

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.

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 a new section 1916 of Chapter 19 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "In-Home Supports Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for in-home supports services provided by licensed or supervised professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

This is a new rule that was developed from section 993, of Chapter 9 of Title 29 DCMR, entitled "Independent Habilitation Services." The name of this new service under the Waiver has been changed to reflect a new focus. In-home supports services provides a blend of the previously available services under the former Waiver (*i.e.* Homemaker Services, Chore Services, Adult Companion Services, Personal Care Services, Attendant Care Services, and Independent Habilitation) that under the modified Waiver, which was effective November 20, 2007, will be delivered based on an in-home supports plan developed by the person and his or her support team. This service delivery approach will address the problems encountered when multiple provider agencies and support staff were needed to deliver supports in a natural home due to the different provider qualifications and restrictions for each service. The new rule is intended to resolve staffing issues which had made it difficult to effectively support individuals in natural homes. In-home supports services are limited to delivery only in person's natural homes or the home of an unpaid caregiver. The service will be limited to no more than eight (8) hours per day of service, and is not available to participants receiving Host Home, Residential Habilitation or Supported Living Services.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 21, 2007. (54 DCR 012370) Comments were received and considered. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

New section 1916 (In-Home Supports Services) of Chapter 19 of Title 29 DCMR is added to read as follows:

1916 IN-HOME SUPPORTS SERVICES

1916.1 In-home supports services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and

developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

1916.2 A person shall only be eligible for in-home supports services when living in one of the following types of residences:

- (a) His or her own home;
- (b) The person's family home; or,
- (c) The home of an unpaid caregiver.

1916.3 In-home supports services provide periodic support to assist the primary caregiver and/or enable the person to live independently and participate in community activities to the fullest extent possible.

1916.4 In-home supports services include a combination of hands-on care, habilitative support, and assistance with activities of daily living. In-home supports services eligible for reimbursement shall be as follows:

- (a) Training and support in activities of daily living and independent living skills;
- (b) Assistance in performing personal care tasks;
- (c) Assistance with light household tasks specific to the needs of the person;
- (d) Assistance with homemaking tasks such as food preparation and laundering clothes that are specific to the needs of the person;
- (e) Training and support on understanding and utilizing community resources;
- (f) Training on, and assistance in the monitoring of health, nutrition, and physical condition;
- (g) Training and support in adapting to a community and home environment, including management of financial and personal affairs, and awareness of health and safety precautions; and
- (h) Coordinating transportation to community events.

1916.5 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.

1916.6 In-home supports services shall be authorized by the person's interdisciplinary team and provided in accordance with each person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

1916.7 In-home supports services require an In-Home Supports Services Plan (Plan) prior to the initiation of services. A copy of the Plan shall be maintained

where services are delivered, at the provider's main office, and with the Department on Disability Services (DDS) Case Manager. The Plan will detail:

- (a) Activities and supports that will be provided and identify anticipated outcomes;
- (b) A staffing plan and schedule;
- (c) As necessary, the participation of professionals to meet the person's individual needs; and
- (d) Emergency and contingency plans to address potential behavioral, health or emergency events.

1916.8 Each provider of in-home supports services shall be a social services agency as described in Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider agrees to:

- (a) Be a member of the resident's interdisciplinary team;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for In-Home Supports Services under the Waiver;
- (c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
- (d) Ensure that all in-home support services staff are prepared to facilitate interpreters for non-English speaking persons;
- (e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (g) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention; and
- (h) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds.

1916.9 Each person providing in-home supports services shall meet all of the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911 in addition to the requirements set forth below:

- (a) Complete competency based training in communication with people with intellectual disabilities;
- (b) Complete competency based training in emergency procedures; and
- (c) Be certified annually in cardiopulmonary resuscitation (CPR) and First Aid.

- 1916.10 Each provider of in-home supports services shall maintain progress notes on a weekly basis, or more frequently if indicated, on the IHP or ISP and Plan of Care. The provider shall also maintain current financial records of expenditures of private funds for each person if applicable. Progress notes shall include at a minimum: (a) progress in meeting each goal in the ISP assigned to the in-home supports services provider; (b) list of all community activities the person participates in with the in-home supports provider and the person's response to each activity; (c) any unusual health events, side effect to medication, change in health status, behavioral event, use of a restrictive procedure or unusual incident; (d) any visitor the person receives, special events, and any situation or event requiring follow-up during the delivery of the in-home supports services; and the dates and times services are delivered.
- 1916.11 Each provider of in-home supports services shall review the person's IHP or ISP and Plan of Care goals, objectives and activities at least quarterly and more often as needed. The provider shall propose modifications to the IHP or ISP and Plan of Care as appropriate. The results of these reviews shall be submitted to the person's DDS Case Manager within 30 days of the end of each quarter (i.e. by January 30th, April 30th, July 30th, and October 30th).
- 1916.12 The reimbursement rate shall be twenty dollars and sixty cents (\$20.60) per hour billable in units of fifteen minutes at a rate of five dollars and fifteen cents (\$5.15), and shall not exceed eight (8) hours per 24-hour day. A fifteen minute unit requires a minimum of eight (8) minutes of continuance service to be billed. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person. Each provider of in-home supports services shall assist the primary caregiver and/or participant with the coordination of the delivery of necessary day/vocational program, behavioral support, skilled nursing, transportation, and other required services from approved Waiver providers of those services in accordance with the requirements of the IHP or ISP and Plan of Care and the Plan. DDS may authorize an increase in hours in the event of a temporary emergency need for which there is no other resource available or demonstrated need based on the DDS-authorized utilization process.
- 1916.13 Reimbursement for in-home supports services shall not include:
- (a) Room and board costs;
 - (b) Routine care and general supervision normally provided by the family or natural caregivers;
 - (c) Services or costs for which payment is made by a source other than Medicaid; or
 - (d) Travel or travel training to Supportive Employment, Day Habilitation or Pre-Vocational Services.

1916.14 In-home supports services may be used in combination with Medicaid State Plan Personal Care and Home Health Services so long as the services are not provided during the same period of the day.

1916.15 In-home supports services are not available to participants receiving Host Home, Residential Habilitation or Supported Living Services.

1916.99 DEFINITIONS

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

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

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*.

In-Home Supports Services Plan – That plan required by these rules prior to the initiation of services which details the activities and supports that will be provided and identify anticipated outcomes; a staffing plan and schedule; as necessary, the participation of professionals to meet the person's individual needs; and emergency and contingency plans to address potential behavioral, health or emergency events.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Person or Participant– An individual with intellectual 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 (Waiver).

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 – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

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.