

DEPARTMENT ON DISABILITY SERVICES

NOTICE OF FINAL RULEMAKING

The Director of the Department on Disability Services (DDS), pursuant to the authority set forth in Title I of the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code §§ 7-761.01 *et seq.* (2018 Repl.)), hereby give notice of the adoption of a new Chapter 131 entitled “Contribution to Costs of DDA Residential Supports” of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish a mechanism for the DDS Developmental Disabilities Administration (DDA) to evaluate, calculate and collect the amount a person contributes to the costs of residential supports for persons who receive waiver services funded either locally or through the District of Columbia Medicaid Home and Community-Based Services (HCBS) Waiver for Persons with Intellectual and Developmental Disabilities (IDD). These rules also establish the procedures by which DDS will collect the calculated amount of the contribution to costs of residential supports and due process protections.

This final rulemaking is consistent with the provisions of the “Contribution to Costs of Supports Fund Amendment Act of 2016,” effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code §§ 7-761.05b, 7-761.05c and 7-761.09(a-1) (2018 Supp.)), which requires the Mayor to issue rules “establishing who has the ability to pay the contribution to costs of supports, the amount to be collected, the method and time of payments to DDS for such purposes, and due process protections.” In accordance with D.C. Official Code § 7-761.09(a-1)(2), the proposed rules were submitted to the Council of the District of Columbia in PR 22-328, the “Department on Disability Services Contribution to Cost of DDA Residential Supports Rulemaking Approval Resolution of 2017,” for a 45-day period of review and were deemed approved on October 13, 2017.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 2, 2017, at 64 DCR 005240. DDS received comments to the proposed rulemaking for 29 DCMR §§ 13100.2 (relating to which assets will be considered when calculating a person’s contribution), 13101.01 (outlining the various calculations for a person’s contribution), 13102.01-05 (due process protections), and 13199 (specifically, the definitions for “residential provider” and “residential supports”). The following changes were made in response to these comments and based on further review of the proposed rule by the agency: (1) revising § 13100.2 to clarify that awards for punitive and non-physical damages that are the result of the District’s care and treatment of the person cannot be considered an asset for the purpose of calculating a person’s contribution but also clarify that a spouse’s income shall be considered; (2) the addition of a new § 13101.1(e) that states that a person will be credited as receiving the full amount of SSI, SSDI, and/or other statutory benefit even if those benefits are reduced due to a previous overpayment; (3) the addition of a new § 13101.5 indicating that a person’s contribution may not exceed the actual cost of supports provided; (4) adding the word “residential” in front of provider in §§ 13101.2, 13101.3, and 13101.4 for consistency; (5) amending § 13102.1 to include additional information that must be shared with a person at the time a contribution calculation is made; (6) amending §

13102.2 to clarify that the DDS Deputy Director for DDA will review requests for reconsideration or recalculation; (7) adding language to § 13102.3 indicating that a person’s contribution amount will not change while a request for recalculation or reconsideration is pending; (8) revising the wording of § 13102.4 for clarity; (9) adding the phrase “recalculation or” before “reconsideration request” to the first sentence of § 13102.5; (10) removing the phrase “and services” from the definition of “Contribution to Costs of Residential Supports” in § 13199; (11) adding the phrase “non-Medicaid” in front of the word “supports” in the definition of “Cost of Occupancy” in § 13199; (12) rewriting the definition of “Residential Provider” in § 13199; and (13) rewriting the definition of “Residential Supports” in § 13199. All of these changes serve only to clarify the intent, meaning and/or application of the proposed rules.

These rules were adopted as final on January 4, 2018, and shall become effective on the date of publication of this notice in the *D.C. Register*.

