

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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 (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 (2012 Repl. & 2016 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, 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).

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of EPD Waiver beneficiaries who are in need of EPD Waiver services through the participant-directed services (PDS) program. The EPD Waiver serves some of the District's most vulnerable residents. Furthermore, the Centers for Medicare and Medicaid Services (CMS) have directed that the District implement its participant-directed services program immediately in order to provide these services to vulnerable beneficiaries. These rules will provide guidance to providers, beneficiaries, and other stakeholders as the District implements this new program, and clarify program requirements that will assist in preserving the health, safety and welfare of these EPD Waiver beneficiaries.

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, as detailed below.

DHCF received a total of 38 comments from Disability Rights DC and IONA in the following areas:

The following comments were received regarding eligibility for the program:

Disability Rights DC stated that the rules do not describe PDS eligibility apart from a reference to the eligibility screening for long-term services and supports necessary for EPD Waiver participation and suggested that the regulations should indicate the basis (preferably an objective measure) for determining Medicaid beneficiaries' PDS eligibility. Disability Rights DC further stated that if beneficiaries are denied PDS participation, the regulations should incorporate a requirement for DHCF to provide written notice, reasons for the denial, and an opportunity to appeal. DHCF notes that as stated in §§ 10100.1-2, the only requirements for PDS eligibility are enrollment in the EPD Waiver and residing in a natural home setting. However, enrollment in the program is contingent upon approval of the participant's PDS budget, including participant-

directed community support (PDCS) and individual-directed goods and services. If any component of a person's PDS budget is denied, the reconsideration process detailed in § 10108 is applicable. In response to this comment, DHCF has added a clarifying provision regarding denials of eligibility for the PDS program and the attendant notice requirements.

Regarding the private residence requirement of § 10100.2, IONA stated that the organization hoped living in an unrelated person's home, such as a friend of the family could also be considered. IONA stated that it was the organization's understanding that any residence that the person considered his/her home would be considered under the EPD Waiver. IONA further asked if the regulation rules out group homes, the Center for Independent Living, congregate housing, or senior housing. DHCF notes that the language in this provision tracks to DHCF's selection in Appendix E of the EPD Waiver. The language regarding "participants who live in their own private residence or in the home of a family member" is CMS language from the waiver portal and therefore DHCF does not have the discretion to alter the language within these rules. This regulation would rule out any residential setting that is not owned by a private individual and in which personal care aide (PCA)-like services are provided. DHCF agrees with the commenter that the "home of a family member" language in the waiver portal selection is overly restrictive and plans to add supplemental modifying language to its portal selection for the EPD Waiver renewal.

IONA requested the reasoning behind *Services My Way* participants not receiving agency-based personal care aide services per § 10100.8, even for emergency back-up services. DHCF notes that there were several reasons for determining that PDS participants could not receive agency-based PCA services. It would not be feasible for a home health agency to allocate staff to provide emergency back-up services only, since these staff may or may not be required and could not be scheduled in advance. Furthermore, as PDCS and PCA offer the same scope of services through different service delivery models, DHCF must ensure that beneficiaries are not receiving duplicative services at any time. Lastly, the provision of agency-based PCA services to PDS participants is inconsistent with the philosophy of self-direction, as PDS participants should retain the authority to designate workers who will provide their PDCS services in the absence of their regular participant-directed worker(s) (PDW(s)).

The following comments were received regarding program enrollment:

Regarding the requirements set forth in § 10101.4, IONA asked how EPD Waiver case managers are being monitored for how long it takes them to complete the necessary forms to apply for the *Services My Way* program. As the program has been implemented, DHCF has determined that the most efficient way to ensure that participants are referred timely is to simply require the Waiver case manager to amend the interested beneficiary's person-centered plan (PCP) to include PDS and transmit the amended PCP to the *Services My Way* Program Coordinator. Therefore, in the second publication of these rules, the provision regarding the completion of inquiry forms by EPD Waiver case managers has been removed.

Disability Rights DC noted that the regulations do not describe the specific documents that are required for enrollment in PDS, although they are referenced generally in § 10101.6. As this is a new program, DHCF did not want to hamstring the agency by specifying a particular form, as

changes to the form would then require amendment of these rules. As noted above, references to any additional forms required to enroll in the program have been removed to clarify that all that is required for the EPD Waiver case manager to initiate the enrollment process is revision of the beneficiary's PCP to include PDS.

