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 (2012 Repl. & 2013 Supp.)) 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 an amendment to Section 1917 (Live-In Caregiver), of Chapter 19 (Home and Community-based Waiver Services for Individuals with Intellectual and Developmental Disabilities), Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of shared living services provided to participants in the Home and Community-Based Waiver Services 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 and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Shared living services are supports provided in a person's home by a principal care provider who lives as a roommate to enable the person to live in the community independently and without constant supervision. The roommate provides support as needed to meet the physical and social needs of the person that naturally occur during the course of a day. These rules amend the previously published rules by: (1) renaming Section 1917, previously referred to as "Live-in Caregiver Services", to "Shared Living Services"; (2) establishing guidelines for the maintenance of documents for purposes of monitoring and audit reviews; (3); setting provider guidelines for the development and execution of a Shared Living Service Agreement between the provider for the agency (principal care provider) and the individual receiving waiver services; (4) defining record-keeping and maintenance requirements; and (5) providing an updated definition for terms and phrases used in this chapter.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of shared living services. Based upon current reporting and record maintenance requirements, there are insufficient safeguards in place to make sure that providers are qualified and taking the necessary steps to ensure that beneficiaries are receiving quality services. By taking emergency action, these rules will clarify the duties and responsibilities of shared living providers and increase their accountability. In addition, these rules will provide the District with the tools needed to increase oversight and to closely monitor the quality and appropriateness of services being delivered to beneficiaries.

The emergency rulemaking was adopted on August 28, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until

December 25, 2013, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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*.

Section 1917 (Live in Caregiver) of Chapter 19 (Home and Community Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29, (Public Welfare) of the DCMR is amended to read as follows:

1917 SHARED LIVING SERVICES

1917.1 The purpose of this section is to establish standards governing Medicaid eligibility for shared living services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers who deliver shared living services.

1917.2 Shared living services are supports provided in a person's home by a principal care provider who lives as a roommate to enable the person to live in the community independently and without constant supervision. The roommate provides support as needed to meet the physical and social needs of the person that naturally occur during the course of a day.

1917.3 In order to receive Medicaid reimbursement for shared living services, a person shall:

(a) Currently reside in a home that they own or lease;

(b) Not require twenty-four (24) hour supervision or support; and

(c) Have habilitation or individual support needs.

1917.4 Medicaid reimbursable shared living services shall be:

(a) Provided in the person's own home, by a roommate who lives there in exchange for room and board; and

(b) Identified as a support in the person's Individual Support Plan (ISP) and Plan of Care.

1917.5 Each Waiver provider shall execute a written Shared Living Services Agreement, (hereinafter referred to as the "Agreement"), developed as part of the person's Plan of Care, that defines at a minimum the shared responsibilities between the roommate, and the person receiving waiver services, and indicating that the roommate may secure employment apart from his/her prescribed role.

1917.6 Each Waiver provider shall recruit, or assist the person desiring the service to recruit, the roommate. The roommate providing the actual support shall be referred to as the provider for the agency.

1917.7 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:

(a) Execute the Agreement between the person receiving services and the provider for the agency, prior to the initiation of services;

(b) Revise the Agreement in accordance with the recommendations of the person, his/her support team, the Waiver provider, and the provider for the agency;

(c) Participate in the development of the ISP by describing the duties of the provider agency;

(d) Propose modifications to the ISP and Plan of Care, as appropriate;

(e) Provide emergency services as needed;

(f) Provide the person receiving shared living with up to fourteen (14) days of respite per year;

(g) Provide oversight of the delivery of services;

(h) Contact the provider for the agency at least once per month; and

(i) Provide initial and quarterly inspections of the person's home to ensure their health, safety, and wellbeing.

1917.8 In order to be eligible for Medicaid reimbursement, each provider for the agency shall provide habilitative and personal supports as described in the Agreement and outlined in the ISP and Plan of Care, which shall include, but not be limited to, the following:

(a) Assisting with activities of daily living and instrumental activities of daily living , such as meal preparation, laundry, shopping, money management, banking, and general housekeeping;

(b) Fostering the development of good social and adaptive skills to enable the person to participate successfully in the community;

(c) Assisting with accessing community resources to increase the person's chances of community inclusion;

(d) Improving the person's skills related to health and safety; and

(e) Supervising and supporting the person as described in the ISP and Plan of Care.

1917.9 In order to be eligible for Medicaid reimbursement, each Waiver provider shall meet all of the following criteria:

(a) Comply with the DDS Provider Certification Review;

(b) Have experience with providing Supported Living, Residential Habilitation, Host Home, In-Home Supports, Respite, or other relevant services; and

(c) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19, Title 29 of the DCMR.

1917.10 The provider for the agency shall:

(a) Be chosen by the person, with support from his or her support team;

(b) Have a written agreement with the Waiver provider agency;

(c) Participate in the development of the person's ISP and Plan of Care;

(d) Comply with any additional requirements identified by the Waiver provider agency; and

(e) Comply with the requirements described under Section 1906 (Requirements for Direct Support Professionals) of Chapter 19, Title 29 of the DCMR.

1917.11 Services shall only be authorized for Medicaid reimbursement if the following conditions are met:

(a) DDS shall provide a written service authorization before the commencement of services;

(b) The service name and Waiver provider delivering services shall be identified in the ISP and Plan of Care;

(c) The ISP and Plan of Care, and Summary of Supports and Services shall document the supports and services to be received including that the

provider for the agency shall be responsible for no more than four (4) hours of support per day; and

(d) Services shall not conflict with the service limitations described under Section 1917.15

1917.12 Each Waiver provider of shared living services shall comply with the requirements described under Sections 1908 (Reporting Requirements), 1909 (Records and Confidentiality of Information) and 1911 (Individual Rights) of Chapter 19, Title 29 of the DCMR.

1917.13 Shared living services shall not be billed on the same day as residential habilitation, supported living, in-home supports, or host home services.

1917.14 Shared living services shall not be provided by a spouse, parent, or guardian, or any other legally responsible individual who would customarily perform, or be responsible for performing supports on behalf of the person. A family member who is not legally responsible for the person and meets all other requirements shall be eligible to administer shared living services.

1917.15 A provider for the agency shall be responsible for no more than four (4) hours of support per day.

1917.16 The reimbursement rate shall be one thousand eight hundred thirty three dollars and thirty-three cents ($1,833.33) per month for each person based on the Agreement.

Section 1999 (DEFINITIONS) is amended by adding the following:

Provider for the agency – The Waiver person's roommate or principal care provider who is hired as a contract employee by the Waiver provider to provide shared living supports to the individual.

Comments on the proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 899 North Capitol Street, NE, Suite 6037, Washington, D.C. 20002, via telephone at (202) 442-9115, via 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 proposed rule may be obtained from the above address.