

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 (District) 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 of a new Chapter 101 (*Services My Way* Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules codify the program policies and procedures for the District of Columbia Medicaid participant-directed *Services My Way* program, offered under the Home and Community-Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver).

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 20, 2016 at 63 DCR 007732. The comment period officially closed on June 20, 2016. Comments were received from Disability Rights DC at University Legal Services and IONA. DHCF carefully considered all comments received and incorporated changes in response to the comments in the Notice of Second Emergency and Proposed Rulemaking published in the *D.C. Register* on December 9, 2016 at 63 DCR 015171. No comments were received in response to the Notice of Second Emergency and Proposed Rulemaking. However, DHCF was required to issue third emergency and proposed rules in order to incorporate changes made as a result of the renewal of the EPD Waiver, which were detailed in the Notice of Third Emergency and Proposed Rulemaking published in the *D.C. Register* on June 16, 2017 at 64 DCR 005708. DHCF received one (1) set of comments on the third emergency and proposed rules from Disability Rights DC (DRDC). DHCF carefully considered the comments received and, for the reasons noted below, determined that no substantive changes were necessary. Therefore, no substantive changes have been made for these final rules. As noted below, four (4) minor technical corrections have been made for these final rules.

The concerns DRDC expressed in its comments are related to the timeframes for each step of the enrollment process for the *Services My Way* program. DRDC indicated that the regulations should detail specific timeframes in both Section 10101 (Outreach and Enrollment) and Section 10107 (Budget Formulation) and provided suggested timeframes for each stage in the enrollment and authorization processes. DHCF acknowledges and shares DRDC's concern regarding timely enrollment of beneficiaries in the *Services My Way* program. However, DHCF declines to add specific timeframes for each step of the enrollment process, including budget review and approval, to these rules as there are several steps in the program enrollment process that DHCF does not control and that the beneficiary and potential participant-directed workers (PDWs) must complete in order for the beneficiary to enroll in the program. Therefore, DHCF cannot hold the agency to requirements that are beyond its control to meet.

The *Services My Way* program enrollment process is tailored to each individual beneficiary who requests enrollment in the program and the enrollment timeframes depend on the beneficiary's specific circumstances, as well as actions that the beneficiary and his or her potential PDWs must complete in order for enrollment to proceed. For example, a beneficiary must identify potential PDWs and determine the rate of pay for each PDW. Similarly, a beneficiary's potential PDWs must obtain the required CPR and First Aid certifications, as well as complete a background check through the Department of Health. If a beneficiary or prospective PDW does not complete these actions in a timely manner, the beneficiary cannot be enrolled in the program.

While the beneficiary's case manager, support broker and DHCF staff are available to assist the beneficiary and his or her prospective PDWs throughout the enrollment process, DHCF cannot compel the beneficiary or prospective PDW to adhere to a prescribed timeframe for completing these actions. Therefore, while DHCF will make every effort to process all enrollment-related documents and authorizations as quickly as possible, the agency is not able to prescribe set timeframes for each stage of the enrollment process, as many stages are dependent on the actions of the beneficiary and prospective PDWs and not under DHCF's control to meet.

To ensure clarity DHCF has made four (4) clarifying amendments to the final rules as follows: (1) Subsection 10102.5 has been updated to ensure that the list of participant-directed community support services includes a reference back to the District rule governing these services, 29 DCMR § 5006.7; (2) Subsection 10104.5(d) has been updated to clarify the types of entertainment equipment that are considered non-allowable individual-directed goods and services; (3) Subsection 10104.5(v) has been updated to clarify that parking expenses are included within the non-allowable goods and services category of vehicle expenses; and (4) Subsection 10107.2(c) has been updated to clarify that the pre-determined percentage used to develop the PDS budget will be published in the *D.C. Register*.

The Director adopted these rules on September 19, 2017 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

A new Chapter 101, *SERVICES MY WAY PROGRAM*, is added to Title 29 DCMR, PUBLIC WELFARE, to read as follows:

CHAPTER 101 *SERVICES MY WAY PROGRAM*

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10100 GENERAL PROVISIONS

10100.1 The *Services My Way* program shall be established as the Medicaid participant-directed services (PDS) program in the District of Columbia to afford persons enrolled in the Home and Community-Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver) the opportunity to self-direct certain EPD Waiver services.

10100.2 Participation in the *Services My Way* program shall be limited to beneficiaries enrolled in the EPD Waiver who live in their own private residence or in the home of a family member or friend.

10100.3 If an EPD Waiver beneficiary is deemed ineligible to participate in the *Services My Way* program because of his or her failure to meet the criteria outlined in § 10100.2, Department of Health Care Finance (DHCF) shall issue timely written notice to the beneficiary which includes the following :

- (a) A clear statement that the beneficiary is not eligible to participate in the *Services My Way* program;
- (b) The reason(s) for the decision;
- (c) Citation to regulations supporting the decision; and
- (d) Information on the beneficiary's right to appeal the decision by filing a notice of appeal with the Office of Administrative Hearings.

10100.4 The *Services My Way* program shall include the following services:

- (a) Participant-directed community support (PDCS) services as described in § 10102; and
- (b) Individual-directed goods and services as described in § 10104.

