

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, 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. 744; D.C. Official Code § 1-307.02), Reorganization. Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to Sections 1900 (General Provisions), 1901 (Covered Services), 1903 (Provider Qualifications), and 1999 (Definitions), and of a new Section 1911 (Requirements for Persons Providing Direct Services), of Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Home and Community-Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities."

This rulemaking amends sections 1900 (General Provisions), 1901 (Covered Services), 1903 (Provider Qualifications), and 1999 (Definitions) of the rules previously published at 51 DCR 10207 (November 5, 2004), in connection with the approval by the District of Columbia Council and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), effective November 20, 2007, of the new District of Columbia Medicaid Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These four sections identify the Waiver as approved by the CMS, specify the twenty-five (25) Waiver services that are available to participants, set forth provider qualifications, and provide updated definitions. In addition, this rulemaking amends Chapter 19 by including a new section 1911 to set forth minimum standards for persons providing direct services to Waiver participants.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 28, 2007 (54 DCR 012691). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become final upon publication of this notice in the *DC Register*.

Section 1900 (General Provisions) of Chapter 19 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

1900 GENERAL PROVISIONS

- 1900.1 The purpose of this chapter is to establish criteria governing Medicaid eligibility for services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of Waiver services.
- 1900.2 The Waiver is authorized pursuant to section 1915 (c) of the Social Security Act, approved by the Centers for Medicare and Medicaid Services of the

United States Department of Health and Human Services (CMS), and shall be effective through November 19, 2012, plus any extensions thereof.

- 1900.3 The Waiver shall be operated by the Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), under the supervision of the Department of Health, Medical Assistance Administration (MAA).
- 1900.4 Enrollment of persons eligible to receive Waiver services shall not exceed the ceiling established by the approved Waiver application.

Section 1901 (Covered Services) of Chapter 19 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

1901 COVERED SERVICES

- 1901.1 Services available under the Waiver shall include the following:
- (a) Behavioral Supports, as set forth in section 937 of Title 29 DCMR;
 - (b) Community Support Team, as set forth in section 1912 of Title 29 DCMR;
 - (c) Day Habilitation, as set forth in section 945 of Title 29 DCMR;
 - (d) Dental, as set forth in section 936 of Title 29 DCMR;
 - (e) Environmental Accessibilities Adaptations, as set forth in section 926 of Title 29 DCMR;
 - (f) Family Training, as set forth in section 942 of Title 29 DCMR;
 - (g) Host Home, as set forth in section 1915 of Title 29 DCMR;
 - (h) In-Home Supports, as set forth in section 1916 of Title 29 DCMR;
 - (i) Live-in Caregiver, as set forth in section 1917 of Title 29 DCMR;
 - (j) Nutrition Evaluation and Consultation, as set forth in section 930 of Title 29 DCMR;
 - (k) Occupational Therapy, as set forth in section 935 of Title 29 DCMR;
 - (l) One-time Transitional, as set forth in section 1913 of Title 29 DCMR;
 - (m) Personal Care Services as an extended service under the State Plan for Medical Assistance as set forth in sections 5004 and 1910 of Title 29 DCMR;
 - (n) Personal Emergency Response System (PERS), as set forth in section 907 of Title 29 DCMR;
 - (o) Physical Therapy, as set forth in section 934 of Title 29 DCMR;
 - (p) Prevocational, as set forth in section 920 of Title 29 DCMR;
 - (q) Professional Services, as set forth in section 1918 of Title 29 DCMR;
 - (r) Residential Habilitation, as set forth in section 946 of Title 29 DCMR;
 - (s) Respite, as set forth in section 994 of Title 29 DCMR;
 - (t) Skilled Nursing, as an extended service under the State Plan for Medical Assistance and as set forth in section 933 of Title 29 DCMR;

- (u) Speech, Hearing and Language, as set forth in section 932 of Title 29 DCMR;
- (v) Supported Employment, as set forth in section 929 of Title 29 DCMR;
- (w) Supported Living, as set forth in section 993 of Title 29 DCMR;
- (x) Transportation, as set forth in section 943 of Title 29 DCMR; and
- (y) Vehicle Modifications, as set forth in section 1914 of Title 29 DCMR.

Section 1903 (Provider Qualifications) of Chapter 19 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

1903 PROVIDER QUALIFICATIONS

- 1903.1 Social Service Agency or Sole Proprietor Agency applicants shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the application and following organizational information:
- (a) A description of ownership and a list of major owners or stockholders owning or controlling five (5) percent or more outstanding shares;
 - (b) A list of Board members and their affiliations;
 - (c) A roster of key personnel, with qualifications, resumes, and a copy of their position descriptions;
 - (d) A copy of the most recent audited financial statement of the organization;
 - (e) A completed copy of the waiver provider application;
 - (f) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreement, if applicable;
 - (g) A copy of the Bylaws or similar documents regarding conduct of the provider's internal affairs;
 - (h) A copy of the business license and or certificate of good standing;
 - (i) A copy of professional/business liability insurance of at least one (1) million dollars;
 - (j) Organizational policies and procedures, such as personnel policies and procedures, human rights, incident reporting, behavioral support policies, staff training, protection of consumer funds, and others as required by DDS;
 - (k) A continuous quality improvement plan; and
 - (l) Any other documentation deemed necessary to support the approval as a provider.
- 1903.2 Professional service provider applicants who are in private practice as an independent practitioner shall complete an application to participate in the Medicaid Waiver program and shall agree to:

- (a) Maintain a private office, even if services are always furnished in the home of the person receiving services;
- (b) Meet all state and local licensure laws and rules;
- (c) Maintain at least one (1) million dollars in liability insurance;
- (d) Ensure that services provided are consistent with the individual habilitation plan (IHP) or individual service plan (ISP) and Plan of Care;
- (e) Ensure that, if services are furnished in a private practice office space, that space shall be owned, leased, or rented by the private practice and shall be used for the exclusive purpose of operating the private practice; and
- (f) Personally supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner. Personal supervision requires the independent practitioner to be in the room during the performance of the service.