Disability Rights DC and IONA had the following comments regarding PDCS services:

Regarding § 10102.9, IONA stated that the hourly living wage and minimum wage are easy to find on the web, but the same is not true of the PCA rate and suggested that DHCF make the PCA methodology and amounts easily accessible. DHCF notes that the agency publishes transmittals on its website each time the rate for agency-based PCA services is changed. The transmittals include both the rate paid to the agency and the amount within the agency-based rate that must be paid to PCAs. DHCF also provided a presentation on the PDS budget methodology and process at the June 24, 2016 PDS stakeholder meeting.

IONA asserted that the regulations are not clear regarding the hourly wage rates for PDWs and asked on what basis the participant would set the rate. DHCF notes that in accordance with § 10102.9, participants have the authority to set the hourly wage rate for their PDWs at any amount between the current living wage in the District and the hourly rate paid to home health agencies for agency-based PCA services. This is known as budget authority, and is a fundamental tenet of the PDS program model. The participant may determine the wage rate for a given worker based on the criteria suggested by the commenter, such as experience level and competency, and may do so in consultation with the support broker and through negotiations with the potential PDW. Participants may use any money saved from paying their PDW(s) a lower wage than the amount paid to HHAs to purchase allowable and approved individual-directed goods and services.

Regarding § 10102.11, IONA asked whether a private agency Certified Nursing Assistant (CNA) or Home Health Aide (HHA) could be designated as an emergency back-up worker and if the support broker would help program participants develop an emergency back-up plan. The support broker will help the participant designate emergency-back up PDWs. A participant may designate an individual who is certified and works as a CNA or HHA as an emergency back-up PDW, but as set forth in this provision, may not designate an agency that provides PCA services as an emergency back-up provider of PDCS services.

Disability Rights DC asserted that the regulations unnecessarily exclude spouses as paid PDWs and suggested that the District should follow the practice in other states where spouses may serve as paid PDWs if they provide care that is significantly more than a spouse would ordinarily provide to a person with disabilities. Disability Rights DC further commented that the regulations' use of the term "other legally responsible relatives" is vague and asked who the other "legally responsible relatives" are. DHCF notes that these provisions mirror DHCF's selection in EPD Waiver and parallel provisions for PCA services under the EPD Waiver and Chapter 50 of Title 29 DCMR. The regulations reflect DHCF's selection in the EPD Waiver, which prohibits all legally responsible relatives, including spouses, from serving as PDWs. The description of legally responsible relatives for these rules is based on CMS' guidelines, and includes spouses, parents of minor children, and any other relative who has been authorized to exercise control over the participant's financial and/or healthcare decisions. DHCF

acknowledges that other states have made different selections regarding the provision of care by legally responsible relatives in 1915(c) waivers, but the District has not elected that option in the EPD Waiver.

Regarding § 10103.4, IONA asked how often PDWs must be recertified for Cardiopulmonary Resuscitation (CPR) and First Aid and raised concern regarding the ability of PDWs to take time off to attend trainings. A PDW needs to be re-certified in CPR and First Aid as often as the certifications expire so that the PDW may maintain current certification in accordance with these rules. If a PDW has trouble scheduling the recertification training due to his/her work schedule, the support broker may need to work with the participant to ensure that someone designated as an emergency back-up worker or a natural supports person can provide the necessary services while the regular PDW attends training.

IONA also requested the development of a checklist to assist participants and authorized representatives in verifying that prospective PDWs meet all qualifications described in § 10103.7. The Vendor Fiscal/Employer Agent Financial Management Services (VF/EA FMS) - Support Broker entity does provide participants and their authorized representatives with materials regarding the PDW qualifications and also verifies that a prospective PDW meets all qualifications prior to enrolling the PDW in its system.