- 10100.5 PDCS services and individual-directed goods and services shall only be available to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 10100.6 *Services My Way* participants shall be afforded the following self-direction opportunities:
- (a) The opportunity to exercise “employer authority” to recruit, hire, supervise and discharge qualified participant-directed workers (PDWs) who provide PDCS services to them; and
 - (b) The opportunity to exercise “budget authority” to purchase allowable and approved individual-directed goods and services using a participant-directed services (PDS) budget.
- 10100.7 The *Services My Way* participant or the participant’s authorized representative, if designated by the participant, shall serve as a “common law employer” of all PDWs hired by the participant.
- 10100.8 Financial management services and information and assistance services, as set forth in § 10106.4 and § 10106.6, respectively, shall be provided to *Services My Way* participants through the Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services (FMS)-Support Broker entity selected by the Department of Health Care Finance (DHCF) through a competitive procurement process.
- 10100.9 *Services My Way* participants shall not receive agency-based personal care aide services offered under Chapter 42 or Chapter 50 of Title 29 DCMR.
- 10100.10 *Services My Way* participants shall be eligible to receive all services offered under the EPD Waiver except for agency-based personal care aide services.
- 10100.11 *Services My Way* participants shall not serve as PDWs.

10101 OUTREACH AND ENROLLMENT

- 10101.1 Both current EPD Waiver beneficiaries and new EPD Waiver enrollees who meet the requirements of § 10100.2 may elect to enroll in the *Services My Way* program.
- 10101.2 DHCF or its agent shall provide information regarding self-direction and the *Services My Way* program to all current EPD Waiver beneficiaries and to new EPD Waiver enrollees at the time of EPD Waiver enrollment.
- 10101.3 EPD Waiver case managers shall provide information regarding self-direction and the *Services My Way* program to all EPD Waiver beneficiaries who are not enrolled as *Services My Way* participants each time a beneficiary is reassessed for

EPD Waiver services, each time a beneficiary's person-centered plan (PCP) is updated, and upon a beneficiary's request.

- 10101.4 All EPD Waiver case managers shall be required to complete a standardized training course on self-direction and the *Services My Way* program conducted by DHCF prior to the date enrollment begins for the *Services My Way* program, as well as all ongoing training required by DHCF.
- 10101.5 If an EPD Waiver beneficiary expresses interest in the *Services My Way* program, the beneficiary's EPD Waiver case manager shall assist the beneficiary in revising an existing PCP or developing an initial PCP to include the *Services My Way* program.
- 10101.6 Upon revising the existing PCP or developing an initial PCP which includes the *Services My Way* program, the EPD Waiver case manager shall submit the PCP which includes the *Services My Way* program to the *Services My Way* Program Coordinator for approval.
- 10101.7 Enrollment in the *Services My Way* program shall only occur following the *Services My Way* Program Coordinator's approval of the beneficiary's PDS budget as described in § 10107 and issuance of a prior authorization for all PDCS services and individual-directed goods and services included in the approved budget.
- 10101.8 Beneficiaries shall be notified at the time of enrollment in the *Services My Way* program that participation in the program is conditioned upon compliance with all program rules and the terms of the Participant/Representative-Employer Agreement.

**10102 PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES:
SERVICE DESCRIPTION**

- 10102.1 PDCS services shall be available only to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 10102.2 PDCS services shall be detailed in the participant's PCP and PDS budget and shall be designed to promote independence and ensure the health, welfare, and safety of the participant.
- 10102.3 The participant or his/her authorized representative, as applicable, shall serve as a "common law employer" of the PDW providing services. In the role of "common law employer," the participant or authorized representative shall be responsible for recruiting, hiring, supervising and discharging PDWs providing PDCS services.

- 10102.4 Supports shall be available to assist the participant/representative-employer with his or her own employer-related responsibilities as described in § 10102.3 through the VF/EA FMS-Support Broker entity.
- 10102.5 PDCS services shall include cueing, safety monitoring and hands-on assistance with activities of daily living and instrumental activities of daily living, as set forth in 29 DCMR § 5006.7.
- 10102.6 All PDCS services provided by a PDW shall be prior authorized by DHCF or its agent in order to be reimbursed under the *Services My Way* program.
- 10102.7 To be eligible for PDCS services, a participant shall be in receipt of a service authorization for personal care aide services from DHCF or its designated agent that specifies the amount, duration, and scope of services authorized to be provided to the beneficiary, in accordance with 29 DCMR § 5003.
- 10102.8 Payment for PDCS services shall be provided in accordance with the participant's PDS budget, at an hourly wage set by the participant/representative-employer which falls within the wage range established by DHCF as set forth in § 10102.9.
- 10102.9 The hourly wage paid to a PDW shall be no lower than the living wage in the District, set in accordance with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.*), and no higher than the wage paid by DHCF for services provided by a personal care aide in accordance with Chapter 42 of Title 29 DCMR.
- 10102.10 PDCS services shall not include the following:
- (a) Services that require the skills of a licensed professional, as defined in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*); or
 - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the participant, laundry for family members, shopping for items not used by the participant, or money management.
- 10102.11 An agency-based provider of personal care aide services shall not be designated as an emergency back-up provider of PDCS services.
- 10102.12 In order to ensure PDCS services are provided in a manner that ensures the participant's health and safety, if a participant submits a PDS budget in accordance with § 10207 that includes one hundred twelve (112) or more hours of personal care aide services per week as described in 29 DCMR § 5003, PDCS services must be provided by at least two (2) PDWs each week.

**10103 PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES:
PROVIDER REQUIREMENTS**

10103.1 PDCS services shall be provided only to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.

10103.2 Qualified PDWs shall provide PDCS services as employees of *Services My Way* participants.

10103.3 PDCS services may be provided by family members and individuals other than a participant's spouse, other legally responsible relative, or court-appointed guardian. A legally responsible relative does not include parents of adult children, so parents of adult children are not precluded from providing PDCS services. Each family member providing PDCS services shall comply with the requirements set forth in these rules.

