 DCMR § 1925;
- (k) In-Home Supports Services, 29 DCMR § 1916;
- (l) Occupational Therapy Services, 29 DCMR § 1926;
- (m) One-Time Transitional Services, 29 DCMR § 1913;
- (n) Parenting Supports Services, 29 DCMR § 1942;
- (o) Personal Care Services, 29 DCMR § 1910;
- (p) Physical Therapy Services, 29 DCMR § 1928;
- (q) Residential Habilitation Services, 29 DCMR § 1929;

- (r) Respite Services, 29 DCMR § 1930;
  - (s) Skilled Nursing Services, 29 DCMR § 1931;
  - (t) Speech, Hearing and Language Services, 29 DCMR § 1932;
  - (u) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933;
  - (v) Supported Living Services, 29 DCMR § 1934; and
  - (w) Wellness Services, 29 DCMR § 1936.
- 1901.2 For dates of services beginning November 20, 2016, which aligns with Waiver Year 5, the Medicaid provider reimbursement rate(s) to be paid for the Waiver services identified in Subsection 1901.1 shall be posted on the District of Columbia Medicaid fee schedule at [www.dc-medicaid.com](http://www.dc-medicaid.com). DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s) for Waiver services.
- 1901.3 No Waiver provider shall provide Waiver services unless in receipt of a Service Authorization from the Department on Disability Services, Developmental Disabilities Administration (DDS/DDA) for that Waiver service. A Service Authorization is an approval for a prescribed Waiver service issued by DDS/DDA to the provider prior to rendering service and is located on MCIS, DDS/DDA's case management information system, or its successor. DDS/DDA will not retroactively authorize services, except in the event of an emergency in which the provider has notified DDS and provided the services in good faith to avoid any service disruptions for the person, and subject to the approval of the Deputy Director for DDA.
- 1901.4 DHCF shall not reimburse any Waiver provider for services to the extent the provider:
- (a) Fails to comply with any applicable regulation in this chapter;
  - (b) Fails to comply with all applicable federal and District of Columbia laws and regulations;
  - (c) Fails to comply with all applicable transmittals, rules, manuals and other requirements for payment issued by DHCF;
  - (d) Provides services in the absence of an approved prior authorization from DHCF or its designee for payment identifying the authorized service, number of hours or units authorized, duration, and scope of service; and

- (e) Fails to comply with the terms of the Medicaid Provider Agreement.
- 1901.5 Each Waiver provider shall agree to accept, as payment in full, the amount determined by DHCF as reimbursement for the authorized Waiver services provided to beneficiaries.
- 1901.6 Each Waiver provider shall agree to bill any and all known third-party payers prior to billing Medicaid.
- 1901.7 A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.

**Subsections 1904.1 and 1904.4, and a new Subsection 1904.5, of Section 1904, PROVIDER QUALIFICATIONS, are amended to read as follows:**

- 1904.1 Home and Community-Based Services (HCBS) Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:
  - (a) A resume and three (3) letters of reference demonstrating that the owner(s)/operator(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waived by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;
  - (b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;
  - (c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);
  - (d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;

- (e) To the extent its corporate structure includes a Board of Directors, a list of Board members representing a diverse spectrum of the respective community and their affiliations;
- (f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;
- (g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);
- (h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;
- (i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;
- (j) A copy of the certificate of good standing from the DCRA;
- (k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at:  
<http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>;
- (l) A continuous quality assurance and improvement plan that includes, but is not limited to, requirements of the applicable Waiver services, and community integration and person-centered thinking principles and values as intentional outcomes for persons supported;
- (m) A copy of professional/business liability insurance of at least one million dollars (\$1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;
- (n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;
- (o) For providers of Supported Living, Supported Living with Transportation, Host Homes, and Residential Habilitation, a Continuity of Operations Plan;
- (p) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day

Habilitation, Individualized Day Supports, and Employment Readiness, evidence of fiscal and organizational accountability; and

- (q) Any other documentation deemed necessary to support the approval as a provider.

1904.4

In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:

- (a) Maintain a copy of the approval letter issued by DHCF;
- (b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;
- (c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;
- (d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;
- (e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;
- (f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;
- (g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;
- (h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: <http://dds.dc.gov/publication/language-access-policy>;
- (i) Offer the Hepatitis B vaccine to all employees;
- (j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 CFR § 1910.1030;
- (k) Ensure compliance with the provider agency's policies and procedures and DDS policies, procedures, transmittals and issued guidance. This includes,

but is not limited to: reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at:

<http://dds.dc.gov/page/policies-and-procedures-dda>;

- (l) For providers of Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness services, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS, and in accordance with the most current DDS Training Policy and Procedure;
- (m) Provide a written staffing schedule for each site where services are provided, if applicable;
- (n) Maintain a written staffing plan, if applicable;
- (o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;
- (p) Ensure that a certificate of occupancy is obtained, if applicable;
- (q) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;
- (r) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;
- (s) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;
- (t) Complete the DDA abbreviated readiness process, if applicable;
- (u) Participate, and support willing waiver recipients to participate, in the National Core Indicators surveys, or successors surveys, as requested by DDS and/ or its assigned contractors; and

- (v) Adhere to the specific provider qualifications in each service rule.

1904.6

In order to provide services under the Waiver and qualify for Medicaid reimbursement, a Qualified Intellectual Disabilities Professional (QIDP), also known as a Qualified Developmental Disabilities Professional or QDDP as defined in D.C. Official Code § 7-1301.03(21), shall oversee the initial habilitative assessment of a person; develop, monitor, and review ISPs; and integrate and coordinates Waiver services. The QIDP shall have at least one (1) of the following qualifications:

- (a) A psychologist with at least a master's degree from an accredited program and with specialized training or one (1) year of experience in intellectual disabilities;
- (b) A physician licensed to practice medicine in the District and with specialized training in intellectual disabilities or with one (1) year of experience in treating persons with intellectual disabilities;
- (c) An educator with a degree in education from an accredited program and with specialized training or one (1) year of experience in working with persons with intellectual disabilities;
- (d) A social worker with a master's degree from an accredited school of social work and with specialized training in intellectual disabilities or with one (1) year of experience in working with persons with intellectual disabilities;
- (e) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification and who has specialized training in intellectual disabilities or one (1) year of experience in working with persons with intellectual disabilities;
- (f) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or one (1) year of experience in working with persons with intellectual disabilities;
- (g) A human service professional with at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology) and who has specialized training in intellectual disabilities or one (1) year of experience in working with persons with intellectual disabilities; or

- (h) A registered nurse with specialized training in intellectual disabilities or with one (1) year of experience in working with persons with intellectual disabilities.

**Section 1905, PROVIDER ENROLLMENT PROCESS, is amended to read as follows:**

**1905 PROVIDER ENROLLMENT PROCESS**

- 1905.1 Prospective providers shall send a letter of intent to DDA to enroll as a Medicaid provider of Waiver services to the Letter of Intent mailbox at [letterofintent.potentialproviders@dc.gov](mailto:letterofintent.potentialproviders@dc.gov). DDA will provide a written response of disposition to the prospective provider within three (3) business days of receipt of the letter of intent.
- 1905.2 With acceptance of a qualified letter of intent, prospective providers will receive an invitation to the DDA Quarterly Prospective Provider's Information Session. Prospective providers shall be notified by DDA of the DHCF contractor schedule for the Provider Data Management Systems (PDMS) training. After the PDMS training, providers shall access the PDMS to initiate the Medicaid provider enrollment application.
- 1905.3 Upon receipt of the Medicaid provider enrollment application by DDA, prospective providers shall receive a denial letter or an invitation to be interviewed. The denial letter shall be issued by DDA within sixty (60) business days from the time a Medicaid provider enrollment application is received by DDA and shall meet the requirements set forth in § 1905.5.
- 1905.4 If the Medicaid provider enrollment application is incomplete, the prospective provider will be notified by the DHCF contractor. DDA may issue a denial letter, in accordance with § 1905.5, within sixty (60) business days from the time a Medicaid provider enrollment application is received.
- 1905.5 The denial letter shall include the following:
- (a) The basis and reasons for the denial of the prospective provider's Medicaid provider enrollment application;
  - (b) The prospective provider's right to dispute the denial of the application and to submit written argument and documentary evidence to support its position; and
  - (c) Specific reference to the particular sections of relevant statutes and/or regulations.
- 1905.6 Prospective providers shall be required to interview with the DDA Provider Review Committee (PRC) Panel for further eligibility towards final approval.

Prospective providers shall receive written notification from DDA to attend a DDA scheduled interview with the PRC Panel.

- 1905.7 Pursuant to the committee's recommendation and the overall merit of the application, DDA shall either issue a denial letter to the prospective provider or send the application of the DDA-recommended provider to DHCF for its review within five (5) business days of the committee's review date. The denial letter shall be issued in accordance with the requirements set forth in § 1905.5. If a denial letter was issued by DDA, the prospective provider may submit a written dispute for reconsideration in no more than five (5) business days and/or appeal the denial of the application to the Office of Administrative Hearings in accordance with Chapter 94 of Title 29 DCMR.
- 1905.8 Upon approval by DDA, the DDA Provider Relationship Specialist will facilitate the newly enrolled provider's acknowledgement of final approval to DHCF via the DHCF's contractor portal PDMS.
- 1905.9 If a denial letter was issued by DDA and there was no reconsideration requested or granted the prospective provider shall be prohibited from submitting an application to enroll as a provider for a period of one year from the date the denial letter was issued.
- 1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program; and to participation and cooperation in the reporting requirements pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by order of the Superior Court of the District of Columbia.
- 1905.11 Each provider who has been terminated or has voluntarily withdrawn from the Waiver program may not reapply to the Waiver program for a period of at least one (1) year.

**Section 1906, REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS, is amended to read as follows:**

**1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS**

- 1906.1 The basic requirements for all employees and volunteers providing direct services, with the exception of peer support employees as set forth in subsection 1906.3, are as follows:
- (a) Be at least eighteen (18) years of age;

- (b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
- (c) Possess a high school diploma, Certificate of Individual Educational Program (IEP) Completion, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
- (d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
- (e) Complete pre-service and in-service training as described in DDS policy;
- (f) Have the ability to communicate with the person to whom services are provided;
- (g) Be able to read, write, and speak the English language, with reasonable accommodation as appropriate in accordance with the Americans with Disabilities Act;
- (h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
- (i) Have 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 are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;
  - (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 foreseeably come in direct contact with Waiver recipients or patients.

- (j) Be acceptable to the person for whom they are providing supports.
- 1906.2 Volunteers who work under the direct supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 1906.1(i).
- 1906.3 The basic requirements for peer support employees providing direct services in Parenting Supports and Family Training services are as follows:
- (a) Be at least eighteen (18) years of age;
- (b) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
- (c) Complete DDS required training for peer support employees;
- (d) Be acceptable to the person for whom they are providing supports; and
- (e) The person is a person with a disability or the family or other unpaid caregiver of a person with a disability and has experience with at least two of the following:
- (1) Advocating on behalf of people with disabilities;
  - (2) Being trained in advocacy on behalf of people with disabilities by an advocacy organization;
  - (3) Being trained and certified in peer counseling by a certified peer counseling organization;
  - (4) Being knowledgeable about the scope of services provided by DDS/DDA and the Child and Family Services Agency;
  - (5) Possessing skills in Engagement, Relationship Building, and Collaboration with Families and Caregivers; and/or
  - (6) Being knowledgeable about Community Systems, Partnerships and Resources

Subsections 1909.1, 1909.2, 1909.5, 1909.8, and 1909.11, and a new Subsection 1909.12, of Section 1909, RECORDS AND CONFIDENTIALITY OF INFORMATION, are amended to read as follows:

- 1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term "records" includes, but is not limited to, all information relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*) or its successor; and any information required by the regulations implementing the HCBS Waiver program.
- 1909.2 Each Waiver provider entity shall maintain the following records at the site of service delivery, where applicable, for each person receiving services for monitoring and audit reviews. For people receiving In-Home Supports, the person and his or her support team make the determination of which records to store in the person's home and which are kept off-site.
- (a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;
  - (b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;
  - (c) A record of all service authorization and prior authorizations for services;
  - (d) A record of all requests for change in services;
  - (e) The person's medical records;
  - (f) The person's financial records;
  - (g) A discharge summary;
  - (h) A written staffing plan, if applicable;

- (i) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;
- (j) Documents which contain the following information:
  - (1) The results of the provider's functional analysis for service delivery;
  - (2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the ISP and the date and time of the activity, the staff as identified in the staffing plan;
  - (3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy as further described in Subsection 1909.11; and
  - (4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving his or her goals;
- (k) Any records relating to adjudication of claims;
- (l) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;
- (m) Progress notes, as set forth in each service rule, containing the following information:
  - (1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;
  - (2) The health or behavioral events or change in status that is not typical to the person;
  - (3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS recommends the use of the Person Centered Thinking Learning Log for recording this information;

- (4) The start time and end time of each shift for any services received including the signature of the Direct Support Professional (DSP)(Note that, where progress notes are written using an electronic record system, an electronic signature meets the requirement for signature.);
  - (5) For services that require awake overnight shifts, the progress notes shall include the support provided as indicated in the specific residential schedule; and
  - (6) The matters requiring follow-up on the part of the Waiver service provider or DDS.
- (n) Reports on a quarterly basis, containing the following information (DDS recommends use of the Person Centered Thinking 4+1 Tool for recording this information.):
- (1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;
  - (2) The service interventions provided and the effectiveness of those interventions;
  - (3) A summary analysis of all habilitative support activities that occurred during the quarter;
  - (4) For providers of Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, the quarterly report shall include information on the person's employment, including place of employment, job title, hours of employment, salary/hourly wage, information on fringe benefits, and current checking, savings and burial fund balances, as applicable;
  - (5) Any modifications or recommendations that may be required to be made to the documents described under Subsection 1909.2(j), ISP, and Plan of Care from the summary analysis; and
  - (6) For providers of Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, and High Intensity In-Home Supports, documentation of the review, implementation, and update, if applicable, of the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards.

