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 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, on an emergency basis, of amendments to Section 1930, entitled "Respite Services", of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of respite 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)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Respite care provides relief to the family or primary caregiver to meet planned or emergency situations. Respite care gives the caregiver a period of relief for scheduled time away from the individual, including vacations. It may also be used in case of emergencies. Respite is only provided to those individuals who live in their own home, or their family home. Respite care will ensure that individuals have access to community activities as delineated in the individual's ISP/Plan of Care. A Notice of Final Rulemaking for 29 DCMR § 1930 (Respite Services) was published in the *D.C. Register* on February 7, 2014, at 61 DCR 000993. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 24, 2015, at 62 DCR 005209. That emergency and proposed rulemaking, which was adopted on April 10, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by (1) clarifying that quarterly reports are not required for respite daily services; (2) requiring that respite daily providers comply with Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; (3) removing the exception that a provider already receiving reimbursement for the general care of the person may not receive Medicaid reimbursement for providing respite services; and (4) modifying the hourly and daily rates to reflect the approved methodology in accordance with the ID/DD Waiver. DHCF did not receive any comments in response to the first emergency and proposed rulemaking but is promulgating this Notice of Second Emergency and Proposed Rulemaking to continue the changes reflected in the first notice of emergency and proposed rulemaking

described above, and to change the hourly rate in § 1930.14 to twenty dollars and fifty-two cents ($20.52).

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on August 12, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment. The emergency rules shall remain in effect for one hundred and twenty (120) days after adoption of the rules until December 10, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules with the Notice of Final Rulemaking. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication on this notice in the *D.C. Register*.

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

Subsections 1930.8, 1930.9, 1930.11, 1930.14, and 1930.18, of Section 1930, RESPITE SERVICES, are amended, and a new Subsection 1930.21 is added, to read as follows:

1930.8 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.

1930.9 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.

1930.11 Medicaid reimbursement shall not be available if respite services are provided by the following individuals or provider:

(a) The person's primary caregiver; or

(b) A spouse, parent of a minor child, or legal guardian of the person receiving respite services.

1930.14 Medicaid reimbursement for hourly respite services shall be twenty dollars and fifty-two cents ($20.52) per hour and shall be limited to seven hundred twenty (720) hours per calendar year.

1930.18 Medicaid reimbursement for daily respite services shall be four hundred dollars ($400.00) per day and shall be limited to thirty (30) days per calendar year.

1930.21 Each provider of Medicaid reimbursable respite daily services shall comply with the requirements under Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR.

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