The following comments were received regarding individual-directed goods and services:

IONA asked whether family members or non-profit organizations may give PDS participants goods or services outside the Service My Way program without affecting the participants' eligibility or jeopardizing their participation in the PDS program. DHCF notes that PDS participants may receive goods or services that would meet the requirements of an individual-directed good or service from a family member or outside organization without jeopardizing their participation in the PDS program. DHCF simply needs to ensure that if a good or service is being requested in the participant's PDS budget, that good or service is not available through another source and would not otherwise be paid for through Medicaid.

Both commenters requested the addition of language regarding maintenance of functionality to § 10104.2. DHCF appreciates the commenters' suggestions for additional language in this provision. However, this language tracks to CMS guidelines in the 1915(c) waiver application and the language in the approved EPD Waiver amendments and therefore cannot be altered in these rules.

IONA asked whether heavy cleaning services would be included under § 10104.3(a). Participants would be able to purchase such cleaning services if they are necessary in addition to those services that are already available under another Medicaid-funded service, such as the chore aide or homemaker service under the EPD Waiver.

IONA asked whether public transit was eligible for reimbursement as an individual-directed service in addition to reimbursement for mileage as provided in § 10104.4. DHCF appreciates the commenter's concern regarding reimbursement for other forms of transportation. The existing rule provision only contemplates reimbursement for mileage, but following internal

agency discussions this provision has been modified in this rulemaking to address reimbursement for public transit, as detailed below.

IONA also inquired regarding the rationale for the exclusion of certain items from the list of allowable goods and services and the requirement that providers of these goods and services execute a Medicaid provider agreement. DHCF notes that the list of non-allowable goods and services is based on CMS guidelines and best practices from other states and that a participant may obtain these items through an outside organization or family and friends. DHCF also notes that costs associated with airfare, lodging and meals may not be paid for through the PDS budget as Medicaid is not allowed to pay for such items. However, if a PDS participant would like a PDW to provide PDCS services while traveling, the PDW may be paid for the PDCS services provided while accompanying the participant. CMS requires vendors who provide individual-directed goods or services on a recurrent basis to execute a Medicaid provider agreement.

The following comments were received regarding the functions of the VF/EA FMS - Support Broker entity:

IONA inquired as to the caseload requirements for a support broker, which are the same as those for an EPD Waiver case manager. The current requirement is a maximum of 45 cases per support broker. IONA also inquired as to the reason the support broker receives the participant's monthly PDS allocation amounts from DHCF. The support broker receives the PDS budget amount in order to assist the participant in developing the budget and allocate money to PDCS and requested individual-directed goods and services. Participants and support brokers receive monthly reports tracking their budget utilization.

IONA also inquired as to what happens if a participant is not able to develop an emergency back-up and natural support plan with the assistance of the support broker. If this is the case, the participant cannot be enrolled in the program. DHCF must ensure that these plans are in place prior to enrollment for the health and safety of program participants.

IONA expressed concern regarding the frequency of visits by the support broker, particularly during a participant's initial phase of program enrollment. DHCF notes that the visits described in § 10106.6 are required at a minimum, and take place after several in-home visits to initially orient and train the participant regarding the program requirements. If the participant is struggling with a particular employer-related responsibility, the support broker will assist as part of the remediation, training and termination protocol. Also, these visits are in addition to the monthly visits conducted by participants' EPD Waiver case managers, who should also be able to identify any crisis that jeopardizes the PCP.

Both commenters expressed concern regarding communication between the support broker and the EPD Waiver case manager, as well as the inclusion of the participant in such communication. DHCF notes that § 10106.6(g) is intended to require coordination between support brokers and EPD Waiver case managers, such that they are not operating in silos and are collaboratively ensuring successful implementation of the PCP. As detailed below, DHCF has added clarifying language in this rulemaking to explicitly state that the participant should be included in such communication.

The following comments were received regarding the formulation of the PDS budget:

IONA inquired generally regarding how the PDS budget allocation amount is generated. The amount of the PDS budget allocation is derived from the results of the Delmarva functional assessment by multiplying the number of PCA hours by the rate paid by DHCF for agency-based PCA services. This amount is entered into an Excel spreadsheet by the *Services My Way* Program Coordinator and transmitted to the support broker to assist the participant in formulating the PDS budget.