1909.5 Each Waiver provider shall ensure the person's privacy and limit access to the person's records to only authorized individuals, including the person. Waiver providers shall not publicly post mealtime protocols, clinical therapy schedules, or any other health information.

1909.8 Each Waiver provider shall implement a written strategy that outlines where and how records are stored. For residential programs, the written strategy will be unique to each home and developed in coordination with the people who live there. For non-facility based programs, the written strategy shall identify the location for the records and shall include the process for making them available when audits and other reviews are conducted.

1909.11 For purposes of Subsection 1909.2(j)(3), the teaching strategy used to execute goals in the ISP shall include enough information so that any provider staff member or DSP could step in to assist the person in completing the goal. At minimum, the teaching strategy shall contain:

- (a) The goal statement;
- (b) The purpose of the goal/measurable outcome;
- (c) The materials needed to implement the goal;
- (d) The preferred learning/teaching style for the person;
- (e) The learning steps (*i.e.* individual actions that need to be completed for success); and
- (f) The method for measuring success.

1909.12 A staff member, designated by the provider, develops and implements an annual supervision plan for each staff member who is classified as a DSP. The annual supervision plan contains the following information:

- (a) The name of the DSP and date of hire;
- (b) The DSP's place of employment, including the name of the provider entity or day services provider;
- (c) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;

- (d) A documentation of performance goals for the DSP;
- (e) A description of the DSP's duties and responsibilities;
- (f) A comment section for the DSP's feedback;
- (g) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;
- (h) The signature, date, and title of the DSP; and
- (i) The signature, date, and title of the DSP's supervisor.

**Subsections 1910.2, 1910.12, and 1910.23 of Section 1910, PERSONAL CARE SERVICES, are amended to read as follows:**

1910.2 Personal care services are identical in scope to those described in 29 DCMR § 5000. Personal care services may be delivered at home, in the day setting, at school or work, or in the community.

...

1910.12 To be eligible for Medicaid reimbursement for personal care services, a provider shall:

- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.* (2012 Repl.)), and implementing rules;
- (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR § 484;
- (c) Comply with the requirements under Section 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR; and
- (d) Comply with all of the requirements for Medicaid State Plan personal care service providers.

...

1910.23 In order to be eligible for Medicaid reimbursement, personal care services shall not be provided at the same time as the following ID/DD Waiver services, except that a person may receive personal care services at school and at work:

- (a) Residential Habilitation;
- (b) Supported Living; and
- (c) Host Home.

**Subsections 1913.5, 1913.9, and 1913.12 of Section 1913, ONE-TIME TRANSITIONAL SERVICES, are amended to read as follows:**

1913.5 Medicaid reimbursable OTT services may include the following:

- (a) Security deposits required in order to obtain a lease for an apartment or home. In order to qualify for OTT services, the lease or other written residency agreement shall include all of the responsibilities and protections from eviction that apply under the jurisdiction's landlord-tenant laws.
- (b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items and bed linens, which reflect the person's preferences, and other expenses required to occupy or maintain an apartment or home;
- (c) Start-up fees or deposits for utility or service access, including telephone, gas, electricity, and water;
- (d) Services necessary for the person's health, safety and wellbeing, such as pest eradication, including bed bugs that may require multiple treatments as part of the process, and one-time cleaning prior to occupancy;
- (e) Home accessibility adaptations such as, but not limited to, carpeting and one-time general home repair, including roof repair, painting and fence repair; and
- (f) Moving expenses related to transporting personal belongings.

1913.9

Each provider of Medicaid reimbursable OTT services shall submit a written report, thirty (30) days after the service has been completed, that includes an itemized list of all expenses tied to the person's ISP goal, referencing the receipts provided, and evidence that the OTT provider used Person-Centered Thinking skills and/or tools to support the person to select items and set up his or her new home.

- 1913.12 Medicaid reimbursement for OTT services shall be limited to a maximum dollar amount per person as a one-time, non-recurring expense.

**Section 1915, HOST HOME WITHOUT TRANSPORTATION SERVICES, is amended to read as follows:**

**1915 HOST HOME WITHOUT TRANSPORTATION SERVICES**

- 1915.1 The purpose of this section is to establish standards governing Medicaid eligibility for host home without transportation services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver), and to establish conditions of participation for providers of host home services.
- 1915.2 Host home without transportation services enable a person to retain or improve skills related to: health; activities of daily living; money management; community mobility; recreation; cooking; shopping; use of community resources; community safety; and to develop other adaptive skills needed to live in the community, based upon what is important to and for the person as documented in his or her Individual Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.
- 1915.3 To be eligible for Medicaid reimbursement of host home without transportation services, each person shall demonstrate a need for support for up to twenty-four (24) hours per day, and the services shall be:
- (a) Provided in a private home, referred to as "host home," which may be leased or owned by the principal care provider; and
  - (b) Identified as a need in the person's ISP and Plan of Care.
- 1915.4 The total number of persons living in the host home (including those served in the ID/DD Waiver) and who are unrelated to the principal care provider cannot exceed three (3).
- 1915.5 In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall:
- (a) Use the Department on Disability Services (DDS) approved Person-Centered Thinking tools and the person's Positive Personal Profile and Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first month of the person residing in the host home. This assessment shall be reviewed and revised annually or more frequently as needed;

- (b) Participate as a member of the person's support team, and coordinate with the principal care provider to participate, including making recommendations for the development of the ISP and Plan of Care;
- (c) Assist in the coordination of all services that the person may receive;
- (d) Develop a program plan with measurable outcomes using the functional assessment from the DDS approved Person-Centered Thinking tools, Positive Personal Profile and Job Search and Community Participation Plan, the ISP, Plan of Care, and other information as appropriate to enable the person to safely reside in and be integrated as a member of his or her community; and
- (e) Review the person's ISP and Plan of Care goals, DDS-approved Person-Centered Thinking tools, Positive Person Profile and Job Search and Community Participation Plan, objectives, and activities at least quarterly, and more often as necessary, and submit quarterly reports to the person, family and/or guardian, and DDS Service Coordinator in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

## 1915.6

In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall coordinate care with the principal care provider, Direct Support Professionals (DSP) working for the respite provider, and others as applicable, to ensure the person's needs are met in the following categories of support, unless the person has demonstrated independence and capacity in any of the areas. Supports provided shall be related to the person's ISP goals and habilitative in nature, aimed at teaching the person to increase his or her skills and self-reliance. These categories or areas of support shall include, but are not limited to, the following:

- (a) Room and board (not included in the ID/DD Waiver reimbursement rate);
- (b) Assistance with eating and food preparation, including learning about healthy eating choices;
- (c) Assistance with personal hygiene;
- (d) Assistance with dressing;
- (e) Assistance with monitoring the person's health and physical condition;
- (f) Assistance with the administration of medication;
- (g) Assistance with communication between the person and other health care providers;

- (h) Assistance with interpersonal and social skills;
- (i) Assistance with household chores;
- (j) Assistance with mobility;
- (k) Assistance with motor and perceptual skills;
- (l) Assistance with problem-solving and decision-making;
- (m) Maintenance of medical records;
- (n) Maintenance of financial records;
- (o) Assistance with attending health care appointments, by the coordination of transportation to and from the person's appointments;
- (p) Assistance with planning and attending events;
- (q) Habilitative support in activities of daily living and/or therapeutic goals and objectives as described in the ISP and Plan of Care;
- (r) Assistance with enhancing the person's opportunities for engagement in community life, including but not limited to social, recreational, and religious activities utilizing community resources;
- (s) Assistance with ensuring that the person's adaptive equipment is appropriate and functioning;
- (t) Provide assistance with finding opportunities for employment in the community in a competitive and integrated setting; and
- (u) Other supports that are identified as important to or for the person as identified in his or her ISP.

1915.7 In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall coordinate the delivery of professional services to each person residing in a host home that may include, but are not limited to, the following disciplines or services:

- (a) Medical Care;
- (b) Dentistry;
- (c) Education;

- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Behavioral support;
- (i) Assistive Technology;
- (j) Parenting Supports;
- (k) Speech, hearing and language therapy; and
- (l) Wellness.

1915.8 In order to be reimbursed by Medicaid, each ID/DD Waiver provider that oversees a person's host home placement shall:

- (a) Receive and review packets submitted by DDS requesting development of a host home for a particular applicant;
- (b) Respond to inquiries for host home development in a timely manner;
- (c) Recruit a principal care provider to deliver host home services;
- (d) Identify and develop on-going relationships with local medical professionals, including those in community health clinics (*e.g.*, dentist, physician, psychiatrist, psychologist, occupational therapist, physical therapist, etc.);
- (e) Coordinate and document a matching process that includes at a minimum two (2) visits, at least one (1) of which must be an overnight stay by the person at the prospective principal care provider's home. This should include exploration of the person's and principal care provider's culture, language, preferences and routines;
- (f) Coordinate transportation with the DDS Service Coordinator for visits to the prospective host home of the principal care provider;
- (g) Participate as a member of the person's support team, in accordance with his or her preference, including making recommendations for the development of the person's ISP and Plan of Care;

- (h) Arrange for essential supports, including training, supplies and equipment to be in place prior to the person's move into a host home setting;
- (i) Arrange for non-essential, but recommended and necessary supports to be put into place subsequent to a person's move into a host home setting; and
- (j) Provide information as needed to the person, the person's family or authorized representative, support team, DDS Service Coordinator, and the principal care provider.

1915.9

In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall:

- (a) Coordinate the use of transportation for each person residing in a host home to his or her day programs, places of employment, and/or community engagements as needed;
- (b) Coordinate general support monitoring at least twice per month to review conditions in the host home, the person's health status, implementation of the ISP, update activity schedules, review medical and other appointments, and draft progress notes;
- (c) Coordinate health care monitoring for each person residing in the host homes, including frequency of nursing visits, and document this in the person's Health Care Management Plan. This must include, at a minimum, monitoring by a registered nurse (RN) at least every ninety (90) days for persons with no prescribed medications, and at least monthly for persons on prescribed medications. Additionally, the ID/DD Waiver provider shall ensure that the RN completes progress notes during each visit as well as quarterly reports, as appropriate;
- (d) Provide respite to the principal care provider for up to a total of fourteen (14) days per year. If respite care and emergency support is provided in the host home, Medicaid reimbursement payments for host home without transportation services shall continue for fourteen (14) days. If respite is provided in another location, the host home services percentage of the reimbursement rate shall be paid to the ID/DD Waiver provider;
- (e) Provide emergency support to the person enrolled in the ID/DD Waiver, in the event that an emergency renders a principal care provider unable to provide supports;
- (f) Coordinate compliance with DDS policies and procedures;
- (g) Provide training to ensure that the principal care provider is knowledgeable about DDS policies and procedures;

- (h) Ensure that, for people who take prescribed medications and need assistance with administration, it is provided by a Trained Medication Employee, at a minimum; and
  - (i) Accompany the person to annual review court hearings and provide reports to be utilized during court hearings, where applicable.
- 1915.10 [RESERVED]
- 1915.11 In order to be reimbursed by Medicaid, the host home residence and the ID/DD Waiver provider shall meet the DDS Certification Standards as set forth in the Human Care Agreement between the principal care provider, the ID/DD Waiver provider, and DDS, if applicable.
- 1915.12 In order to be reimbursed by Medicaid, host home without transportation services shall be administered by supported living service providers or residential habilitation service providers, which in this section shall be referred to as the ID/DD Waiver provider.
- 1915.13 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home services without transportation shall demonstrate verification of passing the DDS Provider Certification Review (PCR) for residential or respite services for at least three (3) years, unless waived by a designated DDA staff. Waiver providers with less than three (3) years of PCR certification shall provide verification of at minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as an ID/DD Waiver provider in the District of Columbia, if applicable.
- 1915.14 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall agree to the following:
- (a) Participate on the person's support team, in accordance with his or her preference;
  - (b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment) of Chapter 19 of Title 29 DCMR; and
  - (c) Maintain a signed, current Human Care Agreement with DDS when deemed necessary by DDS.
- 1915.15 In order to be reimbursed by Medicaid, each host home residence and supporting ID/DD Waiver provider located out-of-state shall be licensed and/or certified in accordance with the host state's laws and regulations and/or consistent with the

terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state host home and ID/DD Waiver provider shall comply with the following additional requirements:

- (a) Remain in good standing in the jurisdiction where the program is located;
- (b) Submit a copy of the current license, annual certification or survey performed by the host state and provider's corrective action to DDS;
- (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and
- (d) Successfully meet the certification review requirements of DDS.