10103.4 All PDWs shall meet the following qualifications:

- (a) Be at least eighteen (18) years of age;
- (b) Complete and pass a criminal background check in accordance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by 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.* (2012 Repl. & 2016 Supp.));
- (c) Receive customized training provided by the participant and/or the participant's authorized representative that is related to the participant's functional needs and goals as outlined in the PCP;
- (d) Be able and willing to perform the service-related responsibilities outlined in the participant's PCP; and
- (e) Be certified in cardiopulmonary resuscitation (CPR) and First Aid through an in-person training course approved by the American Red Cross or an alternative course approved by the *Services My Way* Program Coordinator and maintain current certifications.

10103.5 *Services My Way* participants shall not serve as PDWs.

10103.6 The VF/EA FMS-Support Broker entity shall be responsible for verifying that criminal background checks are conducted for all prospective PDWs in accordance with § 10103.4(b), and providing participants, authorized representatives, prospective PDWs, and the *Services My Way* Program

Coordinator with the results of all criminal background checks performed on prospective PDWs.

10103.7 The participant, or the participant's authorized representative if designated as the "common law employer" of the PDW, shall verify that a prospective PDW meets all qualifications set forth in § 10103.4 prior to hiring the PDW to provide PDCS services.

10103.8 The VF/EA FMS-Support Broker entity shall verify that a PDW meets all qualifications set forth in § 10103.4 prior to enrolling the PDW into its payroll system.

10103.9 The VF/EA FMS-Support Broker entity shall execute a Medicaid provider agreement with each PDW on behalf of DHCF at the time a PDW is enrolled into its payroll system.

10104 INDIVIDUAL-DIRECTED GOODS AND SERVICES: SERVICE DESCRIPTION

10104.1 Individual-directed goods and services are only available to EPD Waiver beneficiaries who are enrolled as participants in the *Services My Way* program, and are purchased from the participant's PDS budget.

10104.2 Individual-directed goods and services are services, equipment or supplies not otherwise provided through the EPD Waiver or the Medicaid State Plan that address an identified need in the participant's PCP, including improving and maintaining the participant's opportunities for full membership in the community. Individual-directed goods and services shall meet the following requirements:

- (a) The requested item or service would decrease the participant's need for other Medicaid services;
- (b) The requested item or service would promote the participant's inclusion in the community; or
- (c) The requested item or service would increase the participant's safety in the home environment.

10104.3 Allowable goods and services shall include, but not be limited to, the following:

- (a) Cleaning services from firms or individuals to clean the participant's personal areas including bedroom, bathroom, kitchen, etc., only if necessary in addition to those services otherwise available through the EPD Waiver;

- (b) Food preparation and delivery services, including grocery delivery and delivery of prepared foods (but not payment for the food itself);
- (c) Transportation services not currently available under Medicaid or the District's accessible transportation programs or through natural supports that are related to activities of daily living, and meet an objective outlined in the participant's PCP;
- (d) Small electric appliances which allow the participant to safely prepare meals;
- (e) Laundry services;
- (f) The cost of changing locks at the participant's home, as necessary, when a PDW stops working for the participant; and
- (g) Maintenance of items that meet the criteria of allowable individual-directed goods described in § 10104.2.

10104.4 Payment for allowable transportation services shall be made in the form of reimbursement for mileage documented on a Mileage Reporting Form provided by DHCF or its agent or reimbursement for public transit costs documented as specified by DHCF or its agent and submitted to the VF/EA FMS-Support Broker entity.

10104.5 Non-allowable goods and services shall include, but not be limited to, the following:

- (a) Gifts for PDWs, family or friends, including bonus payments to PDWs;
- (b) Loans to PDWs, family or friends;
- (c) Food, beverages and nutritional supplements;
- (d) Entertainment equipment or supplies such as televisions, stereos, CDs, DVDs, streaming devices, etc.;
- (e) Air conditioners, heaters, fans and similar items;
- (f) Electronic devices that do not meet the requirements of § 10104.2 and do not meet an objective outlined in the participant's PCP or that are not for the sole use of the participant;
- (g) Illegal drugs;
- (h) Alcoholic beverages or tobacco products;

- (i) Costs associated with advertising for prospective PDWs;
- (j) Costs associated with travel (airfare, lodging, meals, etc.) for vacations or entertainment;
- (k) Utility, rent or mortgage payments;
- (l) Clothing or shoes;
- (m) Comforters, towels, linens or drapes;
- (n) Paint or related supplies;
- (o) Furniture or other household furnishings;
- (p) Cleaning or laundry for other household members or areas of a home that are not used as part of the participant's personal care;
- (q) Large household or kitchen appliances such as washers, dryers, dishwashers, refrigerators, or freezers;
- (r) Exercise equipment;
- (s) Medications, vitamins or herbal supplements;
- (t) Experimental or prohibited treatments;
- (u) Laundry detergent and household cleaning supplies;
- (v) Vehicle expenses, including routine maintenance, repairs, parking or insurance costs;
- (w) Transportation services that are otherwise available under Medicaid or the District's accessible transportation programs or through natural supports or that are not related to activities of daily living;
- (x) Landscaping and yard work;
- (y) Pet care and supplies, except when provided for service animals; and
- (z) Massages, manicures or pedicures.

10104.6 Participants in the *Services My Way* program may purchase individual-directed goods and services that are included in their PCP, meet the requirements of §§ 10104.2 and 10104.3, and are within their PDS budget to purchase.

10104.7 Individual-directed goods and services shall be documented in the participant's PDS budget and PCP. The participant's support broker shall assist participants to revise their PDS budgets, as necessary, to account for new, appropriate individual-directed goods and services they would like to purchase. All revisions to a participant's PDS budget to account for new, appropriate individual-directed goods and services shall be accompanied by justification supporting the revision.

10104.8 Upon revising a PDS budget to reflect a new individual-directed good or service, the support broker shall submit the revised PDS budget and justification to the *Services My Way* Program Coordinator for approval.

