

## 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 section 1910 of Chapter 19 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Personal Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Personal Care Services, a service provided by personal care aides to participants with mental retardation and developmental disabilities in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules at 52 DCR 11281 (December 30, 2005), by establishing standards for personal care services and updating the prohibition against concurrent payments to reflect new Waiver services. Personal care services include assistance with eating, bathing, dressing, personal hygiene and activities of daily living. These personal care services are to be provided as an extension of services under the District of Columbia State Plan for Medical Assistance as set forth in Chapter 50 of Title 29 DCMR, entitled "Medicaid Reimbursement for Personal Care Services," 50 DCR 3957 (May 23, 2003).

The District of Columbia Medicaid Program is also modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the Waiver with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 14, 2007 (54 DCR 012082). No comments were received. No substantive changes have been made. These rules shall become effective upon publication of this notice in the *DC Register*.

Section 1910 (Personal Care Services) of Chapter 19 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**SECTION 1910 PERSONAL CARE SERVICES**

1910.1 Personal care services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities that:

- (a) Has exhausted the personal care services of Chapter 50 of Title 29 DCMR Sections 5009.1 and 5009.2; and
  - (b) Meets the eligibility requirements of Chapter 50 of Title 29 DCMR Section 5005.1.
- 1910.2 Personal care services shall:
- (a) Provide necessary hands-on personal care assistance with the activities of daily living that would maintain a clean, sanitary and safe condition for a participant in the home; and
  - (b) Encourage home-based care as a preferred and cost-effective alternative to institutional care.
- 1910.3 Consistent with Chapter 50 of Title 29 DCMR Section 5004.4, personal care services shall only be provided to the person. Personal care services eligible for reimbursement shall include, but shall not be limited to, the following services:
- (a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, lifting and transferring, feeding, and bowel and bladder care;
  - (b) Household services including assistance with meal preparation in accordance with dietary guidelines, shopping, cleaning and laundry;
  - (c) Cognitive services including assistance with money management, use of medications, and providing instructions with adaptive skills;
  - (d) Mobility services including escorting the person to medical appointments, place of employment, socialization activities, approved recreational activities, and errands;
  - (e) Changing urinary drainage bags;
  - (f) Assisting persons with range of motion exercises;
  - (g) Reading and recording temperature, pulse, respiration, and blood pressure; and
  - (h) Observing and documenting the person's status and reporting all services provided.
- 1910.4 Personal care services shall not include services that require the skills of a licensed professional or person certified to perform such functions, such as catheter insertion, administration of medications, or procedures requiring the use of sterile techniques or invasive methods.
- 1910.5 Personal care services shall be supervised by a registered nurse who is responsible for supervising the delivery of personal care services. The registered nurse shall provide an initial assessment within forty-eight (48) hours of the initiation of services and an on-site assessment at least once

every sixty-two (62) days thereafter, and shall coordinate services and provide documentation consistent with Chapter 50 of Title 29 DCMR Sections 5002.5 and 5002.6.

- 1910.6 Personal care services shall not be provided in a hospital; nursing facility; intermediate care facility for persons with mental retardation; institution for mental disease; or for persons receiving Residential Habilitation, Supported Living or Host Home Services.
- 1910.7 Personal care services eligible for reimbursement shall be provided in the following settings:
- (a) A home belonging to the person's family, guardian, or other non-paid primary caregiver;
  - (b) A home that the person owns, leases, or otherwise controls the operation of;
  - (c) Places of employment;
  - (d) Medical appointments; or
  - (e) Locations where the person travels for other services or recreation.
- 1910.8 Personal care services shall be authorized and provided in accordance with each person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.
- 1910.9 Each provider of personal care services shall be a home health agency meeting the conditions of participation for home health agencies set forth in §§ 1861(0) and 1891(e) of the Social Security Act and 42 CFR § 484, and shall comply with the requirements set forth in the Health-Care and Community Residence Facility Act, 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. In addition, the provider agrees to:
- (a) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Personal Care Services under the Waiver;
  - (b) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
  - (c) Ensure that all personal care services staff are qualified and properly supervised to include having a plan to provide staff interpreters for non-English speaking persons;
  - (d) Maintain a written staffing plan; and
  - (e) Provide a written staffing schedule for each site where services are provided.