1915.16 Each principal care provider and direct support professional (DSP) providing host home without transportation services shall meet all of the requirements in Section 1906 (Requirements for direct support professionals) of Chapter 19 of Title 29 DCMR.

1915.17 In order to be reimbursed by Medicaid, each principal care provider shall agree to cooperate and attend mandatory training sessions provided by DDS and the ID/DD Waiver provider regarding abuse and neglect, incident reporting, and training on the unique needs of the person, and to allow DDS Service Coordinator and other DDS employees' reasonable access to the host home.

1915.18 In order to be reimbursed by Medicaid, host home without transportation services shall be authorized for reimbursement in accordance with the following provider requirements:

- (a) DDS shall provide a written service authorization before the commencement of services;
- (b) The ID/DD Waiver provider shall conduct an assessment and develop a host home assessment plan with training goals and techniques that will assist the principal care provider, within the first thirty (30) days of service delivery;
- (c) The service name and the ID/DD Waiver provider delivering services shall be identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under Subsection 1915.25.

1915.19 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall maintain the following documents for monitoring and audit reviews:

- (a) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR;
- (b) A copy of the person's most recent DDS approved ISP and Plan of Care;
- (c) A current written staffing plan, if additional DSP support services in the home are needed;
- (d) A written explanation of staffing responsibilities when the principal care provider is unavailable to provide support to the person enrolled in the ID/DD Waiver;
- (e) Current financial records of expenditures of public and private funds for each person;
- (f) The records of any nursing care provided pursuant to a physician ordered protocol and procedure, charting, and other supports provided in accordance with a physician's order relating to the development and management of the Health Care Management Plan; and
- (g) Progress notes written by the principal care provider on a weekly basis and archived at the ID/DD Waiver provider's central office.

1915.20 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall comply with Sections 1908 (Reporting Requirements), 1911 (Individual Rights), and 1938 (Home and Community-Based Setting Requirements) of Chapter 19 of Title 29 DCMR. All Host Home settings must fully comply with the requirements of the HCBS Settings Rule.

1915.21 Host home without transportation services shall not be reimbursed by Medicaid if they are billed at the same time as the following ID/DD Waiver services are provided to the person:

- (a) Supported Living;
- (b) Residential Habilitation;
- (c) Personal Care, unless provided when a person is working or in school;
- (d) Respite; and

- (e) In-Home Supports.
- 1915.22 In order to be eligible for Medicaid reimbursement, host home without transportation services shall not include a day when the person is hospitalized, on vacation, or other days during which the person is not residing at the host home, with the exception of days when the person is on vacation with the principal care provider or with other host home ID/DD Waiver provider supports.
- 1915.23 In order to be eligible for Medicaid reimbursement, host home without transportation services shall not include a day when the person is not residing at the host home, with the exception of days when the person is temporarily residing in a hotel or other facility due to an emergency situation.
- 1915.24 The following individuals shall not be authorized to enroll as an ID/DD Waiver provider of host home without transportation services for the person or as the principal care provider:
- (a) The person's legal guardian;
  - (b) The person's parent;
  - (c) The person's spouse; or
  - (d) Any other legally responsible person.
- 1915.25 Reimbursement for host home without transportation services shall not include:
- (a) Cost of room and board;
  - (b) Cost of facility maintenance, upkeep, and improvement;
  - (c) Activities for which payment is made by a source other than Medicaid; and
  - (d) Time when the person is in school or employed.
- 1915.26 The reimbursement rate for host home without transportation services is a daily inclusive rate based on the person's acuity level. The acuity level shall be determined by DDS based on the results of the Level of Need Assessment and Screening Tool, or its successor, or as documented in the person's ISP.
- 1915.27 The daily inclusive reimbursement rate for host home without transportation services shall be broken down by the person's acuity level into the basic support rate, the moderate support rate, and the intensive support rate. The host home without transportation services reimbursement rate shall include:

- (a) Programmatic supplies;
  - (b) Oral/topical medication management;
  - (c) General and administrative costs for ID/DD Waiver services;
  - (d) Relief of the caregiver and emergency support;
  - (e) All direct support costs based on the needs of the person; and
  - (f) Additional supports provided by a DSP for up to twenty (20) hours per week.
- 1915.28 In the event that additional DSP supports are requested, the ID/DD Waiver provider shall submit to the DDS Service Coordinator, the following documents:
- (a) A written justification; and
  - (b) A summary of the responsibilities of the DSP who is scheduled to provide the additional supports.
- 1915.29 Persons with extraordinary needs may be eligible to receive a specialized reimbursement rate not to exceed a maximum dollar amount per day, subject to DDS approval.
- 1915.30 Forty percent (40%) to sixty percent (60%) of the daily reimbursement rate shall be paid to the principal care provider by the ID/DD Waiver provider for support services. The remaining forty percent (40%) to sixty percent (60%) of the daily reimbursement rate shall be retained by the ID/DD Waiver provider for training, additional in-home support services based on the needs of the person, medication management, general and administrative costs for ID/DD Waiver services, general supervision, and relief and emergency coverage. The actual percentage of the daily reimbursement rate allocated between the principal care provider and the ID/DD Waiver provider shall be negotiated between the parties based on the specific support needs of the person.
- 1915.31 The person receiving host home without transportation services shall contribute an amount based on his or her Social Security benefits to the principal care provider to pay towards his or her room and board expenses.

**Subsections 1916.2, 1916.4, 1916.11, and 1916.19 of Section 1916, IN-HOME SUPPORTS SERVICES, are amended to read as follows:**

- 1916.2 In order to be reimbursed by Medicaid, in-home supports are services that may only be provided to people enrolled in the Waiver who have an assessed need for

assistance with acquisition, retention or improvement in skills related to activities of daily living that are necessary to enable the person to reside successfully at home in his or her community and participate in community activities based upon what is important to and for the person as documented in his or her Individual Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.

- (a) Services may be provided to people in the home or community, with the place of residence as the primary setting. A person may receive in-home supports services when his or her place of residence is his or her own home, a family home, a friend's home, or transitional housing.
- (b) Services may be provided in person, by phone or by any other technology device that supports the use of video-audio communication, such as Skype, FaceTime, etc., as approved by the person and his or her support team and documented in the ISP. In-home supports services using technology to communicate with the person shall not exceed twenty (20) percent of the total hours of in-home supports services that the person receives each week.
- (c) For people with higher intensity support needs, high acuity in-home supports services are available with the additional supports described below in Subsection 1916.4.

1916.4

In order to be reimbursed by Medicaid, in-home supports services shall include a combination of hands-on care, habilitative supports, skill development and assistance with activities of daily living. Supports provided shall be aimed at teaching the person to increase his or her skills and self-reliance. In addition to the direct in-home supports eligible for reimbursement below in Subsection 1916.5, high acuity in-home supports shall also include the following:

- (a) Assistance in the coordination of behavioral, health and wellness services that a person may receive, including working with the person's natural supports, if any, to ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care;
- (b) Development and implementation of the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards;
- (c) Training on the Health Care Management Plan for high acuity in-home supports Direct Support Professionals and any other residents of the person's home who provide natural (unpaid) supports: and

- (d) Supports to ensure that staff delivering day habilitation, individualized day supports, companion, employment readiness, or supported employment services shall receive training about the person's health care needs as identified in the person's Health Care Management Plan, and are informed about those needs that are relevant to the person in those settings and that are identified in the person's Health Care Management Plan and Behavior Support Plan, if applicable.

...

1916.11 In order to be reimbursed by Medicaid, an In-Home Supports Plan shall be developed by the provider within thirty (30) days of the start of the service authorization and shall be revised as needed and on an annual basis. The In-Home Supports Plan shall be maintained in the home where services are provided with a copy also maintained at the Provider's main office. The In-Home Supports Plan shall include:

- (a) Activities and supports that will be provided during the service, based upon what is important to and important for the person, as identified in the Person Centered Thinking and Discovery tools and reflected in the person's ISP;
- (b) A staffing plan and schedule;
- (c) A list of licensed non-medical professionals who will be providing services, if applicable; and
- (d) Emergency and contingency plans to address potential behavioral, health or emergency events.

...

1916.19 In-home supports services, including those provided in the event of a temporary emergency, shall be billed at the unit rate of fifteen (15) minutes and shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. There shall be a Medicaid reimbursement rate for both the in-home supports identified in Subsection 1916.5 and the high acuity in-home supports identified in Subsection 1916.4. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

**Subsections 1920.4, 1920.10, 1920.11, and 1920.22, and new Subsections 1920.33, 1920.34, 1920.35, and 1920.36, of Section 1920, DAY HABILITATION SERVICES, are amended to read as follows:**

1920.4 Medicaid reimbursable day habilitation services may also be delivered in small group settings at a ratio of 1:3 for persons who are medically and/or behaviorally complex, as verified by the DDA Level of Need (LON) Assessment and

Screening Tool, or its successor tool, and/or the person's Behavior Support Plan, and who would benefit from day habilitation services in a smaller setting. Small group day habilitation settings must include integrated skills building in the community and support access to the greater community. In order to be Medicaid reimbursable, small group day habilitation:

- (a) Cannot be provided in the same building as a large day habilitation facility setting;
- (b) Must be located in places that facilitate community integration and inclusion;
- (c) Must full comply with the requirements of the HCBS Settings Rule; and
- (d) May not be delivered in settings that have a daily census larger than fifteen (15) persons.

...

1920.10

In order to be reimbursed by Medicaid, day habilitation services shall consist of the following age-appropriate learning and/or habilitative activities that are based on what is important to and for the person as documented in his or her Individualized Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools:

- (a) Training and skills development that increase participation in community activities, enhance community inclusion, and foster greater independence, self-determination and self-advocacy;
- (b) A diversity of activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences;
- (c) Activities that provide opportunities for socialization and leisure activities in the community, community explorations, and activities that support the person to build and maintain relationships;
- (d) Training in the safe and effective use of one or more modes of accessible public transportation;
- (e) Coordination of transportation to enable the person to participate in community activities;
- (f) Activities to support community integration and inclusion:
  - (1) These must occur in the community in groups not to exceed four (4) participants for regular day habilitation or three (3) participants for persons in small group day habilitation;

- (2) The activities, frequency and duration of these activities must be based on a person's interests and preferences as reflected in his or her Individualized Support Plan and Person-Centered Thinking and Discovery tools;
  - (3) There shall be a system to match persons together in community outings based on common interests, goals, and/ or friendships, including that a person is given a choice as to whom he or she would like to spend time with during these activities;
  - (4) Except when a person's ISP indicates a lower frequency, each person must be offered the opportunity to engage in community integration and inclusion activities at least once per week, and more if indicated by the ISP;
  - (5) The Department on Disability Services (DDS) encourages the use of learning logs for documentation of community integration and inclusion activities;
  - (6) At least quarterly, there must be a community integration activity for each person in which a Day Habilitation Program Coordinator, Assistant Director, and/or a Qualified Intellectual and Developmental Disabilities Professional participates to ensure: proper matching of participants; that the community outings reflect each person's interests, goals, or friendships; that each person receiving supports has opportunities to engage with people while in the community and to coach Direct Support Professionals (DSPs) on the skills needed to successfully connect persons receiving supports with the broader community, and this must be fully documented in the quarterly report; and
  - (7) Each day habilitation provider must have, and must train their DSP staff on, written protocols regarding how DSPs are expected to support persons in the community and requirements for documenting progress notes regarding community engagement activities; and
- (g) Individualized or group services that enable the person to attain his/her maximum functional level based on the ISP and Plan of Care.