10104.9 The *Services My Way* Program Coordinator shall review all requested individual-directed goods and services.

10104.10 The VF/EA FMS-Support Broker entity shall only authorize payment of invoices submitted for individual-directed goods and services that are included in the participant's PCP and PDS budget and that have been approved by the *Services My Way* Program Coordinator.

10105 INDIVIDUAL-DIRECTED GOODS AND SERVICES: PROVIDER REQUIREMENTS

10105.1 Individual-directed goods and services shall be provided only to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.

10105.2 All individuals and vendors providing individual-directed goods and services shall meet the following minimum qualifications:

- (a) All individuals providing individual-directed goods and services shall be at least eighteen (18) years of age;
- (b) All individuals and vendors providing individual-directed goods and services shall be able to demonstrate to the participant that:
 - (1) The individual/vendor has the capacity to perform the requested work;
 - (2) The individual/vendor has the ability to successfully communicate with the participant; and
 - (3) The individual/vendor has all the necessary professional and/or commercial licenses required by federal and District law.

10105.3 Individuals and vendors providing non-medical transportation as an individual-directed service shall meet the following additional qualifications:

- (a) The individual/vendor shall have a valid driver's license; and
 - (b) The individual/vendor shall have the minimum amounts of property damage liability, third party personal liability, uninsured motorist bodily injury, and uninsured motorist property damage insurance coverage required by the District of Columbia for the type of vehicle used to provide the transportation, in accordance with the Compulsory/No-Fault Motor Vehicle Insurance Act, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code §§ 31-2401 *et seq.*).
- 10105.4 No individual or vendor shall provide any individual-directed good or service that is not:
 - (a) Documented in the participant's PCP and PDS budget; and
 - (b) Approved by the *Services My Way* Program Coordinator.
- 10105.5 All individuals and vendors selected by a participant to provide individual-directed goods or services shall be required to enter into a Medicaid provider agreement with DHCF prior to providing the goods or services. The Medicaid provider agreement shall be executed by the VF/EA FMS-Support Broker entity supporting the *Services My Way* program on behalf of DHCF.
- 10105.6 The VF/EA FMS-Support Broker entity shall verify that an individual or vendor selected by the participant to provide individual-directed goods and services meets all applicable requirements set forth in §§ 10105.2 and 10105.3 at the time of enrollment into the VF/EA FMS-Support Broker entity's provider payment system and thereafter, as necessary.
- 10106 VENDOR FISCAL/EMPLOYER AGENT FINANCIAL MANAGEMENT SERVICES-SUPPORT BROKER ENTITY FUNCTIONS**
- 10106.1 *Services My Way* participants shall receive financial management services and information and assistance services through the VF/EA FMS-Support Broker entity selected by DHCF through a competitive procurement process.
- 10106.2 The VF/EA FMS-Support Broker entity shall operate in accordance with 26 USC § 3504 and Rev. Proc. 70-6, as modified by REG-137036 and Rev. Proc. 2013-39, as well as all applicable federal and District labor, citizenship and immigration, and workers compensation requirements.
- 10106.3 The VF/EA FMS-Support Broker entity shall consist of the following two (2) divisions:
 - (a) The Financial Management Services Division; and

- (b) The Support Broker Division.

10106.4 The VF/EA FMS-Support Broker entity's Financial Management Services Division shall provide the following services to *Services My Way* participants:

- (a) Assist participants in verifying citizenship status of prospective PDWs;
- (b) Report PDWs in the District New Hire Reporting System;
- (c) Collect and process timesheets for PDWs;
- (d) Process payroll, withholding, filing and payment of applicable federal and District employment-related taxes and insurance for PDWs;
- (e) Manage the receipt and renewal of workers' compensation insurance policies for participants' PDWs;
- (f) Track and report participant funds, disbursements, and the balance of participant funds;
- (g) Process and pay invoices for individual-directed goods and services outlined in the participant's PCP and approved PDS budget;
- (h) Provide participants with periodic reports of expenditures and the status of their PDS budgets, as described in § 10113.2;
- (i) Provide customer service, including toll-free phone numbers, written translation and oral language services in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.*); and
- (j) Any other services specified in the VF/EA FMS-Support Broker entity contract and accompanying documents.

10106.5 The VF/EA FMS-Support Broker entity's Financial Management Services Division shall execute the following tasks on behalf of DHCF:

- (a) Execute Medicaid provider agreements for PDWs and individual-directed goods and services vendors providing goods or services and maintaining such agreements as authorized under a written agreement with DHCF;
- (b) Process returned PDW payroll checks and returned payments to individual-directed goods and services vendors in accordance with the District Unclaimed Property Law, effective March 5, 1981 (D.C. Law 3-160; D.C. Official Code §§ 41-101 *et seq.*); and

- (c) Any other tasks specified in the VF/EA FMS-Support Broker entity contract and accompanying documents.

10106.6 The VF/EA FMS-Support Broker entity's Support Broker Division shall provide each *Services My Way* participant with a support broker to furnish information and assistance services. Support brokers shall provide the following services to *Services My Way* participants:

- (a) Assist participants in designating an authorized representative, if participants choose to do so;
- (b) Provide initial orientation to participants and authorized representatives, as appropriate, on participating in the *Services My Way* program, including the role and responsibilities of acting as a "common law employer" and the VF/EA FMS-Support Broker entity, the exercise of employer and budget authority, and management of the PDS budget;
- (c) Provide initial and ongoing skills training to participants and authorized representatives, as appropriate, on performing as a common law employer, utilizing financial management and information and assistance services provided by the VF/EA FMS-Support Broker entity, and managing the PDS budget;
- (d) Assist participant/representative-employers in developing, implementing, and revising, as needed, emergency back-up and natural support plans;
- (e) Receive participants' monthly PDS allocation amount from DHCF and assist participants and authorized representatives, as appropriate, in developing initial and revised PDS budgets using allocation amounts;
- (f) Conduct monthly phone calls and quarterly in-home visits with all participants and authorized representatives, as appropriate;
- (g) Communicate with EPD Waiver case managers to address any health and safety concerns identified for participants and ensure that participants are included in such communication; and
- (h) Any other services specified in the VF/EA FMS-Support Broker entity contract and accompanying documents.