IONA inquired whether the range of wage rates discussed in § 10107.6 includes the percentage of administrative costs by which the rate for agency-based PCA services is reduced. DHCF notes that this wage range reflects a span from the living wage in the District to the hourly rate paid by DHCF for agency-based PCA services. The participant will receive the full budget amount, which accounts for employer-related costs such as federal and state taxes and workers compensation coverage for PDWs.

Disability Rights DC expressed concern regarding the clarity of the budget formulation process related to individual-directed goods and services. DHCF notes that depending on what wage rate a participant chooses to pay a PDW, there may or may not be remaining funds in the PDS budget to purchase individual-directed goods and services. Participants may accrue unspent funds in order to make a large individual-directed good or service purchase or to allocate for payment of overtime to their PDWs. As described in § 10107.7, the PDS budget formulation process does account for individual-directed goods and services, and the VF/EA FMS-Support Broker entity is responsible for issuing monthly budget utilization reports to participants and support brokers.

The following comments were received regarding the reconsideration process:

Both commenters expressed concern regarding information on the participant's right to appeal the reconsideration decision by filing a notice of appeal with the Office of Administrative Hearings, particularly regarding a listing of legal resources and the continuation of services pending completion of an appeal. DHCF notes that all notices providing information regarding the participant's appeal rights include a listing of legal services organizations. At this point in the process, no individual-directed good or service has yet been furnished. As with all Medicaid-covered services, if a participant's assessed PDCS hours are decreased or terminated and the participant files a timely appeal with OAH, services are preserved at the current level pending appeal. DHCF has included more specific language regarding notices issued as a result of the reconsideration process in this rulemaking, as detailed below.

The following comments were received regarding the designation of authorized representatives:

Disability Rights DC asserted that the section on authorized representatives is problematic as it refers to a "legal guardian or other court-appointed guardian" as "legal guardians" are appointed by the court for individuals eighteen (18) years of age and older, there are no "other" court-appointed guardians. The language in the cited provision is "legal guardian or other court-appointed representative," and was drafted in order to capture individuals such as conservators.

IONA inquired regarding the process for designating a mandated representative in accordance with § 10109.4. A participant would choose a mandated representative just as a voluntary representative would be chosen by the participant, as described in this provision. What is being mandated is the participant's designation of a voluntary representative when there is currently no authorized representative.

IONA stated that the organization assumed DHCF would not prevent a court appointed lawyer who is paid through the court to provide guardianship services from serving as an authorized representative for the program, and suggested revised language for § 10109.6 to clarify that no one would be paid monetary compensation from the program. DHCF appreciates the commenter's concern, but believes this provision is clear as drafted. No one will be paid for acting as an authorized representative in the PDS program. If a participant's authorized representative is a court-appointed guardian, that individual is paid by the court for performing the duties of a guardian, but is not paid for serving as an authorized representative in the PDS program.

IONA stated that the participant should be given written notice that describes in detail the reasons why DHCF has determined that the participant cannot self-direct their services, and both commenters requested the inclusion of a provision barring DHCF from seeking guardianship based on the participant's ability or inability to continue in the PDS program. DHCF notes that § 10109.11 describes the content of the notice a participant receives if DHCF has determined a mandated representative is required to continue participating in the program. DHCF appreciates the commenters' concern regarding guardianship, but the agency would not be in a position to seek guardianship for any program participant.

The following comments were received regarding the involuntary termination process:

Both commenters suggested that DHCF institute a "probationary period" for new participants in order to give them a chance to adjust to the program rules. DHCF believes the remediation, training and termination protocol detailed in § 10112 addresses the commenters' concern regarding new participants adapting to the program requirements. The protocol was designed based on best practices from other states and supports those participants who need additional assistance in executing their new employer-related responsibilities.

IONA expressed that the organization hoped all EPD Waiver case managers would get periodic training to recognize abuse, neglect and exploitation and mandatory reporting requirements. DHCF appreciates the commenter's concern. However, training of EPD Waiver case managers in this area is outside the scope of these rules governing the PDS program.

IONA inquired as to what happens to a participant's PDW(s) in the event that the participant is transitioned out of the program or hospitalized. If a participant is voluntarily or involuntarily transitioned to agency-based PCA services, the PDW will no longer have authorization to deliver PDCS services and will not be paid by the VF/EA FMS-Support Broker entity. Similarly, if a participant is hospitalized and PDCS services are not delivered during the period of hospitalization, the PDW will not be paid as no services were delivered.