1920.11 Day habilitation services shall include a Registered Nurse for the purposes of:

- (a) Medication administration;
- (b) Staff training in components of the Health Care Management Plan (regardless of the author of the plan); and

- (c) Oversight of Health Care Management Plans (regardless of the author of the plan).

...

1920.22 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR. Additionally, quarterly reports shall include a description of the person's activities in the community that support community integration and inclusion using the Person-Centered Thinking Learning Log, available on-line at: <https://dds.dc.gov/publication/person-centered-thinking-tools-procedure>.

...

1920.33 Any day habilitation setting that is established after the effective date of these regulations must fully comply with the requirements of the HCBS Settings Rule. The daily census of any new setting may not exceed fifty (50) people. The daily census includes people who receive support through the ID/DD HCBS Waiver and people who receive ICF/IID supports and are engaged in active treatment at the setting. However, the daily census does not include people who are in the setting only for morning arrival and afternoon departure and who spend the remainder of their day in the community.

1920.34 Non-small group day habilitation settings established prior to the effective date of these regulations that have a daily census under fifty (50) people may only receive authorizations for services for new participants up to a daily census of fifty (50) people in the setting. Current non-small group day habilitation settings that have a daily census of fifty (50) people or more in the setting will not be eligible for authorizations for services for new participants until their daily census is less than fifty (50) people in the setting.

- (a) The daily census includes people who receive support through the ID/DD HCBS Waiver and people who receive ICF/IID supports and are engaged in active treatment at the setting; and
- (b) The daily census does not include people who are in the setting only for morning arrival and afternoon departure and who spend the remainder of their day in the community.

1920.35 The following service limitations apply to new enrollees in non-small group day habilitation services:

- (a) No new enrollee may attend non-small group day habilitation for more than twenty-four (24) hours per week;

- (b) People who are sixty-four (64) years old and younger and have a level of need (LON) Day Composite score of two (2) or less would not be eligible to attend day habilitation services, unless approved by DDA due to extenuating circumstances or barriers that are expected to be resolved within six (6) months:
- (1) This limitation is applicable to small group day habilitation services;
  - (2) Exceptions may only be granted by DDA for six (6) month periods and must be accompanied by an Individual Support Plan goal aimed at addressing the barrier to participation in other day or employment Waiver supports; and
  - (3) Alternative services, including Employment Readiness, Small Group Supported Employment, Individualized Day Supports, and Companion services that are offered during regular day service hours, would be available, in combination, for up to forty (40) hours per week.
- (c) People who are sixty-four (64) years old and younger and have a LON Day Composite score of three (3) or higher would not be eligible to attend day habilitation services, unless they already have tried other day and employment options for at least one year:
- (1) This limitation is not applicable to small group day habilitation services;
  - (2) DDS may approve an exception to this prohibition due to extenuating circumstances or barriers that are expected to be resolved within six (6) months. Any exceptions must be accompanied by an ISP goal aimed at addressing the barrier to participation in other day or employment Waiver supports;
  - (3) Alternative services including Supported Employment, Individualized Day Supports, Employment Readiness and Companion would be available, in combination, for up to forty (40) hours per week.

1920.36 The following service limitations apply to people who are currently attending non-small group day habilitation services:

- (a) Within one (1) year from the Waiver renewal effective date, any person with a LON Day Composite score of one (1) or two (2) would no longer be eligible for day habilitation services and services may no longer be authorized:

- (1) For any person with a LON Day Composite score of one (1) or two (2), the person should be offered employment services, either through the Waiver, the Rehabilitation Services Administration, or other community-based options;
  - (2) The transition from day habilitation services would be implemented on a rolling basis over the course of the year, with the new service limitation discussed and choice of alternative options offered at the person's next ISP meeting, subject to the exception described in subparagraph (3) of this subsection; and
  - (3) For a person with an ISP meeting that is scheduled within ninety (90) days of the Waiver effective date, DDA may authorize day habilitation services for up to ninety (90) days following the ISP meeting to ensure a smooth transition;
- (b) Within one (1) year from the effective date of the Waiver renewal, non-small group day habilitation services may not be authorized for any Waiver participant with a LON Day Composite score above two (2) for more than twenty-four (24) hours per week, subject to the exception described below:
- (1) Wrap around services are available, including Supported Employment, Individualized Day Supports, Employment Readiness and Companion, in combination, for up to forty (40) hours per week;
  - (2) For people with an ISP meeting that is scheduled within ninety (90) days of the Waiver renewal effective date, DDA may authorize up to forty (40) hours of day habilitation services per week for up to ninety (90) days following the ISP meeting to ensure a smooth transition; and
  - (3) This limitation is not applicable to small group day habilitation services.
- (c) For any person who is currently receiving non-small group day habilitation services who will be subject to a reduction in authorized service hours due to the service limitations identified in these provisions, DDA will provide timely and adequate due process notice of the change in services and the person's appeal rights, using the process described in the DDS Person-Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

Subsections 1922.5, 1922.8, 1922.12, 1922.19, 1922.21, 1922.24 and 1929.25, and new Subsections 1922.27, 1922.28, 1922.29 and 1922.30, of Section 1922, EMPLOYMENT READINESS SERVICES, are amended to read as follows:

1922.5 Volunteer experiences, as part of employment readiness, shall be time limited and must allow the person to develop experience and build skills to further the person's employment goal, as identified in his or her ISP. A person enrolled in the Waiver may volunteer at a for-profit private sector entity, a not-for-profit organization or an approved government agency, but may not volunteer for the provider agency or another business affiliated with the provider. Volunteering at a for-profit business shall meet any requirements released by the U.S. Department of Labor. Guidance for those requirements can be found at:  
<http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

...

1922.8 Each provider of Medicaid reimbursable employment readiness services shall develop an individualized service delivery plan reflecting the person enrolled in the Waiver's interests, career preferences, choices, goals and prioritized needs. The plan shall:

- (a) Define the specific outcomes to be achieved over a specified period of time;
- (b) Describe the activities in the plan that are developed with the person and support the person on his or her pathway to competitive, integrated employment;
- (c) Describe how the plan shall support a person in the development of employment related skills, including social skills such as interviewing skills, professionalism, building and maintaining relationships, self-determination and self-advocacy, and attending to the person's needs; and
- (d) Describe community-based employment preparation experiences that are related to the person's employment goals.

...

1922.12 To receive Medicaid reimbursement, employment readiness services shall provide opportunities for community engagement, inclusion and integration.

...

1922.19 Employment readiness services shall be authorized for Medicaid reimbursement if:

- (a) DDS provided a written service authorization before the commencement of services;

- (b) The provider develops a Positive Personal Profile and Job Search and Community Participation Plan, conducts an additional initial vocational assessment and then an annual Positive Personal Profile and Job Search and Community Participation Plan and additional vocational assessment thereafter; and develops an employment readiness plan with training goals and techniques that will assist the person to achieve employment readiness goals and outcomes based upon the person's interests and preferences. The initial Positive Personal Profile and Job Search and Community Participation Plan shall be completed within the first thirty (30) days of service delivery and the additional vocational assessment shall be completed within the first ninety (90) days of service delivery;
- (c) The service name and provider delivering services are identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under Subsection 1922.20 (Service Limitations).

...

1922.21 Medicaid reimbursable employment readiness services shall not be provided, or billed at the same time as the following services:

- (a) Day Habilitation;
- (b) Supported Employment;
- (c) In-Home Supports;
- (d) Companion;
- (e) Personal Care Services; and
- (f) Individualized Day Supports.

...

1922.24 Employment readiness services are not available to people who are eligible to participate and are fully supported in programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Sections 602(16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*). However, employment readiness services may be used to provide additional supports for employment for persons eligible for and participating in those programs.

1922.25 Each provider of employment readiness services shall maintain the required staff-to-person ratio, as indicated in the person's ISP and Plan of Care, with a maximum staffing ratio of 1:4. For a person that requires 1:1 supports (behavioral and/or medical) in an Employment Readiness setting:

- (a) The direct support professional (DSP) providing 1:1 employment readiness services shall be trained in physical management techniques, positive behavioral support practices and other training required to implement the person's health care management plan and behavioral support plan (BSP), in accordance with DDS's Training policy and procedure;
- (b) There shall be an approved BSP or physician's order for 1:1 staffing support; and
- (c) When required by a person's BSP, the DSP shall accurately complete the behavioral data sheets.

...

1922.27 No Employment Readiness setting may have a daily census that exceeds fifty (50) people who are in the setting for more than twenty (20) percent of the day, inclusive of people who receive supports through the Waiver and people who live in intermediate care facilities for individuals with intellectual disabilities and are engaged in active treatment at the setting.

1922.28 The following time limitations apply to the use of employment readiness services:

- (a) For people who are not currently enrolled in employment readiness services, the service may only be authorized for up to one (1) year, except that DDS may approve up to a one-year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services;
- (b) For people who are currently enrolled in employment readiness services, the service may only be reauthorized for up to one (1) year from the person's next ISP effective date, except that DDS may approve up to a one-year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services. For people who have an ISP meeting scheduled within ninety (90) days of the Waiver renewal effective date, DDS may authorize an additional ninety (90) days of employment readiness services if needed to ensure a smooth transition.;
- (c) If a person has exhausted employment readiness services and has had at least one (1) year since the end of that service; expresses an interest in employment; and the support team has identified specific goals around

building employment skills that are reflected in the ISP, then DDS may authorize employment readiness services one time for up to one (1) year.;

- (d) Any time that a person loses his or her job, voluntarily leaves employment, or is employed and is seeking to learn new job skills, DDS may authorize employment readiness services for up to one (1) year; and.
- (e) For any person who is currently receiving employment readiness services who will be subject to a reduction in authorized service hours due to the service limitations listed above, DDS will provide timely and adequate due process notice of the change in services and the person's appeal rights in accordance with 29 DCMR § 1912 (Initiating, Changing, or Terminating Any Approved Service) and using the process described in the DDS Person-Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

1922.29 As of the effective date of this regulation, any new Employment Readiness setting must be fully compliant with the requirements of the HCBS Settings Rule.

1922.30 Within one (1) year of the effective date of this Subsection 1922.30, all existing Employment Readiness providers must become enrolled as a provider for Rehabilitation Services Administration services. Any new Employment Readiness providers must become enrolled as a provider for Rehabilitation Services Administration services within one (1) year of becoming an HCBS Waiver Employment Readiness provider.

**Subsections 1924.1, 1924.2 and 1924.8 of Section 1924, FAMILY TRAINING SERVICES, are amended to read as follows:**

1924.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 1924.9 ("Medicaid Providers") and family training services professionals and peer employees enumerated in § 1924.8 to provide family training services to caregivers of persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver).

1924.2 Medicaid reimbursable family training services are training, counseling, and other professional support services offered to uncompensated caregivers who provide support, training, companionship, or supervision to persons enrolled in the ID/DD Waiver.:

- (a) Family training services includes instruction about treatment regimens and other services included in the plan of care, use of equipment specified in the plan of care, and includes updates as necessary to safely maintain the individual at home. Counseling may be aimed at assisting the unpaid

caregiver in meeting the needs of the individual. All training and counseling must be included in the individual's plan of care;

- (b) Family training services are available both as a 1:1 service for a person, and in small group settings not to exceed 1:4, based upon the recommendation of the person's support team as reflected in the person's Individual Support Plan (ISP). For persons enrolled in small group family training services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests;
- (c) Family training services may be provided by professionals or peer employees who meet the qualification at 1906.3; and
- (d) A person served through the ID/DD Waiver may utilize both 1:1 and small group family training services, and services provided by professionals and qualified peer employees subject to the limitations in Subsection 1924.14.

...

1924.8 Medicaid reimbursable family training services shall be provided by either professionals or peer employees as follows:

- (a) Professionals shall be qualified as at least one (1) of the following:
  - (1) Special Education Teacher;
  - (2) Licensed Graduate Social Worker;
  - (3) Licensed Clinical Social Worker;
  - (4) Physical Therapist;
  - (5) Occupational Therapist;
  - (6) Registered Nurse; or
  - (7) Speech Pathologist.
- (b) Peer employees shall meet the basic requirements set forth in 29 DCMR § 1906.3.