10107 PARTICIPANT-DIRECTED SERVICES BUDGET FORMULATION

10107.1 To be eligible for PDCS services, a *Services My Way* participant shall be in receipt of a service authorization for personal care aide services that specifies the

amount, duration, and scope of services authorized to be provided, in accordance with 29 DCMR § 5003.

- 10107.2 A PDS budget shall be developed based on the following methodology:
- (a) The participant's total assessed hours per week for personal care aide services is determined through the assessment process as set forth in 29 DCMR § 5003.3 and converted to hours per month;
 - (b) The total number of personal care aide services hours per month is multiplied by the hourly rate paid by DHCF for personal care aide services; and
 - (c) The total amount computed in (b) above is reduced by a pre-determined percentage that shall be published in the *D.C. Register* providing thirty (30) days advance notice, to reflect the administrative overhead amount included in the hourly rate paid by DHCF for personal care aide services.
- 10107.3 The amount resulting from the calculation described in § 10107.2 shall represent the *Services My Way* participant's monthly PDS allocation amount, which shall be used to compute the participant's PDS budget.
- 10107.4 A PDS budget shall be developed by the participant and authorized representative, as appropriate, with assistance from the participant's support broker.
- 10107.5 A PDS budget shall contain the following two (2) cost components:
- (a) PDCS services; and
 - (b) Individual-directed goods and services.
- 10107.6 Participant/representative-employers shall set the hourly wage rate paid to their PDWs within the wage range established by DHCF as set forth in § 10102.9.
- 10107.7 Funds available for purchase of individual-directed goods and services shall be those funds, if any, remaining in the PDS budget after the amount for PDCS services has been determined.
- 10107.8 Support brokers shall be responsible for explaining the method used to develop the monthly PDS allocation amount to *Services My Way* participants.
- 10107.9 DHCF shall calculate the monthly PDS allocation amount for all *Services My Way* participants.

- 10107.10 DHCF or its agent shall notify all *Services My Way* participants each time PDS allocation amounts are adjusted as a result of a change to the hourly rate paid by DHCF for personal care aide services.
- 10107.11 The participant and the authorized representative, if applicable, shall work with the support broker to develop the participant's PDS budget based on the allocation amount.
- 10107.12 The participant's support broker shall submit the participant's completed PDS budget to the *Services My Way* Program Coordinator for approval within the timeframe established by DHCF.
- 10107.13 The *Services My Way* Program Coordinator shall review all PDCS services and individual-directed goods and services requested in a participant's PDS budget. All PDCS services requested in a PDS budget shall be reviewed in accordance with all relevant provisions of the Fair Labor Standards Act, 29 USC §§ 201 *et seq.*, and attendant regulations.
- 10107.14 If the *Services My Way* Program Coordinator denies any PDCS services or individual-directed good or service requested in a participant's PDS budget, the Program Coordinator shall send written notice of the denial to the participant, authorized representative as appropriate, and the participant's support broker. The notice shall contain information on the reconsideration process, as described in § 10108, and the participant's appeal rights.
- 10107.15 Once a participant's PDS budget is approved by the *Services My Way* Program Coordinator, the Program Coordinator shall provide the approved PDS budget to the VF/EA FMS-Support Broker entity.
- 10107.16 The VF/EA FMS-Support Broker entity shall only release payment for PDCS services and individual-directed goods and services included in the participant's approved PDS budget and for which prior authorizations have been issued.

10108 RECONSIDERATION PROCESS

- 10108.1 If the *Services My Way* Program Coordinator denies any PDCS services or individual-directed good or service requested in a participant's PDS budget, the participant may request reconsideration of the denial in accordance with § 10108.2.
- 10108.2 If the participant wishes to request reconsideration of the denial, the following steps shall occur:
- (a) The participant shall submit a written request for reconsideration to DHCF within twenty-one (21) days of the postmark date on the notice of denial, containing the following elements:

- (1) The reason the participant believes the denial decision should not be upheld; and
 - (2) Any additional information and/or documentation the participant believes is relevant to the reconsideration decision;
- (b) The Director of DHCF or a designee shall issue a reconsideration decision within forty-five (45) days of the date the reconsideration request was received, containing the following elements:
 - (1) A clear statement that the PDS budget denial explained in the initial notice has been upheld or overturned on reconsideration;
 - (2) An explanation of the reason(s) the PDS budget denial was upheld or overturned;
 - (3) Citation to regulations supporting the decision;
 - (4) Information regarding the participant's right to appeal the reconsideration decision by filing a notice of appeal with the Office of Administrative Hearings; and
 - (5) An explanation of the circumstances under which the participant's current level of PDCS and individual-directed goods and services will be continued if the participant files a timely notice of appeal with the Office of Administrative Hearings.

10108.3 A *Services My Way* participant shall not be required to request reconsideration of the denial and may appeal the PDS budget denial decision directly by filing a notice of appeal with the Office of Administrative Hearings.

10109 AUTHORIZED REPRESENTATIVES

10109.1 A *Services My Way* participant may designate an authorized representative to exercise employer-related responsibilities in the *Services My Way* program.

10109.2 An authorized representative is an individual who willingly accepts responsibility for performing employer and PDS budget management tasks that a participant is unable to perform without the assistance of a representative.