A new Chapter 131, CONTRIBUTION TO COSTS OF DDA RESIDENTIAL SUPPORTS, of Title 29 DCMR, PUBLIC WELFARE, is adopted to read as follows:

**CHAPTER 131 CONTRIBUTION TO COSTS OF
DDA RESIDENTIAL SUPPORTS**

- 13100 APPLICATION AND RELEVANT FINANCIAL DOCUMENTATION**
- 13101 AMOUNT TO BE COLLECTED AND METHOD AND TIME OF PAYMENTS**
- 13102 DUE PROCESS PROTECTIONS**
- 13199 DEFINITIONS**

13100 APPLICATION AND RELEVANT FINANCIAL DOCUMENTATION

13100.1 Persons applying for or receiving residential supports, as defined in Section 13199 of this chapter, in conjunction with services through the Medicaid Home and Community-Based Services (“HCBS”) Waiver for Persons with Intellectual and Developmental Disabilities (“IDD”) or other locally-funded services, shall be required to submit to the Department on Disability Services (“DDS”) relevant financial documentation indicating that person’s income and assets. Such relevant financial documentation shall be provided during a person’s initial intake process and on a regular basis, at least annually, as part of the person’s Individual Support Plan (“ISP”) and Individual Financial Plan (“IFP”) to the person’s Service Coordinator.

13100.2 As set forth in Section 13199 of this chapter, relevant financial documentation includes evidence of income and assets that the DDS Developmental Disabilities Administration (“DDA”) will use in calculating the amount of a person’s contribution to costs of residential supports including, but not limited to, wages, checking and savings accounts, Social Security Income (“SSI”), Social Security Disability Insurance (“SSDI”), Veteran Benefits (“VB”), and other statutory benefits. DDA may also consider other income of a person, including but not

limited to pensions, earned income, and unearned income, including worker's compensation, insurance proceeds and death benefits, inheritances, dividends and interest, rental income and royalties, prizes, awards, gambling proceeds, and awards for punitive and non-physical damages to the person (unless the result of the District's care and treatment of the person). The income of a spouse or domestic partner, as defined in D.C. Official Code § 32-701(3), of a person shall be considered part of the person's income.

13101 AMOUNT TO BE COLLECTED AND METHOD AND TIME OF PAYMENTS

13101.1 DDA shall use the following formula in computing a person's required monthly contribution to costs of residential supports:

- (a) A person whose only income is SSI, SSDI, and/or any other statutory benefits, shall keep \$100 of his or her benefits each month as a personal needs allowance, and shall contribute the remainder to costs of residential supports consistent with 29 DCMR § 1450, 20 CFR § 266.10, 20 CFR § 404.2040, and 20 CFR § 416.640.
- (b) A person who receives SSI, SSDI, and/or any other statutory benefits, as well as employment or other income shall, on a monthly basis:
 - (1) Keep \$100 of his or her benefits as a personal needs allowance and contribute the remainder to his or her cost of residential supports; and
 - (2) From his or her employment or other income, contribute to the cost of residential supports an amount equivalent to the amount that his or her SSI, SSDI and/or any other statutory benefits have been reduced due to employment.
- (c) A person who is employed in such a way that they are not eligible for statutory benefits shall have their monthly contribution to costs of residential supports calculated using the following formula: the current maximum monthly SSI payment amount minus \$100. As of January 2017, this would be $\$735 - \$100 = \$635$ in contribution to costs of residential supports.
- (d) A person who resides in a Host Home, as defined in Section 1999 of Chapter 29, and receives more than the current maximum monthly SSI payment shall contribute an amount equivalent to the current maximum monthly SSI payment amount minus \$100. The person shall also keep the amount of funds greater than the current maximum monthly SSI payment.
- (e) For the purpose of calculating contribution to cost of residential supports,

DDA will credit a person for the amount of the person's SSI, SSDI, and/or other statutory benefits are reduced due to a previous over payment.

- 13101.2 For a person whose only income is SSI, SSDI, and/or any other statutory benefits, the person's Social Security representative payee, if he or she has one, is responsible for ensuring that each month the person pays to DDA his or her contribution to costs of residential supports and receives his or her personal needs allowance. If the person does not have a representative payee, then the person's residential provider is responsible for collecting his or her contribution to costs of residential supports each month. DDA's payment to the residential provider will be reduced by the amount of the person's contribution to costs of residential supports.
- 13101.3 For a person who receives SSI, SSDI, and/or any other statutory benefits and also has employment and other income, the person's Social Security representative payee, if he or she has one, is responsible for ensuring that each month the person pays to DDA the portion of his or her contribution to costs of residential supports that comes from statutory benefits income, and that the person receives his or her personal needs allowance. If the person does not have a representative payee, then the person's residential provider is responsible for collecting his or her contribution to costs of residential supports from statutory benefits. The person's residential provider is also responsible for collecting the remainder of his or her contribution to costs of residential supports each month, based on the person's employment and other income. DDA's payment to the residential provider will be reduced by the amount of the person's contribution to costs of residential supports.
- 13101.4 For a person who has employment income only, the person's residential provider is responsible for collecting the payment for the person's contribution to costs of residential supports each month. DDA's payment to the residential provider will be reduced by the amount of the person's contribution to costs of residential supports.
- 13101.5 A person's contribution to cost of residential supports may not exceed the actual cost of providing such residential supports.

