

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1914, entitled “Vehicle Modification Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

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

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Vehicle modifications are designed to help the person live his/her life with greater independence and to increase access to the community. The adaptations or modifications to a vehicle may include the installation of a lift or other adaptations to make the vehicle accessible to the person, or to enable the person to drive the vehicle.

The most recent Notice of Final Rulemaking for 29 DCMR § 1914 (Vehicle Modification Services) was published in the *D.C. Register* on March 14, 2014, at 61 DCR 002108. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 22, 2015, at 62 DCR 006695. That emergency and proposed rulemaking, which was adopted on May 8, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by: (1) clarifying service definition exclusions; (2) clarifying service authorization requirements for vehicle modification services; (3) clarifying requirements to request additional services beyond the limitations or caps on a service; (4) removing the exclusion under the previous rule that prohibited caregivers who provide Host Home services from utilizing Vehicle Modifications; and (5) clarifying that the service may not be used with Supported Living with Transportation. DHCF did not receive any comments in response to the first emergency and proposed rulemaking, but promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on August 21, 2015, at 62 DCR

011650, to continue the changes reflected in the first notice of emergency and proposed rulemaking described above. The second emergency and proposed rulemaking was adopted on August 13, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 11, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made from the second emergency and proposed rulemaking.

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

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

Subsections 1914.3, 1914.9, 1914.12, 1914.13, and 1914.17 of Section 1914, VEHICLE MODIFICATION SERVICES, are amended to read as follows:

1914.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing VM services. The request for prior authorization shall include a written justification demonstrating how the services will help the person to function with greater independence and increase his/her access to the community. The vehicle being serviced shall be owned by the person or the person’s family, guardian, or other primary caretaker who is not providing Residential Habilitation Services, Supported Living Services or Supported Living Services with Transportation.

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1914.9 Before pre-authorization of any VM services, the vehicle owner shall submit at least two (2) written bids from providers for the service to the DDS service coordinator for comparison, in order to determine the most cost efficient use of Medicaid waiver funding for the service.

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1914.12 Medicaid reimbursable VM services shall be available for modification of no more than two (2) vehicles over the course of five (5) years and shall not exceed a total of ten thousand dollars (\$10,000), unless the person receives service authorization from DDS through the exception process in § 1914.13.

1914.13 Exceptions to the ten thousand dollars (\$10,000) limit and/or the two (2) vehicle limit over the course of five (5) years may be approved by DDS on a case-by-case basis by the DDS Medicaid Waiver Supervisor or a designated Developmental Disabilities Administration (DDA) staff member for persons who demonstrate need. The request for exception must be in writing and must specify the amount

requested above the \$10,000 limit; describe the demonstrated need for the exception; and include supporting documentation.

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1914.17 Medicaid reimbursable VM services shall not be provided to those persons receiving residential supports through Residential Habilitation, Supported Living, or Supported Living with Transportation.