10109.3 An individual shall execute a Designation of Authorized Representative form in order to be recognized as a *Services My Way* participant's authorized representative.

- 10109.4 A *Services My Way* participant may designate one (1) of the following three (3) types of authorized representative:
- (a) Pre-Determined Representative: A legal guardian or other court-appointed representative in place at the time of the participant's enrollment in the *Services My Way* program;
 - (b) Voluntary Representative: An individual twenty-one (21) years of age or older who is actively engaged in the participant's life and lives in the participant's community; or
 - (c) Mandated Representative: An individual who meets the criteria of (b) above who is designated by the participant if DHCF or its agent determines that the participant requires an authorized representative in order to continue participation in the *Services My Way* program.
- 10109.5 A *Services My Way* participant shall only have one (1) authorized representative at any time.
- 10109.6 No individual shall receive any monetary compensation for acting as an authorized representative for a *Services My Way* participant.
- 10109.7 No individual acting as an authorized representative for a *Services My Way* participant shall serve as a PDW for that participant.
- 10109.8 All authorized representatives shall be responsible for working collaboratively with *Services My Way* participants to ensure that:
- (a) The participant receives all needed PDCS services from qualified PDWs; and
 - (b) PDCS services and individual-directed goods and services are provided in accordance with the participant's PCP and PDS budget.
- 10109.9 *Services My Way* participants may revoke an authorized representative designation at any time by notifying the support broker, who shall assist the participant to complete any required forms.
- 10109.10 DHCF may determine that a participant requires an authorized representative to continue participation in the *Services My Way* program if the participant has demonstrated an inability to self-direct their services after additional counseling, information, training or assistance.
- 10109.11 If DHCF determines that a participant requires an authorized representative to continue participation in the *Services My Way* program in accordance with §

10109.10, DHCF shall issue written notice to the participant, support broker and EPD Waiver case manager which shall:

- (a) Inform the participant that designation of an authorized representative is required in order to continue participation in the *Services My Way* program;
- (b) Detail the reasons that designation of an authorized representative is required;
- (c) Provide instructions on designating an authorized representative; and
- (d) Provide information regarding the participant's right to appeal the determination by filing a notice of appeal with the Office of Administrative Hearings.

10110 MANDATORY REPORTING

10110.1 All EPD Waiver case managers, authorized representatives, and employees of the VF/EA FMS-Support Broker entity shall be required to report any suspected instance of abuse, neglect, or exploitation of a *Services My Way* participant to DHCF and Adult Protective Services.

10111 VOLUNTARY TERMINATION OF PROGRAM PARTICIPATION

10111.1 *Services My Way* participants may decide at any time to voluntarily terminate their participation in the *Services My Way* program.

10111.2 A *Services My Way* participant shall indicate the decision to voluntarily terminate participation in the program by completing and submitting any required voluntary termination forms to the *Services My Way* Program Coordinator. The participant's authorized representative and/or support broker shall assist the participant to complete the forms as necessary.

10111.3 Upon receipt of the participant's voluntary termination forms, the *Services My Way* Program Coordinator shall inform the participant's EPD Waiver case manager and support broker of the participant's decision to terminate program participation.

10111.4 EPD Waiver case managers shall be responsible for assisting participants to transition to agency-based personal care aide services. EPD Waiver case managers shall ensure that there is no break in service provision during the transition period and shall coordinate the approval by DHCF or its designee of the request to initiate agency-based personal care aide services.

10112 INVOLUNTARY TERMINATION OF PROGRAM PARTICIPATION

- 10112.1 Participant/representative-employers shall be required to comply with all program rules and terms of the Participant/Representative-Employer Agreement and the Participant/Representative-Employer Consent Form executed at the time of enrollment in the *Services My Way* program.
- 10112.2 Non-compliance with program rules or the terms of the Participant/Representative-Employer Agreement or Participant/Representative-Employer Consent Form shall result in referral of the participant to the Remediation, Training and Termination Protocol established by DHCF.
- 10112.3 Non-compliance with the terms of the Participant/Representative-Employer Agreement may be identified by the VF/EA FMS-Support Broker entity, the participant's support broker, the participant's EPD Waiver case manager, or DHCF staff.
- 10112.4 Except in the case of a credible allegation of fraud, theft, or any other criminal behavior, as described in § 10112.11, participant/representative-employers shall be afforded two (2) episodes of non-compliance in each area of employer-related responsibility delineated in the Participant/Representative Employer Agreement during the first twelve (12) months of enrollment in the *Services My Way* program, in order to allow new program participants to become familiar with all employer-related responsibilities. The third episode of non-compliance in a single area of employer-related responsibility during the first twelve (12) months of program enrollment shall result in the participant's termination from the *Services My Way* program and a transition to agency-based personal care aide services.
- 10112.5 After the first twelve (12) months of program enrollment, participant/representative-employers shall be afforded a total of two (2) further episodes of non-compliance, in any area of employer-related responsibility delineated in the Participant/Representative Employer Agreement, for the duration of their enrollment in the *Services My Way* program. The third episode of non-compliance in any area of employer-related responsibility after the first twelve (12) months of program enrollment shall result in the participant's termination from the *Services My Way* program and a transition to agency-based personal care aide services.
- 10112.6 When a participant/representative-employer is found to be out of compliance with the Participant/Representative-Employer Agreement for the first time, the following steps shall occur:
- (a) The *Services My Way* Program Coordinator shall issue a notice of non-compliance to the participant/representative-employer, the support broker, and the EPD Waiver case manager, which shall:

- (1) Identify the issue of non-compliance and request that the issue be corrected, if possible, and not repeated;
 - (2) Detail requirements of the Corrective Action Plan (CAP) the participant shall create to address the issue;
 - (3) Offer training and/or technical assistance;
 - (4) Encourage the participant/representative-employer to direct questions to the support broker regarding the issue of non-compliance, including requesting training, obtaining assistance in preparing the CAP, and designating an authorized representative;
 - (5) Identify consequences of further non-compliance with the Participant/Representative-Employer Agreement; and
 - (6) Provide information on the participant's appeal rights for termination from the program should three (3) episodes of non-compliance occur.
- (b) Within five (5) business days of issuing the notice of non-compliance, the support broker shall contact the participant/representative-employer to discuss the episode of non-compliance;
- (c) Within five (5) business days of the contact described in (b) above, the participant shall, with the assistance of the authorized representative and/or the support broker, if needed, draft and sign a written CAP regarding the issue of non-compliance; and
- (d) The support broker shall provide copies of the participant's signed CAP to the participant's EPD Waiver case manager and the VF/EA FMS-Support Broker entity.
- 10112.7 The participant's support broker shall be responsible for monitoring the participant's adherence to the CAP.
- 10112.8 If the participant or authorized representative, as applicable, fails to implement all or a portion of the CAP, this failure shall be considered an episode of non-compliance with the terms of the Participant/Representative-Employer Agreement and shall be reported to the *Services My Way* Program Coordinator.
- 10112.9 If a participant/representative-employer is found to be out of compliance with the Participant/Representative-Employer Agreement a second time, the following steps shall occur:

- (a) The *Services My Way* Program Coordinator shall issue a second notice of non-compliance to the participant/representative-employer, the support broker, and the EPD Waiver case manager, which shall meet all requirements described in § 10112.6(a);
- (b) Within five (5) business days of issuing the notice of non-compliance, the support broker shall contact the participant/representative-employer to discuss the episode of non-compliance;
- (c) Within five (5) business days of the contact described in (b) above, the participant shall, with the assistance of the authorized representative and/or the support broker, if needed, draft and sign a written CAP regarding the issue of non-compliance; and
- (d) The support broker shall provide copies of the participant's signed CAP to the participant's EPD Waiver case manager and the VF/EA FMS-Support Broker entity.

10112.10 If a participant/representative-employer is found to be out of compliance with the Participant/Representative-Employer Agreement a third time, the following steps shall occur:

- (a) The *Services My Way* Program Coordinator shall issue a third notice of non-compliance to the participant, the support broker, and the EPD Waiver case manager, which shall:
 - (1) Identify the three (3) episodes of non-compliance;
 - (2) Clearly state that DHCF is terminating the participant's enrollment in the *Services My Way* program, per notice provided in the first and second notifications of non-compliance;
 - (3) Inform the participant that he/she will be transitioned to agency-based personal care aide services, per notice provided in the first and second notifications of non-compliance; and
 - (4) Provide information regarding the participant's right to appeal the *Services My Way* program termination decision by filing a notice of appeal with the Office of Administrative Hearings;
- (b) The support broker shall provide copies of the termination notice to the participant's EPD Waiver case manager and the VF/EA FMS-Support Broker entity;

- (c) Within five (5) business days of issuing the termination notice, the support broker shall contact the participant/ representative-employer and address the following topics:
 - (1) Reference to the first and second notices of non-compliance and the termination notice;
 - (2) Review of the consequences of three (3) episodes of non-compliance within a twelve (12) month period;
 - (3) Explanation of the process to transition the participant to agency-based personal care aide services; and
 - (4) Explanation of the participant's right to appeal the *Services My Way* program termination decision and the appeal process; and
 - (d) Within five (5) business days of the contact described in (c) above, the support broker shall complete all required participant termination forms and submit them to the *Services My Way* Program Coordinator.
- 10112.11 In the case of a credible allegation of fraud, theft, or any other criminal behavior committed by a *Services My Way* participant, the participant shall not be referred to the remediation, training and termination protocol, and shall not be afforded three (3) episodes of non-compliance. The participant may be terminated from the program immediately upon completion of an investigation by the DHCF Division of Program Integrity substantiating the credible allegation of criminal behavior.
- 10112.12 If the DHCF Division of Program Integrity receives a credible allegation of fraud, theft, or any other criminal behavior by a *Services My Way* participant, the Division shall complete an investigation of the allegation and issue a report detailing its findings.
- 10112.13 A credible allegation of fraud, theft or other criminal behavior is an allegation that has been reviewed and verified by DHCF from a source including, but not limited to, the following:
- (a) The VF/EA FMS-Support Broker entity;
 - (b) The participant's support broker;
 - (c) The participant's EPD Waiver case manager;
 - (d) The participant's other EPD Waiver service providers;
 - (e) The participant's PDW; or
 - (f) DHCF staff.
- 10112.14 If the report issued in accordance with § 10112.12 finds the allegation to be substantiated, DHCF shall convene an interdisciplinary termination committee to

review the report and determine whether to terminate the participant based on the findings documented in the report.

10112.15 If a *Services My Way* participant is terminated from the program based on the determination of the committee described in § 10112.14, the *Services My Way* Program Coordinator shall issue a termination notice to the participant/representative-employer, the support broker, and the waiver case manager, which shall:

- (a) Clearly state that DHCF is terminating the participant's enrollment in the *Services My Way* program due to a substantiated allegation of fraud, theft or other criminal behavior;
- (b) Explain the allegation, the investigation process, and the findings of the investigation, and include a copy of the investigation report;
- (c) Explain the process to transition the participant to agency-based personal care aide services, if appropriate;
- (d) Provide information regarding the participant's right to appeal the *Services My Way* program termination decision by filing a notice of appeal with the Office of Administrative Hearings; and
- (e) Provide information regarding the circumstances under which the participant's current *Services My Way* program services will be continued if a hearing is requested, as described in § 10211.16.