**Subsections 1925.5, 1925.7, 1925.9, 1925.10, 1925.14, and 1925.20 of Section 1925, INDIVIDUALIZED DAY SUPPORTS SERVICES, are amended to read as follows:**

1925.5 Medicaid reimbursable individualized day supports (IDS) services shall provide:

- (a) Highly individualized, pre-planned activities and opportunities that occur within integrated and inclusive community settings and that emphasize the development of skills to support community participation and involvement, self-determination, community membership, community contribution, retirement or vocational exploration, and life skills training;
- (b) Activities that maximize the person's functional abilities for successful participation in integrated community activities and opportunities that match a person's interests and goals;
- (c) Activities that support the person's informed choice in identifying his or her own areas of interest and preferences, including but not limited to community mapping, employment exploration and discovery where appropriate;
- (d) Activities that provide community-based opportunities for personal and adult skill development through socialization, participation in membership-based community groups and associations, and forming and maintaining relationships with other community members;
- (e) Training in the safe and effective use of one or more modes of accessible public transportation and/or coordination and provision of transportation by the individualized day supports provider to support participation in community activities consistent with the intent of this service; and
- (f) For persons who live in their own home or with their family and who select this, IDS may include provision of one (1) nutritionally adequate meal including preparation, packaging, and delivery, as needed. The provision of meals shall take place during typical lunchtime hours (11 a.m. to 1 p.m.), prepared based on the person's specific needs as per the Level of Need Assessment (LON), and when necessary, the nutritionist/doctor's recommendation. This meal must be one-third (1/3) of a person's Recommended Dietary Allowance (RDA) and must be comprised of foods the person enjoys eating when not medically contraindicated.

...

1925.7 Services shall only be authorized for Medicaid reimbursement if the following conditions are met;

- (a) DDS provides a written service authorization before service delivery begins;
- (b) The IDS service name and enrolled provider are identified in the ISP, Plan of Care and Summary of Support Services;

- (c) The amount and frequency of services to be received is documented in the ISP, Plan of Care and Summary of Support Services;
- (d) Services shall not conflict with the service limitations described under Subsection 1925.12;
- (e) The staffing plan and initial community integration plan described under Subsection 1925.10 are submitted within five (5) business days of the start of services using the template required by DDS;
- (f) An on-going community integration plan, using the template required by DDS, and described under Subsection 1925.10 is submitted thirty (30) calendar days, plus seven (7) business days, from the start date of the individualized day supports service and then within seven (7) business days after the conclusion of each ISP quarter; and
- (g) A quarterly report, using the template required by DDS, is submitted within seven (7) business days after the conclusion of each ISP quarter.

...

1925.9

In order to be eligible for Medicaid reimbursement, each DSP providing IDS services shall meet the following requirements:

- (a) To the extent the DSP is providing 1:1 individualized day supports services based upon the person's medical or behavioral support needs, have at least one year of experience supporting people with Intellectual and Developmental Disabilities;
- (b) Meet additional training requirements for an Individualized Day Supports DSP, as required by DDS policy and procedure, within one year of the effective date of the waiver amendment;
- (c) Assist with the development of the initial and on-going community integration plans to implement the individualized day supports services;
- (d) Coordinate the scheduled activities specified under the initial and on-going community integration plans;
- (e) Assist with the writing of quarterly reports;
- (f) Utilize positive behavioral support strategies and crisis interventions as described in the approved Behavioral Support Plan to address emergency situations; and
- (g) Support persons enrolled in the Waiver to learn to use public transportation.

- 1925.10 Each provider approved to provide IDS services shall, in order to be eligible for Medicaid reimbursement, maintain documents for monitoring and audit reviews as described under Section 1909 (Records and Confidentiality of Information) of Chapter 19, of Title 29 DCMR, and maintain the following additional records:
- (a) A contingency plan that describes how the IDS will be provided when the primary DSP is unavailable; and, if the lack of immediate support poses a serious threat to the person's health and welfare, how the support will be provided when back-up DSPs are also unavailable;
  - (b) An initial community integration plan, during the first thirty (30) days a person is receiving IDS, utilizing the template required by DDS and containing the following information:
    - (1) The name of the person receiving the service;
    - (2) Service start date;
    - (3) The names of the primary and back-up DSPs that will be delivering the service during the first thirty (30) days of service;
    - (4) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;
    - (5) Goals in ISP that trigger authorization for individualized day supports;
    - (6) Schedule of service and calendar of activities for the first thirty (30) days;
    - (7) Back-up activities for the first thirty (30) days that relate to the person's individualized day supports goals and/or exploration and discovery; and
    - (8) Goals to be achieved in the first thirty (30) days of service and methods that will be used to achieve the goals.
  - (c) After a person has received IDS for thirty (30) calendar days, an on-going community integration plan utilizing the template required by DDS and containing the following information:
    - (1) The name of the person receiving the services;
    - (2) The names of the primary and back-up DSPs delivering services;

- (3) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;
  - (4) Goals for the service falling under any of the following categories: Community Membership; Relationships & Natural Supports; Career Exploration & Employment; Retirement (for individuals 61 or older); Community Contribution; Self-Determination; Community Navigation; Wellness/Fitness, or others as listed in the community integration plan template;
  - (5) The highly individualized, integrated community activity/activities or opportunity/opportunities that will support achievement of the goals;
  - (6) Specific skills the person will be assisted to learn that can help with achievement of his/her goals and help the person participate successfully, and as independently as possible, in the Activities/Opportunities;
  - (7) Measureable outcomes promoting community integration which are expected and will indicate the goals have been achieved;
  - (8) Calendar of activities for the quarter and back-up activities for the quarter; and
  - (9) Teaching objectives, strategies and measurable outcomes for skill development goals;
- (d) Within seven (7) business days of the conclusion of each ISP quarter, submit to the DDS service coordinator a quarterly report, utilizing the template required by DDS and containing the following information:
- (1) Description of person's attendance and participation;
  - (2) Description of person's relationship with the assigned DSPs;
  - (3) Description of the person's relationships with others paired with the person to receive the service, if applicable;
  - (4) Description of how the activities and opportunities offered through individualized day supports contributed to the achievement of the person's service goals;
  - (5) Description of skill development gains and next steps to continue progress on skill development; and

(6) Description of career and vocational exploration activities and outcomes for working-age participants in individualized day supports.

(e) A Positive Personal Profile and Job Search and Community Participation Plan shall be developed annually and reviewed at least quarterly, and that is updated as needed, based upon what is being learned about the person's needs and interests by the individualized day supports provider. Positive Personal Profile and Job Search and Community Participation Plan shall be used to inform, and attached to, the initial and on-going community integration plans.

...

1925.14 Time spent in transportation to and from IDS generally shall not be included in the total amount of services provided per day. However, IDS may include the time a DSP spends accompanying the person on public transportation (excluding Medicaid funded non-emergency transportation) for the purposes of training the person to travel using public transportation, including when the person's IDS day begins and ends at the person's residence. IDS and Medicaid funded non-emergency transportation may not be billed during the same period of time. Medicaid funded non-emergency transportation may not be used during the provision of IDS. Medicaid funded non-emergency transportation may be used to transport the person to and from IDS; however, it should not preclude opportunities for the person to learn to use public transportation as part of participation in IDS.

...

1925.20 A person receiving IDS may start and end his or her day at his or her place of residence, if that is the person's preference and/or is recommended by the person's support team and reflected in his or her IDS Community Participation Plan.

**Subsection 1928.2 of Section 1928, PHYSICAL THERAPY SERVICES, is amended to read as follows:**

1928.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability and regression of functional abilities, promote mobility, maintain health and maximize independence. These services are delivered in a location of the person's choice, including his or her home, day service setting, or community.

Subsections 1929.2, 1929.5, 1929.16, 1929.18, 1929.19, 1929.24, and 1929.25, and a new Subsection 1929.28, of Section 1929, RESIDENTIAL HABILITATION SERVICES, are amended to read as follows:

1929.2 Residential habilitation services are supports, provided in a home shared by at least four (4), but no more than six (6), persons. However, any new setting cannot exceed four (4) people. Settings that are in existence on the effective date of this regulation are grandfathered in, but are not eligible for new referrals, until their size is less than four (4) people in the setting. The service assists each person in: acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community, based upon what is important to and for the person, as documented in his or her Individualized Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.

...

1929.5 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, skill development, habilitation, and other supports, aimed at teaching the person to increase his or her skills and self-reliance. This shall include, but not be limited to, the following categories of support, unless the person has demonstrated independence and capacity in any of the following areas.

- (a) Eating and food preparation, including learning about healthy eating choices;
- (b) Personal hygiene;
- (c) Dressing;
- (d) Monitoring health and physical conditions;
- (e) Assistance with the administration of medication;
- (f) Communications;
- (g) Interpersonal and social skills including building and maintaining relationships;
- (h) Household chores;
- (i) Mobility;
- (j) Financial management;
- (k) Motor and perceptual skills;

- (l) Problem-solving and decision-making;
- (m) Human sexuality;
- (n) Providing opportunities to engage in community life, including but not limited to social, recreational, and religious activities utilizing community resources;
- (o) Ensuring that the person has appropriate and functioning adaptive equipment;
- (p) Providing opportunities for the person to seek employment to work in the community in a competitive and integrated setting; and
- (q) Other supports that are identified as important to or for the person in supports as identified in the person's ISP.

...

1929.16 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHPID must meet the minimum staffing ratio requirements set forth in Chapter 35 of Title 22-B DCMR and described in §§ 1929.24 and 1929.25 (reimbursement rates), unless it is determined by DDS to require a higher acuity level. For intensive residential habilitation services, one of the direct support staff must be a licensed practical nurse (LPN) for all awake hours.

...

1929.18 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements), Section 1909 (Records and Confidentiality of Information), Section 1911 (Individual Rights), and Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; except that the progress notes as described in Subsection 1909.2(m) shall be maintained on a daily basis. Additionally, all residential habilitation settings must fully comply with all of the requirements of the HCBS Settings Rule.

1929.19 Residential habilitation services cannot be delivered on the same day as the following Waiver services:

- (a) Supported Living;
- (b) Respite;
- (c) Host Home;

- (d) Companion, except that Companion services can be used with Residential Habilitation services during regular daytime hours on Mondays through Fridays, not to exceed more than forty (40) hours per week, or in combination with any other waiver day or vocational support service, including Day Habilitation, Employment Readiness, Supported Employment and Individualized Day Supports not to exceed forty (40) hours per week;
- (e) In-Home Supports; and
- (f) Skilled Nursing.

...

1929.24 There shall be a Medicaid reimbursement rate for residential habilitation services for a group home for persons with intellectual disabilities (GHPID) with four (4) persons as follows:

- (a) The Basic Support Level 1 daily rate for a direct care staff support ratio of 1:4 for all awake and overnight hours;
- (b) The Moderate Support Level 2 daily rate for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support with Skilled Nursing daily rate for twenty-four (24) hours for a direct care staffing support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home; with 2:4 direct care staffing and 1:4 licensed practical nursing staff during all awake hours and 1:4 direct care staff and 1:4 licensed practical nursing services during awake overnight.

1929.25 There shall be a Medicaid reimbursement rate for residential habilitation services for a GHPID with five (5) to six (6) persons as follows:

- (a) The Basic Support Level 1 daily rate for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;

- (b) The Moderate Support Level 2 daily rate for a direct care staff support ratio of 2:5 or 2:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate for increased direct care staff support for sleep hours to 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate for twenty-four (24) hours for a direct care staffing support ratio of 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home, with 1:5/6 licensed practical nursing staff during all awake hours and 1:5/6 direct care staff and one licensed practical nursing services awake overnight.

1929.28 . In order to be eligible for Medicaid reimbursement, residential habilitation services may only occur on days when the person is residing in the home or is on vacation with provider support.

**Subsections 1931.2, 1931.6, 1931.11, 1931.16, 1931.19, 1931.20, and 1931.25 of Section 1931, SKILLED NURSING SERVICES, are amended to read as follows:**

1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers. Skilled nursing services may be delivered in the home and/or in the community.

1931.6 The physician's order described in Subsection 1931.5 shall include the scope, frequency, and duration of skilled nursing services; shall be updated at least every sixty (60) calendar days; and shall be maintained in the person's records.

