

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF 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 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 emergency and proposed 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 Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)). The amendment must also be approved by CMS, which will affect the effective date of for the emergency rulemaking.

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 current 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. These rules amend 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.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of vehicle modification services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the person’s health, safety, and welfare are not threatened by lack of access to needed vehicle modification services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on May 8, 2015, but these rules shall become effective for services rendered on or after May 8, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of May 8, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until September 5, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date 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 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.
- 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.
- 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 dollar (\$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.

- 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.

Comments on these 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.