10112.16 If a participant files a notice of appeal with the Office of Administrative Hearings within thirty (30) days of the date on the *Services My Way* program termination notice, the participant shall remain enrolled in the *Services My Way* program and continue to receive PDCS services and individual-directed goods and services included in the participant's approved PDS budget while the participant's appeal is pending.

10112.17 EPD Waiver case managers shall be responsible for transitioning participants to agency-based personal care aide services. EPD Waiver case managers shall ensure that there is no break in service provision during the transition period and shall coordinate the approval by DHCF or its designee of the request to initiate agency-based personal care aide services.

10112.18 Nothing in this section shall be construed to limit the District's authority to investigate and prosecute a *Services My Way* program participant for criminal acts including but not limited to theft and fraud.

10113 EXPENDITURE SAFEGUARDS

10113.1 DHCF shall implement all safeguards described in this section to prevent premature depletion of *Services My Way* participants' PDS budgets and address potential service delivery issues associated with budget underutilization.

10113.2 The Financial Management Services Division of the VF/EA FMS-Support Broker entity shall prepare and issue a monthly PDS budget report to all participant/representative-employers, their support brokers, EPD Waiver case managers, and the *Services My Way* Program Coordinator. The monthly PDS budget report shall include the following elements:

(a) The participant's monthly PDS budget amount, services used, and expenses incurred for both the current month and the year to date; and

(b) The remaining balance of the participant's PDS budget amount.

10113.3 Support brokers shall review the monthly PDS budget report with participant/representative-employers during their monthly phone contact.

10113.4 The Financial Management Services Division of the VF/EA FMS-Support Broker entity shall monitor PDCS services utilization and provide written notice to the participant/representative-employer, the support broker, the EPD Waiver case manager, and the *Services My Way* Program Coordinator of any significant over- or under-utilization of PDCS services.

10113.5 If the Financial Management Services Division of the VF/EA FMS-Support Broker entity discovers significant over-utilization of PDCS services, the participant/representative-employer shall be referred to the Remediation, Training and Termination Protocol described in § 10112.

10113.6 If the Financial Management Services Division of the VF/EA FMS-Support Broker entity discovers significant under-utilization of PDCS services, the support broker shall address the issue with the participant/representative-employer and develop a corrective action plan as necessary to remedy the issue.

10199 DEFINITIONS

10199.1

Activities of Daily Living (ADLs) - The ability to bathe, transfer, dress, eat and feed oneself, engage in toileting, and maintain bowel and bladder control (continence).

Authorized Representative - An individual who willingly accepts responsibility for performing employer and PDS budget management tasks that a participant is unable to perform without the assistance of a representative,

and who has been designated by the participant in writing by executing a Designation of Authorized Representative form.

Budget Authority - The authority granted to *Services My Way* program participants and their authorized representatives, as applicable, to develop and manage their own PDS budget with the assistance of the support broker and the approval of the *Services My Way* Program Coordinator. This authority allows participants to set the wage rate for their own participant-directed workers within the range prescribed by DHCF, and to allocate funds in their own PDS budget to individual-directed goods and services.

Common Law Employer - A person for whom the services are being performed who has the right to direct and control the actions of the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and the means by which the result is accomplished, and who is responsible for payment of wages and employment taxes to its employees and all federal, state and local government agencies.

District New Hire Reporting System - The electronic system in which all District employers are required to enter new employees within twenty (20) days of hire, per 42 USC § 653A.

Employer Authority - The authority granted to *Services My Way* program participants and their authorized representatives, as applicable, to recruit, hire, supervise, and discharge their own qualified participant-directed workers who provide participant-directed community support services to program participants, with the assistance of the VF/EA FMS-Support Broker entity.

Fraud - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person, including any act that constitutes fraud under federal or District law.

Instrumental Activities of Daily Living (IADLs) - The ability to perform activities not necessary for day-to-day functioning, but which allow an individual to live independently in the community, such as telephone use and medication administration.

Participant-Directed Worker - An individual meeting the qualifications set forth in § 10103 who is hired by the participant/representative employer to provide PDCS services.

Participant/Representative-Employer - The *Services My Way* participant or the participant's authorized representative, as applicable, who performs employer-related duties including recruiting, hiring, supervising and discharging participant-directed workers.

Person-Centered Plan - An individualized service plan developed by the EPD Waiver case manager that identifies the supports and services to be provided to the person enrolled in the EPD Waiver and the evaluation of the person's progress on an ongoing basis to assure that the person's needs and desired outcomes are being met.

Self-Direction - The ability of program participants, or their representatives if applicable, to exercise decision-making authority over certain services and take direct responsibility to manage their services with the assistance of a system of available supports.

Support Broker - An employee of the VF/EA FMS-Support Broker entity who provides information and assistance services to *Services My Way* participants to enable participants and authorized representatives, as appropriate, to independently direct and manage their participant-directed services.

Theft - To wrongfully obtain or use the property of another with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to an individual's own use or to the use of a third person.

Vendor - A corporate entity providing individual-directed goods or services.

Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services (FMS)-Support Broker Entity - An entity operating in accordance with 26 USC § 3504 and Rev. Proc. 70-6, as modified by REG-137036 and Rev. Proc. 2013-39, which provides financial management services and information and assistance services to *Services My Way* participants and their authorized representatives, as appropriate.

Wrongfully Obtain or Use - Taking or exercising control over property; making an unauthorized use, disposition, or transfer of an interest in or possession of property; or obtaining property by trick, false pretense, false token, tampering, or deception. The term "wrongfully obtain or use" includes conduct previously known in the District as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.