

DEPARTMENT OF HEALTH CARE FINANCE
NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1927, entitled “Personal Emergency Response System Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of personal emergency response system services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

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. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Personal Emergency Response System (PERS) is 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 services are available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision.

The most recent Notice of Final Rulemaking for 29 DCMR § 1927 (Personal Emergency Response System Services) was published in the *D.C. Register* on March 21, 2014, at 61 DCR 002470. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 8, 2015, at 62 DCR 005775. That emergency and proposed rulemaking, which was adopted on April 24, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by (1) clarifying the requirements that the criteria set forth in Section 1906 of Title 29 DCMR, Chapter 19, only apply to responders who are employed by a provider agency; (2) correcting the identification of the agency for incident reporting; (3) allowing PERS to be delivered concurrently with Supported Living Periodic services and Supported Living with Transportation Periodic services; (4) eliminating the

prohibition from PERS being provided for a person receiving Host Home services; and (5) changing the rate for monthly rental, maintenance, and service fee. DHCF did not receive any comments in response to the first emergency and proposed rulemaking, but promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on August 21, 2015, at 62 DCR 011653, to continue the changes reflected in the first notice of emergency and proposed rulemaking described above. The second emergency and proposed rulemaking was adopted on August 12, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 10, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no changes were made from the second emergency and proposed rulemaking.

The Director of DHCF adopted these rules as final on November 16, 2015, and they shall become effective on the date of publication on this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsections 1927.11, 1927.14, 1927.18 and 1927.20 of Section 1927, PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES, are amended to read as follows:

1927 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS) SERVICES

- 1927.11 If the responder who will be in direct contact with the person is an employee of a Medicaid Waiver provider agency, he or she shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1927.14 Each provider of Medicaid reimbursable PERS services shall follow the DDS Developmental Disabilities Administration (DDA) incident reporting process within twenty four (24) hours of an emergency response. Emergency responses shall not include test signals or activations made by a person.
- 1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence. PERS shall not be provided to persons receiving Residential Habilitation services, Supported Living or Supported Living with Transportation services, with the exception of Supported Living Periodic and Supported Living with Transportation Periodic services.
- 1927.20 Medicaid reimbursement for PERS services shall be as follows:
- (a) Fifty dollars (\$50.00) for the initial installation, training, and testing; and
 - (b) Thirty dollars and thirty-nine cents (\$30.39) for the monthly rental, maintenance, and service fee.