1903.3 Home Health Agency or Skilled Nursing Service provider applicants shall complete an application to participate in the Medicaid Waiver program and shall meet the definitions and licensure requirements to participate as a Home Health Agency or Skilled Nursing Service as follows:

- (a) Home Health Agency – Shall have the same meaning as “home care agency” and shall meet the definitions and licensure requirements as set forth in the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), and implementing rules; and
- (b) Skilled Nursing Service – Health care services that are delivered by a registered or practical nurse acting within the scope of their practice and shall meet the definitions and licensure requirements as set forth 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 *et seq.*), and implementing rules.

1903.4 Each service provider under the Waiver for which transportation is included in the Waiver service shall:

- (a) Ensure that each vehicle used to transport an individual has valid license plates;
- (b) Ensure that each vehicle used to transport an individual has at least the minimum level of motor vehicle insurance required by law;
- (c) Present each vehicle used to transport an individual for inspection by a certified inspection station every six months (or as required in the jurisdiction where the vehicle is registered) and provide proof that the

- vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request;
- (d) Ensure that each vehicle used to transport an individual is maintained in safe, working order,
 - (e) Ensure that each vehicle used to transport an individual meets the needs of the individual;
 - (f) Ensure that each vehicle used to transport an individual has seats fastened to the body of the vehicle;
 - (g) Ensure that each vehicle used to transport an individual has operational seat belts;
 - (h) Ensure that each vehicle used to transport an individual has temperature conducive to comfort;
 - (i) Ensure that each vehicle used to transport an individual is certified by the Washington Metropolitan Area Transit Commission;
 - (j) Ensure that each individual is properly seated when the vehicle is in operation;
 - (k) Ensure that each individual is transported to and from each appointment in a timely manner;
 - (l) Ensure that each individual is provided with an escort on the vehicle, when needed;
 - (m) Ensure that each vehicle used to transport a person with mobility needs is adapted to provide safe access and use;
 - (n) Ensure that each person providing services meet the requirements set forth in section 1911 of these rules; and
 - (o) Ensure that each person providing services be certified in cardiopulmonary resuscitation and First Aid.
- 1903.5 MAA shall notify each prospective provider, in writing, of the approval or disapproval to become a provider of Waiver services, no later than fifteen (15) days of receipt of all required documentation. If additional information is requested by MAA, the provider shall have thirty (30) days from the date of the request to submit the additional information. If an application is disapproved, the notice shall set forth the reason for disapproval. Failure to submit all required documentation may result in disapproval.
- 1903.6 Each provider shall enter into a provider agreement with MAA for the provision of Waiver services.
- 1903.7 The provider agreement shall specify the services to be provided, methods of operation, financial and legal requirements, and identification of the population to be served.
- 1903.8 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR, to the provider certification standards established by DDS (currently known as the Basic Assurance Standards Authorization process), and to all policies and procedures promulgated by

DDS that are applicable to providers during the provider's participation in the Waiver program.

- 1903.9 Each provider shall comply with all applicable provisions of District and federal law and rules applicable to the Title XIX of the Social Security Act, and all District and federal law and rules applicable to the service or activity provided pursuant to these rules.

A new Section 1911 (Requirements for Persons Providing Direct Services) of Chapter 19 of Title 29 DCMR is adopted to read as follows:

1911 REQUIREMENTS FOR PERSONS PROVIDING DIRECT SERVICES

1911.1 The basic requirements for all employees providing direct services are as follows:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the person to whom services are provided;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
- (d) Possess a high school diploma or general educational development (GED) certificate;
- (e) Complete pre-service and in-service training as required by DDS;
- (f) Have the ability to communicate with the person to whom services are provided;
- (g) Be able to read, write, and speak the English language; and
- (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the 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.*).

Section 1999 (Definitions) of Chapter 19 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

1999 DEFINITIONS

When used in this Chapter, the following terms and phrases shall have the meanings ascribed:

Client – An individual who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Intermediate Care Facility for Persons with Mental Retardation – Shall have the same meaning as set forth in section 1905(d) of the Social Security Act.

Mentally retarded – Shall have the same meaning as set forth in D.C. Official Code § 7-1301.03(19).

Quality Assurance Plan – A written plan that describes the process by which the provider shall evaluate the quality and appropriateness of services delivered to each individual. The plan should describe the process and frequency of implementation for identifying, evaluating and resolving any problem related to the services rendered.

Qualified mental retardation professional – Shall have the same meaning as set forth in 42 CFR § 483.430(a).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Person or Participant – An individual who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities.

Person's home – Shall mean the natural home, but shall not include an institutional or residential facility or foster home.

Provider – Any entity that meets the Waiver service requirements, has signed an agreement with MAA to provide those services, and is enrolled by MAA to provide Waiver services.

Registered Nurse – A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations

Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a registered nurse in the jurisdiction where services are provided.

Waiver – Shall mean the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.