13102 DUE PROCESS PROTECTIONS

- 13102.1 The amount of the monthly contribution to costs of residential supports will be determined during intake or, for persons already receiving DDA services, at the next ISP meeting following the effective date of these regulations. At that time, the person will be informed of the estimated cost of residential supports, the requirement for contribution to costs of residential supports, including an explanation of how that contribution is calculated consistent with these regulations, and information about how to request a recalculation or reconsideration, including how to obtain assistance from a DDA Rights and

Advocacy Specialist or area legal services organization. This information shall be included in the person's ISP as part of their IFP. The amount will be reevaluated at least annually during each person's ISP meeting.

- 13102.2 The person, or a family member, friend, attorney, or any other representative, if so designated by the person, may make a request in writing, by telephone, or in person at DDA to his or her Service Coordinator for recalculation or reconsideration of his or her contribution to costs of residential supports at any time for referral to the DDS Deputy Director for DDA.
- 13102.3 The person's request for recalculation or reconsideration must set forth the factual and/or legal basis for the disagreement in the calculated contribution to costs of residential supports. The person's contribution to the cost of residential supports will not change while a request for recalculation or reconsideration is pending.
- 13102.4 A DDA Rights and Advocacy Specialist shall provide, upon request, assistance to a person in the appeal process requesting a recalculation or reconsideration. A person may also be assisted by a family member, friend, attorney, or any other representative designated by the person.
- 13102.5 The DDS Deputy Director for DDA will provide a final, written administrative decision to the person and his or her representative within thirty (30) calendar days of his or her receipt of the person's recalculation or reconsideration request. The final written decision shall include information about the person's right to bring an appeal in the Superior Court of the District of Columbia. The person seeking review of DDS's final written decision must file this appeal in the Superior Court not later than thirty (30) calendar days after the date he or she receives notice of the final decision.

13199 DEFINITIONS

- 13199.1 When used in this section, the following terms and phrases shall have the meanings ascribed:

Contribution to Costs of Residential Supports – Full or partial payment by persons with intellectual disabilities or their estate for locally funded supports provided by the Developmental Disabilities Administration, including cost of occupancy.

Cost of Occupancy – The cost of rent, other personal expenses, including food, clothing, and medical costs, supplies, furnishings, equipment, communications, and other non-Medicaid supports.

Department on Disability Services (DDS) - The agency that provides services to District of Columbia residents with intellectual and other disabilities through its Developmental Disabilities Administration and Rehabilitation

Services Administration.

Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (HCBS IDD waiver) - The HCBS IDD waiver is a District of Columbia Medicaid program as approved by the Council of the District of Columbia and Centers for Medicare and Medicaid Services (CMS), that funds home and community-based services and supports as an alternative to receiving services in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

Residential Provider - Any entity that provides Supported Living, Host Home, and/ or Residential Habilitation services through the HCBS IDD waiver or other locally funded residential services.

Residential Supports - Items that make up the cost of occupancy for people who receive Supported Living, Host Home, and/ or Residential Habilitation services through the HCBS IDD waiver or other locally funded residential services. Residential supports are locally funded and should be combined with housing vouchers, food stamps, cash benefits, wages and other sources of housing subsidies to maximize the capacity of DDA to support all people who need such support.

Relevant Financial Documentation - Includes, but is not limited to, evidence of income and assets that DDA will use in calculating the amount of contribution to costs of support including, but not limited to, wages, checking and savings accounts, Social Security Income (“SSI”), Social Security Disability Insurance (“SSDI”), Veteran Benefits (“VB”), other statutory benefits, pensions, earned income, and unearned income, including worker’s compensation, insurance proceeds and death benefits, inheritances, dividends and interest, rental income and royalties, prizes, awards, and gambling proceeds, and awards for punitive and non-physical damages to the person.