1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR. All ID/DD Waiver providers of skilled nursing services must

comply with all of the requirements for Medicaid State Plan skilled nursing providers.

...

1931.16 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least every sixty (60) days.

...

1931.19 Skilled nursing services shall not be available when provided with Residential Habilitation or when Supported Living or Supported Living with Transportation is billed using the rate that includes direct skilled nursing services.

1931.20 Upon exhaustion of the number of hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for additional skilled nursing services based upon medical need when required to support a person to live in the community, for persons who would otherwise be required to live in a nursing facility.

...

1931.25 [RESERVED]

**Subsections 1932.2 and 1932.18 of Section 1932, SPEECH, HEARING, AND LANGUAGE SERVICES, are amended to read as follows:**

1932.2 Speech, hearing, and language services are therapeutic interventions to address communicative and speech disorders to maximize a person's expressive and receptive communication skills.

(a) These services may be delivered at a person's home, day service setting, and/or in the community.

(b) These services are available either as an individual service or may be provided in small group settings of 1:3 based upon the recommendation of the person's support team as reflected in the person's Individual Support Plan (ISP). A person may use either individual, small group, or a combination of such services, subject to the service limitations described in Subsection 1932.16. For persons enrolled in small group speech, hearing and language services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests.

...

1932.18 There shall be a Medicaid reimbursement rate for both individual and small group speech, hearing and language services. The billable unit of service for speech,

hearing and language therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service. For small group speech, hearing and language services, there shall be a Medicaid reimbursement rate for each person in a group of two (2) to three (3) people enrolled in the Waiver.

**Subsections 1933.2, 1933.3, 1933.4, 1933.8, 1933.13, 1933.16, 1933.18, 1933.20, 1933.21, 1933.29, 1933.31, and 1933.34, and new Subsections 1933.46 and 1933.47, of Section 1933, SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES, are amended to read as follows:**

1933.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks. All Medicaid reimbursable supported employment services must fully comply with the requirements of the HCBS Settings Rule.

1933.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group, based upon the recommendations of the person and his or her support team, as reflected in the person's Individual Support Plan (ISP) and Plan of Care. For persons enrolled in small group supported employment services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests.

1933.4 Medicaid reimbursable small group supported employment services are services and training activities that are provided in regular business, industry, or community setting for groups of two (2) to four (4) workers.

...

1933.8 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

- (a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;
- (b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to four (4) workers with disabilities to place persons in an integrated community based work setting; and
- (c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

...

1933.13 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:

- (a) Conducting a person-centered vocational and situational assessment based upon what is important to and for the person as reflected in his or her Person-Centered Thinking and Discovery tools and related ISP goals;
- (b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a Positive Personal Profile and Job Search and Community Participation Plan;
- (c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;
- (d) Engaging in community mapping to identify available community supports and assisting the person to establish a network for job development, placement and mentoring;
- (e) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations that provide information specific to owning and operating a business;
- (f) Providing employment counseling, which includes, but is not limited to, the person's rights as an employee with a disability; and
- (g) Providing or coordinating access to benefits counseling, defined as analysis and advice to help the person understand the potential impact of employment on his or her public benefits, including, but not limited to Supplemental Security Income, Medicaid, Social Security Disability Insurance, Medicare, and Supplemental Nutrition Assistance Program (SNAP).

\*\*\*

1933.16 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

- (a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
- (b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;
- (c) Assisting the person with the completion of job applications;

- (d) Assisting the person with job exploration and placement, including assessing opportunities for the person's advancement and growth, with a consideration for customized employment, as needed;
- (e) Visiting employment sites, participating in informational interviews, attending employment networking events, and job shadowing;
- (f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, individuals in the person's network, utilizing the internet, social media, magazines, newspapers, and other publications as prospective employment leads;
- (g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;
- (h) Negotiating employment terms with or on behalf of the person;
- (i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business;
- (j) Providing or coordinating access to benefits counseling; and
- (k) Working with the person and employer to develop group placements.

...

1933.18 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

- (a) On-the-job training in work and work-related skills required to perform the job;
- (b) Work site support that is intervention-oriented and designed to enhance work performance and support the development of appropriate workplace etiquette
- (c) Supervision and monitoring of the person in the workplace;
- (d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs; including, where appropriate, the use of assistive technology, *i.e.* calendar alerts, timers, alarm clocks and other devices that assist a person with meeting employment requirements;

- (e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;
- (f) Providing or coordinating access to ongoing benefits counseling, including but not limited to prior to the person reaching the end of his or her Trial Work period and/or attaining Substantive Gainful Activity (SGA);
- (g) Consulting with other professionals and the person's family, as necessary;
- (h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary; and
- (i) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities.

...

1933.20 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

- (a) Periodic monitoring of job stability with a minimum of two (2) visits per month;
- (b) Intervening to address issues that threaten job stability;
- (c) Providing re-training, cross-training, and additional supports as needed, when job duties change;
- (d) Facilitating integration and natural supports at the job site;
- (e) Providing or coordinating access to benefits counseling prior to and after the person reaching the end of his or her Trial Work period and/or attaining SGA, and to ensure a person maintains eligibility for benefits and that earnings are being properly reported;
- (f) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities; and
- (g) Facilitating job advancement, professional growth, and job mobility.

- 1933.21 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability after they become employed.
- (a) Once the person exhibits confidence to perform the job without a job coach present, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.
  - (b) On the job coaching supported employment services may be provided in person, or by phone or by any other technology device that supports the use of Skype, FaceTime, etc., where approved by the person and his or her support team and documented in the ISP. Supported employment services by phone or other technology to communicate cannot exceed twenty (20) percent of the total hours of supported employment services that the person receives each week.
- 1933.29 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:
- (a) DDS provides a written service authorization before the commencement of services;
  - (b) The provider conducts a comprehensive vocational assessment, at minimum consisting of a Positive Personal Profile and Job Search and Community Participation Plan, if the person does not already have a comprehensive assessment. If the person does have a comprehensive vocational assessment, this must be reviewed to ensure that it is current and reflects what is important to and for the person, and updated as needed;
  - (c) The provider develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;
  - (d) The service name and provider delivering services are identified in the ISP and Plan of Care;
  - (e) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received;
  - (f) The provider completes an employment progress plan, using the template required by DDS, and submits it as an attachment to the required quarterly report; and
  - (g) Services shall not conflict with the service limitations described under Subsections 1933.31-1933.42.

...

1933.31 Supported employment services are not available to people who are eligible to participate and are fully supported in programs funded under Title I of the Rehabilitation Act of 1973, Section 110, enacted September 26, 1973 (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 USC §§ 1401(16) and (71), enacted October 30, 1990 (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*). However, supported employment services may be used to provide additional supports for employment for persons eligible for and participating in those programs.

...

1933.34 Medicaid reimbursement is not available if supported employment services are provided in specialized sheltered workshop or other similar type facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.

...

1933.46 DDS shall only approve an extension for Job Training and Supports when there is documentation in the employment progress plan that the person continues to demonstrate progress on the job, including but not limited to: learning the job and related tasks, following directions, interaction with others, following supervision, reluctance or reliance on the job coach, etc. However, if recommended by the person and/or his or her support team and reflected in the ISP, DDS would authorize long-term follow-along supported employment services as needed to support the person on an ongoing basis.

1933.47 In order to be eligible for Medicaid reimbursement, each Waiver provider of supported employment services shall comply with Section 1908 (Reporting Requirements); Section 1909 (Records and Confidentiality of Information); and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

**Subsections 1934.4, 1934.9, 1934.17, 1934.21, 1934.27, 1934.37 and 1934.38, and new Subsections 1934.47, 1934.48 and 1934.49, of Section 1934, SUPPORTED LIVING SERVICES, are amended to read as follows:**

1934.4 To be eligible for Medicaid reimbursement, twenty-four (24) hour one-to-one supported living services in a single occupancy supported living residence (SLR):

- (a) The person must have a history of challenging behaviors that may put others at risk, require intensive supports as determined by a psychological assessment which is updated annually or pursuant to a court order, and have a behavior support plan (BSP) that identifies the challenging behaviors and the need for one-to-one supervision that was approved by the Department on Disability Services (DDS); or
- (b) The person and/or his or her support team have recommended that the

person live in a single person setting, and the person is able to pay for the non-Waiver costs of the supported living services placement (for example, rent, utilities, etc.); or

- (c) The person and/or his or her support team have recommended that the person, based on medical or behavioral needs, live in a single person setting and it has been approved by the DDS Deputy Director for DDA.

...

1934.9 [RESERVED]

...

1934.17 Each provider of Medicaid reimbursable supported living services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, and other social and adaptive skills necessary to enable the person to become a fully integrated member of their community. To accomplish these goals, the provider shall:

- (a) Use the DDS-approved Person-Centered Thinking tools, the person's Positive Personal Profile, and the Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first month of providing services. This assessment shall be reviewed and revised annually or more frequently as needed;
- (b) Participate as a member of the person's support team, at his or her preference, including making recommendations for the development of the ISP and Plan of Care;
- (c) Review the person's ISP and Plan of Care goals, DDS- approved person centered thinking tools, Positive Person Profiles and Job Search and Community Participation plan, objectives, and activities at least quarterly and more often, as necessary, and submit quarterly reports to the person, family, as appropriate, guardian, and DDS Service Coordinator no later than seven (7) business days after the end of the first ISP quarter or each subsequent quarter thereafter and in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR;
- (d) Provide access and information as requested for service coordination, visits and reviews;
- (e) Assist in the coordination of all services that a person may receive; and

- (f) Develop and implement the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards.

...

1934.21 Each provider of Medicaid reimbursable supported living services shall maintain the records as prescribed under Section 1909 of Title 29 DCMR for monitoring and auditing purposes for each person receiving services and shall also maintain the following documents:

- (a) If providing twenty-four (24) hour supported living services in a single occupancy or one-to-one supports, a copy of the annual BSP or court order;
- (b) Progress notes that describe the person's leisure and recreation activities, in accordance with his or her interests as identified in the ISP or Person-Centered Thinking and Discovery tools;
- (c) A daily schedule that complies with DDS guidance;
- (d) The records of any nursing care, procedures, and other supports related to the development and management of the Health Care Management Plan; and
- (e) A record of monitoring and maintenance of adaptive equipment, if applicable.

...

1934.27 Each provider of Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing shall:

- (a) Provide skilled nursing services and supports to the person living in the SLR;
- (b) Complete any skilled nursing assessment and document hourly nursing interventions and treatments;
- (c) Provide as appropriate, all of the supported living activities listed in Subsections 1934.18, 1934.19, and 1934.20; and
- (d) Ensure that at least one staff person is a licensed practical nurse during all awake hours, including awake overnight hours.

...

1934.37 There shall be a Medicaid reimbursement rate for supported living services without transportation as follows:

- (a) Basic Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours when individuals are awake and receiving services;
- (b) Basic Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when the residents are receiving services;
- (c) Moderate Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage;
- (d) Moderate Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight;
- (e) Intensive Support Level 1, which provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (f) Intensive Support Level 2, which provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (g) Basic Support Level 1, which provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 during all hours when individuals are awake and receiving services;
- (h) Basic Support Level 2, which provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the residents are receiving services;
- (i) Moderate Support Level 1, which provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage overnight;

- (j) Moderate Support Level 2, which provides support in a SLR with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism;
- (k) Intensive Support Level 1, which provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and adjusted for increased absenteeism;
- (l) Supported living periodic services, as described under Subsection 1934.6, which shall be authorized up to sixteen (16) hours per day without transportation. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service;
- (m) A specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5, when there are at least three (3) people living in the SLR and residing in a home that requires skilled nursing services and demonstrates extraordinary medical needs; provided, however, that this service requires a direct care staffing support ratio of 2:3, including at least one staff who is a licensed practical nurse during all awake hours, including awake overnight hours; and
- (n) A specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4, for asleep overnight staff and for one-to-one awake overnight staff.

1934.38

There shall be a Medicaid reimbursement rate for supported living services with transportation as follows:

- (a) Basic Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours;
- (b) Basic Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours;
- (c) Moderate Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage;

- (d) Moderate Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight;
- (e) Intensive Support Level 1, which provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (f) Intensive Support Level 2, which provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (g) Basic Support Level 1, which provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage when residents are receiving services;
- (h) Basic Support Level 2, which provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the resident is receiving services;
- (i) Moderate Support Level 1, which provides awake overnight daily rate for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage overnight;
- (j) Moderate Support Level 2, which provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (k) Intensive Support Level 1, which provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (l) Supported living periodic services, described under Subsection 1934.6, which shall be authorized up to sixteen (16) hours per day with

transportation. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service;

- (m) A specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5, when there are at least three (3) people living in the SLR and residing in a home that requires skilled nursing services and demonstrates extraordinary medical needs; provided, however, that this service requires a direct care staffing support ratio of 2:3, including at least one staff who is a licensed practical nurse during all awake hours, including awake overnight hours; and
- (n) A specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4 for asleep overnight staff and for one-to-one awake overnight staff.