- 1910.10 Consistent with Chapter 50 of Title 29 DCMR Section 5001.1, providers must maintain at least:
- (a) Blanket malpractice insurance for all employees in the amount of at least one million (\$1,000,000) dollars per incident; and
  - (b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million (\$1,000,000) dollars.
- 1910.11 Each person providing personal care services shall meet the standards set forth in Chapter 50 of Title 29 DCMR Sections 5003.1 through 5003.3.
- 1910.12 Personal care services shall not be administered by a spouse, parent or guardian, or any other legally responsible individual who ordinarily would perform or be responsible for performing services on behalf of the person. A family member who is not legally responsible for the individual shall be eligible to administer personal care services. Each family member administering personal care services pursuant to this section shall be employed by a provider under subsection 1910.9, shall meet all of the requirements in Chapter 19 of Title 29 DCMR Section 1911, "Requirements for people providing direct services," and shall meet the standards set forth in Chapter 50 of Title 29 DCMR Sections 5003.1 through 5003.3.
- 1910.13 Consistent with Chapter 50 of Title 29 DCMR Sections 5006.1 through 5006.6, each provider shall develop and maintain a plan of care. The plan of care shall be available for inspection by representatives of DDS upon request.
- 1910.14 Consistent with Chapter 50 of Title 29 DCMR Sections 5007.1 through 5007.8, records shall be maintained and available for inspection by representatives of DDS upon request.
- 1910.15 Consistent with Chapter 50 of Title 29 DCMR Section 5002.9, providers shall notify DDS in writing no less than seven (7) calendar days in advance of discharge.
- 1910.16 If the person seeks to change providers, the DDS case manager shall assist the person in selecting a new provider. The current provider shall continue to provide services until the transfer has been completed. Each provider shall develop contingency staffing plans to provide coverage to each person in the event that the assigned personal care aide cannot provide the services or is terminated by the provider.
- 1910.17 The billable unit of service for personal care services shall be one (1) hour. Each provider shall be reimbursed at sixteen dollars and thirty cents

(\$16.30) per hour for personal care services. Consistent with Chapter 50 of Title 29 DCMR Sections 5009.2 through 5009.5, service limits of eight (8) hours per day and one thousand forty (1040) hours per year shall be maintained. The limits shall not be exceeded without prior authorization for additional hours from DDS.

1910.18 Personal care services shall not be billed concurrently with the following Waiver services:

- (a) Prevocational Habilitation;
- (b) Residential Habilitation;
- (c) Supported Living;
- (d) Host Home;
- (e) Live-In Caregiver; or
- (f) In-Home Supports.

#### 1910.99 DEFINITIONS

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

**Activities of daily living** – Shall mean the ability to get in and out of bed, bathe, dress, eat, take medications prescribed for self-administration and/or engage in toileting.

**Case manager** – A professional who assists persons in gaining access to needed Waiver services and other State Plan services, as well as needed medical, social, educational, and other services regardless of the funding source for the service to which access is gained.

**Family** – Any person related to the person by blood, marriage, or adoption.

**Group setting** – a setting in which two or more persons who are receiving Waiver services reside.

**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*, No. 76-293.

**Person** – An individual with mental retardation and developmental disabilities 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.

**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.

**Provider** – For purposes of this section, any home health agency or social service agency that provides services pursuant to these rules.

**Registered nurse** – A person who is licensed to or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1985 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), or licensed as a registered nurse in the jurisdiction where services are rendered.

**Waiver** – Shall mean the Home and Community-based 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.