The following comments were received regarding the definitions of terms included in these rules:

IONA suggested that other examples of Instrumental Activities of Daily Living (IADLs) be added to the rule definition. The rule definition of IADLs includes a few illustrative examples of IADLs, but is not exhaustive. Cleaning, laundry, meal preparation, and money management for the participant could be included within this rule definition. The scope of PDCS services mirrors the scope of agency-based PCA services.

Disability Rights DC suggested that the definitions of Common Law Employer, Employer Authority and Participant Employer should be “unified.” DHCF is not quite clear on the commenter’s suggestion regarding the unification of several definitions. As each of these terms has a distinct meaning, DHCF believes that each of these three terms should remain separately defined.

In sum, DHCF determined that the following substantive changes were necessary to address the commenters’ concerns: (1) clarification of the case manager’s responsibilities related to enrollment of EPD Waiver beneficiaries in the *Services My Way* program; (2) specification of the types of training that prospective participant-directed workers (PDWs) must complete in order to provide services within the program; (3) clarification of the Vendor/Fiscal Employer Agent Financial Management Services -Support Broker entity’s responsibilities related to processing criminal background checks for prospective PDWs; (4) “maintenance of items that meet the criteria of individual-directed goods” has been added to the list of allowable uses of funds for individual-directed goods and services; (5) clarification regarding the use of PDS budget funds to advertise for prospective PDWs; (6) “reimbursement for public transit costs” has been added in addition to reimbursement for mileage costs; and (7) specification of notice requirements for EPD Waiver beneficiaries who do not meet the threshold eligibility criteria for *Services My Way* program participation.

The emergency rulemaking was adopted on November 22, 2016, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until March 22, 2017, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from 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*

10100 GENERAL PROVISIONS
10101 OUTREACH AND ENROLLMENT

10102	PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES: SERVICE DESCRIPTION
10103	PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES: PROVIDER REQUIREMENTS
10104	INDIVIDUAL-DIRECTED GOODS AND SERVICES: SERVICE DESCRIPTION
10105	INDIVIDUAL-DIRECTED GOODS AND SERVICES: PROVIDER REQUIREMENTS
10106	VENDOR FISCAL/EMPLOYER AGENT FINANCIAL MANAGEMENT SERVICES-SUPPORT BROKER ENTITY FUNCTIONS
10107	PARTICIPANT-DIRECTED SERVICES BUDGET FORMULATION
10108	RECONSIDERATION PROCESS
10109	AUTHORIZED REPRESENTATIVES
10110	MANDATORY REPORTING
10111	VOLUNTARY TERMINATION OF PROGRAM PARTICIPATION
10112	INVOLUNTARY TERMINATION OF PROGRAM PARTICIPATION
10113	EXPENDITURE SAFEGUARDS
10199	DEFINITIONS

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.
- 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 and assistance with activities of daily living and instrumental activities of daily living.
- 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 has been assessed for one hundred twelve (112) or more hours of personal care aide services per week in accordance with 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 videos, VCRs, televisions, stereos, CDs, DVDs, audio/video tapes, 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;

- (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, 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 An individual or vendor selected by a participant to provide individual-directed goods or services on a recurrent basis may 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 U.S.C. § 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 on a recurrent

basis 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 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 U.S.C. §§ 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 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 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 If a *Services My Way* participant is found to be non-compliant with the terms of the Participant/Representative-Employer Agreement three (3) times within a twelve (12) month period, the third episode of non-compliance shall necessitate termination from the program and transition to agency-based personal care aide services.

10112.5 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 in a twelve (12) month period.
- (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.
- 10112.6 The participant's support broker shall be responsible for monitoring the participant's adherence to the CAP.
- 10112.7 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.
- 10112.8 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 § 10112.5(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.

10112.9

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.

10112.10 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.

10112.11 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.

10112.12 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 over- or under-utilization of PDCS services.

10113.5 If the Financial Management Services Division of the VF/EA FMS-Support Broker entity discovers 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 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 U.S.C. § 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.

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, N.W., Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.