...

- 1934.47 Medicaid reimbursable supported living periodic services are calculated based on the time the person is scheduled to use residential services and may include the time the person is being transported by the provider to day programs, employment, professional appointments, community activities, and events.
- 1934.48 All Supported Living and Supported Living with Transportation settings must be fully compliant with the requirements of the HCBS Settings Rule, 79 *Federal Register* 2947.
- 1934.49 Supported Living Periodic services may be provided in person, by phone or by any other technology device that supports the use of Skype, FaceTime, etc., as approved by the person and his or her support team and documented in the ISP. Supported Living Periodic services using technology to communicate with the person shall not exceed twenty (20) percent of the total hours of Supported Living Periodic services that the person receives each week.

**Subsections 1936.4, 1936.5, 1936.6, 1936.7, 1936.15, 1936.16, and 1936.21 of Section 1936, WELLNESS SERVICES, are amended to read as follows:**

- 1936.4 Fitness training is available as either an individual service, or in small group settings of 1:2 based upon the person's request and/or recommendation of the person's support team. A person may utilize both 1:1 and small group fitness services subject to the limitations in Subsection 1936.21. When a person is enrolled in small group fitness, efforts should be made to match the person with another person of his or her choosing, or, if not available, with a person who has similar skills and interests.
- 1936.5 To be eligible for Medicaid reimbursement of bereavement counseling:

- (a) The person must have experienced a loss through death, relocation, change in family structure, or loss of employment;
  - (b) The service must be requested by the person and/or recommended by the person's support team; and
  - (c) The service shall be identified as a need in the person's ISP and Plan of Care.
- 1936.6 To be eligible for Medicaid reimbursement of sexuality education, the services shall be:
- (a) Requested by the person and/or recommended by the person's support team; and
  - (b) Identified as a need in the person's ISP and Plan of Care.
- 1936.7 To be eligible for Medicaid reimbursement of fitness training and massage therapy, the services shall be:
- (a) Requested by the person and/or recommended by the person's support team;
  - (b) Identified as a need in the person's ISP and Plan of Care; and
  - (c) Ordered by a physician.
- 1936.15 In order to be eligible for Medicaid reimbursement, professionals delivering wellness services shall meet the following licensure and certification requirements:
- (a) Bereavement counseling services shall be performed by a professional counselor 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.* (2016 Repl.)) and certified by the American Academy of Grief Counseling as a grief counselor or other equivalent national certification as approved by DDS;
  - (b) Fitness services shall be performed by professional fitness trainers who have been certified by any of the following national and/or international certifications, or other equivalent national certification as approved by DDS: the American Fitness Professionals and Associates, the National Athletic Training Association, the National Academy of Sports Medicine,

the Aerobics and Fitness Association of America, and the American College of Sports Medicine; or professional fitness trainers who have a bachelor's degree in physical education, health education, exercise, science or kinesiology; or recreational therapists;

- (c) Dietetic and nutrition counselors shall 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.* (2016 Repl.)); and
- (d) Massage Therapists shall 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.* (2016 Repl.)) and certified by the National Certification Board for Therapeutic Massage and Bodywork, or other equivalent national certification as approved by DDS.

1936.16 In order to be eligible for Medicaid reimbursement, sexuality education services shall be delivered by:

- (a) A Sexuality Education Specialist who is certified to practice sexuality education by the American Association of Sexuality Educators, Counselors and Therapists Credentialing Board, or other equivalent national certification as approved by DDS; or
- (b) Any of the following professionals with specialized training in Sexuality Education:
  - (1) Psychologist;
  - (2) Psychiatrist;
  - (3) Licensed Clinical Social Worker; or
  - (4) Licensed Professional Counselor.

1936.21 Wellness services shall be limited to one hundred (100) hours per ISP year per service. Additional hours may be authorized before the expiration of the ISP and Plan of Care year and when the person's health and safety are at risk and the person is demonstrating progress towards achieving established outcome and/or maintenance of goals. Requests for additional hours may be approved when accompanied by a physician's order or if the request passes a clinical review by staff designated by DDS.

Section 1937, COST REPORTS AND AUDITS, is amended to read as follows:

**1937 COST REPORTS, AUDITS, AND OVERSIGHT MONITORING**

- 1937.1 Beginning October 1, 2015, each waiver provider of residential habilitation, host home, supported living, supported living with transportation, day habilitation, in-home supports, individualized day supports, respite, employment readiness and supported employment services shall report costs to DHCF no later than ninety (90) 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, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period.
- 1937.2 A cost report that is not completed shall be considered an incomplete filing, and DHCF shall notify the waiver provider within thirty (30) days of the date on which DHCF received the incomplete cost report.
- 1937.3 All of the facility's accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, shall be permanent records and be retained for a period of not less than five (5) years after the filing of a cost report.
- 1937.4 DHCF shall evaluate expenditures subject to the requirements in this Section through annual review of cost reports.
- 1937.5 DHCF, or its designee, shall review each cost report for completeness, accuracy, compliance, and reasonableness.
- 1937.6 Every five (5) years, for purposes of renewing the Waiver, DHCF shall rely on audited cost reports submitted by Waiver providers to DHCF. In the absence of audited cost reports, Waiver providers may submit unaudited costs reports or financial statements.
- 1937.7 DHCF, Division of Program Integrity shall perform ongoing audits to ensure that the provider's services for which Medicaid payments are made are consistent with programmatic duties, documentation, and reimbursement requirements as required under this chapter.
- 1937.8 The audit process shall be routinely conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered to IDD Waiver program beneficiaries and billed to Medicaid.

- 1937.9 If DHCF denies a claim during an audit, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the process for administrative review as outlined below:
- (a) DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NPMOR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.
  - (b) The Provider shall have thirty (30) days from the date of the NPMOR to submit documentary evidence and written argument to DHCF against the proposed action;
  - (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;
  - (d) Based on review of the documentary evidence and written argument, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNMOR);
  - (e) Within fifteen (15) days of receipt of the FNMOR, the Provider may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, N.W., Suite 450 North, Washington, D.C. 20001; and
  - (f) Filing an appeal with the OAH shall not stay any action to recover any overpayment.
- 1937.10 The recoupment amounts for denied claims may be determined by the following formula:
- (a) A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample; and
  - (b) The denominator shall be the total number of paid claims from the audit sample. This fraction will be multiplied by the total dollars paid by DHCF to the Provider during the audit period, to determine the amount recouped.
- 1937.11 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by authorized government officials or their agents, as requested.
- 1937.12 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the

operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the auditing official.

- 1937.13 The failure of a provider to release or to grant access to program documents and records to the DHCF auditors in a timely manner, after reasonable notice by DHCF to the provider to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement.
- 1937.14 DHCF shall retain the right to conduct audits or reviews at any time. Each waiver provider shall grant full access, during announced or unannounced on-site audits or review by DHCF, DHCF's designee, other District of Columbia officials, and representatives of the U.S. Department of Health and Human Services auditors, to relevant financial records, statistical data to verify costs previously reported to DHCF, program documentation, and any other documents relevant to the administration and provision of the Waiver service.
- 1937.15 As part of the audit process, providers shall grant access to any of the following documents to DHCF Program Integrity personnel, which may include, but are not limited to the following:
- (a) A record of all service authorization and prior authorizations for services;
  - (b) A record for all request for change in services;
  - (c) A written staffing plan, if applicable;
  - (d) A schedule of the beneficiary's activities in the community, if applicable, including strategies to execute goals in the Individualized Service Plan, the date and time of the activities, and staff, as identified in the staffing plan;
  - (e) Any records relating to adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and dates of service, and the name, signature, and credentials of the service provider;
  - (f) Progress notes, as described in 29 DCMR § 1909; and
  - (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of the Waiver.
- 1937.16 DHCF's Long Term Care Administration's Waiver Oversight and Monitoring team shall conduct monitoring reviews as follows:

- (a) Quarterly oversight and monitoring reviews to ensure compliance with established federal and District regulations and applicable laws governing the operations and administration of the Waiver Program; and
- (b) Quarterly oversight and monitoring reviews to monitor progress and performance against quality measures.

1937.17 As part of the oversight monitoring process, providers shall grant access to any of the following documents to the DHCF monitor, which may include, but shall not be limited to the following:

- (a) Person-Centered Service Plan and Plan of Care/service delivery plan;
- (b) Employee records;
- (c) A signed, current copy of the Medicaid Provider Agreement;
- (d) Licensure information;
- (e) Policies and procedures;
- (f) Incident reports and investigation reports; and
- (g) Complaint related reports.

**Section 1938, HOME AND COMMUNITY-BASED SETTING REQUIREMENTS, is amended to read as follows:**

**1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS**

1938.1 All Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Companion, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:

- (a) Be chosen by the person from HCBS settings options including non-disability settings. For residential settings, this includes, but is not limited to, ensuring that:
  - (1) People select their home and know that they have protections against eviction;
  - (2) People choose their roommates and know how to request a roommate change; and

- (3) People who have a roommate are offered the choice of available residential settings with a private bedroom, if they have the ability to pay.
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint. This includes, but is not limited to, ensuring that:
  - (1) People are provided personal care assistance in private, as appropriate;
  - (2) Information is provided to people on how to make an anonymous complaint;
  - (3) People's health and other personal information (e.g., mealtime protocols, therapy schedules) are kept private;
  - (4) Staff do not talk about people's private information in front of other people who do not have a right and/ or need to know; and
  - (5) Staff address people by their names or preferred nicknames.
- (c) Be physically accessible to the person and allow the person access to all common areas. For residential settings, this includes, but is not limited to, ensuring that:
  - (1) People have full access to the kitchen, dining area, living room, laundry, and all other common areas of their home; and
  - (2) The home is fully accessible to meet the needs of the people living there, including all common areas and supports as needed, such as grab bars and ramps.
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
- (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community. This is evidenced in part by the following:
  - (1) People who desire to work are supported to pursue work in the community; and
  - (2) People engage in meaningful non-work activities in the community.

- (f) Provide information on individual rights;
- (g) Optimize the person's initiative, autonomy, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- (h) Facilitate the person's choices regarding services and supports, and who provides them;
- (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP, in accordance with DDS guidance;
- (j) Provide opportunities for the person to engage in community life, as evidenced in part by people being able to shop, attend religious services, schedule appointments, have lunch with friends and family, etc. in the community, as they choose;
- (k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS, as evidenced in part by people using community resources, such as parks, recreational centers, community health clinics, etc.;
- (l) Control over his or her personal funds and bank accounts, as evidenced in part by people being able to access their funds, when they want to, and without advanced notice;
- (m) Allow visitors at any time within the limits of the lease or other residency agreement;
- (n) Be integrated in the community and support access to the greater community. This is evidenced in part by the following:
  - (1) People receive the supports they need to see family and friends and spend time doing activities of their choosing in the community; and
  - (2) People are encouraged to learn travel skills so that they can use public transportation.
- (o) Allow full access to the greater community.

1938.2

All Supported Living, Supported Living with Transportation, Host Home Without Transportation, and Residential Habilitation settings must:

- (a) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under the relevant landlord/tenant law for that jurisdiction. This includes a responsibility to ensure that each person knows their rights regarding housing, as explained by their lease or written residency agreement, including when they could be required to relocate, and understand the eviction process and appeals rights. This provision applies equally to leased and provider owned properties;
- (b) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
  - (1) Privacy in his or her personal space, including entrances to living spaces that are lockable by the person (with staff having keys as needed). This is evidenced in part by staff knocking and receiving permission prior to entering a person's living space;
  - (2) Freedom to furnish and decorate his or her personal space, as evidenced in part by people's living space reflecting their taste and preferences (*e.g.*, furniture, linens and other household items reflect people's choices), within the limits of the lease or other residency agreement or consistent with the governing Human Care Agreement;
  - (3) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, *e.g.* FaceTime or Skype, with or without support, based on person's preference; and
  - (4) Access to food at any time, as evidenced in part by:
    - (A) Each person has meals at the time and place of his or her choosing;
    - (B) People can request an alternative meal, if desired; and
    - (C) Snacks are available and accessible at any time unless there is documentation of a medical condition that requires restrictions.

1938.3 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment, Companion and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) A secure place to keep their belongings;
- (b) Access to snacks at any time;
- (c) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, *e.g.* FaceTime or Skype, with or without support, based on the person's preference; and
- (d) Meals at the time and place of a person's choosing.

1938.4 Any deviations from the requirements in §§ 1938.1(l) and (m), 1938.2(b) and § 1938.3 must be supported by a specific assessed need, justified and documented in the person's person-centered Individualized Support Plan, as well as reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review and person-centered planning meeting included discussion of the following elements:

- (a) What the person's specific individualized assessed need is that results in the restriction;
- (b) What prior interventions and supports have been attempted, including less intrusive methods;
- (c) Whether the proposed restriction is proportionate to the person's assessed needs;
- (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;
- (e) When the HRC and the person's support team will review the restriction again;
- (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
- (g) Whether the HRC and the person's support team has assurance that the proposed restriction or intervention will not cause harm.

**A new Section 1941, ASSISTIVE TECHNOLOGY SERVICES, is adopted to read as follows:**

**1941 ASSISTIVE TECHNOLOGY SERVICES**

1941.1 The purpose of this section is to establish standards governing eligibility for assistive technology services for persons enrolled in the Home and Community-

Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver), and to establish conditions of participation for professionals and providers of assistive technology services to receive reimbursement.

1941.2

Assistive technology services include both goods and services that are designed to enable the person to function with greater independence, avoid institutionalization and reduce the need for human assistance.

- (a) Assistive technology goods means an item, piece of equipment, service animal or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities and can also support increased community inclusion, including in employment settings. Assistive technology goods must not be otherwise available through another funding source.
- (b) Assistive technology service means a service that directly assists a person in the selection, acquisition, or use of an assistive technology device and includes, but is not limited to:
  - (1) The evaluation of assistive technology needs, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the person in his/her customary environment;
  - (2) Services consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for persons served through the waiver;
  - (3) Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - (4) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with other services in the service plan;
  - (5) Training or technical assistance for the person or, where appropriate, his/her family members, guardians, advocates, or authorized representatives who provide unpaid support, training, companionship or supervision; and
  - (6) Training or technical assistance for professionals or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the person served.

- (c) Assistive technology specifically includes, but is not limited to, Personal Emergency Response System (PERS), an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency. The person may also wear a portable “help” button to allow for mobility. The system is connected to the person’s phone and programmed to signal a response center once the ‘help’ button is activated. Trained professionals staff the response center. PERS is available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the maintenance costs and training the recipient to use the equipment, and twenty-four (24) hour, seven (7) day a week, response center services. Reimbursement will be made for an installation fee for the PERS unit. A monthly fee will be paid for the maintenance of the PERS.

1941.3 A person qualifies for assistive technology services when he or she requests the service and/or it is recommended by the person’s support team to enhance or maintain the person’s independence, increase, maintain, or improve functional capabilities, and/or support increased community inclusion; or there is a physician’s order for the service. Assistive technology services must be included in the person’s Individual Support Plan (ISP) and Plan of Care.

1941.4 In order to be eligible for Medicaid reimbursement, each professional providing assistive technology services shall:

- (a) Conduct a comprehensive assessment within the first four (4) hours of service delivery, which shall include the following:
  - (1) A background review and current functional review of the person’s capabilities in different environments;
  - (2) An environmental review in places of employment, residence, and other sites as necessary; and
  - (3) A needs assessment for the use of assistive technology.
- (b) Develop and implement an assistive technology plan within the first four (4) hours of service delivery that describes strategies, including recommended assistive technology goods, coordination with professional services, training of caregivers, monitoring requirements and instructions, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and Plan of Care.

- 1941.5 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21) years old, the DDS Service Coordinator shall ensure that Early Periodic Screening and Diagnostic Treatment (EPSDT) services under the District of Columbia State Plan for Medical Assistance are fully utilized before accessing assistive technology services under the Waiver.
- 1941.6 Assistive technology services may be provided by the following professionals:
- (a) Approved Waiver providers of occupational therapy, physical therapy, and speech, hearing and language services, who are licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) and implementing rules; and
  - (b) Assistive technology professionals who are certified through the Rehabilitation Engineering and Assistive Technology Society of North America, or another comparable national accreditation body, as approved by DDS.
- 1941.7 Assistive technology services may be provided by the following agency provider types.
- (a) An Assistive Technology Professional Agency or Supplier that is an approved vendor for the Rehabilitation Services Administration; or
  - (b) A licensed provider agency of any of the following clinical services: occupational therapy, physical therapy, and speech, hearing and language pathology.
- 1941.8 Each provider of Medicaid reimbursable assistive technology services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1941.9 Each provider of Medicaid reimbursable assistive technology services shall maintain the following documents for monitoring and audit reviews:
- (a) A copy of the assistive technology assessment and treatment plan;
  - (b) A copy of the physician's order, if applicable;
  - (c) A copy of receipts documenting the date, item, amount expended, and any related warranty; and
  - (d) Any other applicable documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, where applicable.

- 1941.10 In order to be eligible for Medicaid reimbursement, each provider shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1941.11 In order to be eligible for reimbursement, each Medicaid provider of assistive technology services must obtain a written Service Authorization from the Department on Disability Services (DDS) before providing assistive technology services.
- 1941.12 Assistive technology services is subject to the follow limitations:
- (a) There is a maximum dollar amount per participant over a five-year period for this service. A person may be able to exceed this limitation on a case-by-case basis with the approval of DDS, based upon documented need, but shall be authorized prior to rendering the Waiver service; and
  - (b) Assistive technology provided through the Waiver is available only after the person has fully utilized services available under the Medicaid State Plan, or programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Sections 602(16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*), and where the assistive technology is not the obligation of the individual's employer.
- 1941.13 The billable unit of service for assistive technology services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

**A new Section 1942, PARENTING SUPPORT SERVICES, is adopted to read as follows:**

**1942 PARENTING SUPPORT SERVICES**

- 1942.1 The purpose of this section is to establish standards governing eligibility for parenting support services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver), and to establish conditions of participation for professionals and providers of parenting support services to receive Medicaid reimbursement.
- 1942.2 Parenting support services assist people who are or will be parents in developing appropriate parenting skills. Parents will receive training that is individualized and focused on the health and welfare and developmental needs of their child, as well as building necessary parenting skills. Close coordination will be maintained with informal and other formal supports.

- (a) Parenting support services may include training of individuals who provide unpaid support, training, companionship or supervision to persons served through the waiver to reinforce strategies provided to the person served;
- (b) Parenting support services is available both as a 1:1 service for a person, and in small group settings not to exceed 1:4. For persons enrolled in small group parenting support services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests;
- (c) Parenting support services may be provided by professionals or qualified peer employees;
- (d) Parenting support services shall be provided in the person's home or in a variety of community based settings, based upon the person's needs and choices;
- (e) A person served through the ID/DD Waiver may utilize both 1:1 and small group parenting support, and services provided by professionals and qualified peer employees and both services combined are subject to the limitations in Subsection 1942.10; and
- (f) Parenting support services do not include activities that are the responsibility of Supported Living, Supported Living with Transportation, Residential Habilitation, Host Home or In-Home Supports and can be offered in combination with any ID/DD Waiver residential services.

1942.3 Parenting support services will be authorized when:

- (a) The person is an expectant parent, a parent with physical custody or visitation with his or her child, or a parent who is pursuing reunification with his or her child;
- (b) The person requests the service and/or it is recommended by the person's support team; and
- (c) Parenting support services is included in the person's Individual Support Plan (ISP) and Plan of Care.

1942.4 In order to be eligible for Medicaid reimbursement, each parenting support services provider shall comply with the following service delivery requirements:

- (a) Conduct an assessment, within the first four (4) hours of service delivery, which shall include the following:

- (1) A background review and current functional review of the person's parenting capabilities in different environments;
  - (2) An environmental review in the person's home, and other community site as necessary; and
- (b) Develop and implement a parenting support plan, within the first four (4) hours of service delivery, that describes strategies, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and Plan of Care.
- 1942.5 Parenting support services may be provided by any of the following agency provider types:
- (a) In-Home Supports;
  - (b) Supported Living;
  - (c) Supported Living with Transportation; and
  - (d) Host Home Without Transportation.
- 1942.6 Medicaid reimbursable parenting support services shall be provided by either professionals or peer employees:
- (a) Professionals shall meet the following qualifications:
    - (1) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 effective April 20, 1999 (D.C. Law 12- 238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
    - (2) Documented completion of required training in accordance with the DDS Training policy;
    - (3) Master's degree in field related to supporting people with disabilities, including but not limited to social services, education, and psychology;
    - (4) At least five (5) years of experience working with people with intellectual disabilities and/or their families; and

- (5) Demonstrated ability, experience and education to teach adult learners; conduct support needs assessments; implement service/support plans; assist parent in specific areas of support described in the plan; serve as an advocate; and work with people of varied ethnic and cultural backgrounds.
  - (b) Peer employees shall meet the basic requirements set forth in 29 DCMR § 1906.3.
    - (1) A peer employee may be the person's relative, but may not be legally responsible for the person, or the person's legal guardian.
    - (2) A peer employee shall not provide parenting support services to a person for whom he or she provides the following ID/DD Waiver services: Residential Habilitation; Supported Living; Supported Living with Transportation; Host Home Without Transportation; or In-Home Supports.
- 1942.7 Each Medicaid provider of parenting support services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1942.8 Each Medicaid provider of parenting support services shall maintain the following documents for monitoring and audit reviews:
- (a) A copy of the most recent DDS approved ISP and Plan of Care, which shall include the documentation required by Subsection 1942.4;
  - (b) The parenting support plan developed in accordance with the requirements of Subsection 1942.4; and
  - (c) The documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.
- 1942.9 Each Medicaid provider of parenting support services shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1942.10 There shall be a total of four (4) Medicaid reimbursement rates for parenting support services: for 1:1 services and for small group services (*i.e.* 1:2, 1:3 and 1:4 staffing ratios) based on whether the services are provided by a professional or peer employee. Parenting support services shall not exceed one thousand four hundred sixty (1,460) hours per ISP year. Support is available from the first trimester until the eligible participant's child transitions from high school.

1942.11 The billable unit of service for parenting support services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

**Section 1999, DEFINITIONS, Subsection 1999.1, is amended as follows:**

**The following ten (10) terms and phrases are deleted:**

Client  
 Community Participation Plan  
 Health Management Care Plan  
 Homeowner  
 Intermediate Care Facility for Persons with Mental Retardation  
 Mentally Retarded  
 Quality Assurance Plan  
 Qualified Developmental Disabilities Professional  
 Qualified Mental Retardation Professional  
 Vocational Rehabilitation Counselor

**The following eight (8) terms and phrases are amended to read as follows:**

**Competitive Integrated Employment** - Full or part-time work at minimum wage or higher, with wages and benefits, and opportunities for advancement similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.

**Group Home for a Person with an Intellectual Disability** – The same as the definitions and licensure requirements as set forth in Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

**Individual Habilitation Plan (IHP)** - That plan as set forth in Section 403 of the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

**Intermediate Care Facility for Individuals with Intellectual Disabilities** - The same meaning as an “Intermediate Care Facility for Individuals with Intellectual Disabilities” as set forth in Section 1905(d) of the Social Security Act.

**Principal care provider** - The person who owns and/or leases the host home and provides host home services and supports to the person enrolled in the ID/DD Waiver. This person is not a Direct Support Professional (DSP).

**Qualified Intellectual Disabilities Professional (QIDP)** - Also known as Qualified Developmental Disabilities Professional or QDDP as defined in D.C. Official Code § 7-1301.03(21), is someone who oversees the initial habilitative assessment of a person; develops, monitors, and review ISPs; and integrates and coordinates Waiver services.

**Substantial Gainful Activity (SGA)** – A level of work activity and earning that have a meaning consistent with 20 CFR §§ 404.1510 and 404.1571-404.1576.

**Trained Medication Employee** – An individual employed to work in a program who has successfully completed a training program approved by the Board of Nursing and is certified to administer medication to program participants.

The following term is included to read as follows:

**Continuous Quality Assurance Plan** – A plan that has a systematic approach to assessing Waiver services and supports designed to ensure Waiver requirements are implemented on an ongoing basis including activities that emerge from a systematic and organized framework that tracks improvement.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by 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 after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.