

## 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 907 (Personal Emergency Response System Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for personal emergency response system (PERS) services provided by professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules at 50 DCR 4395 (June 6, 2003) by updating the prohibition against concurrent payments to reflect the new Waiver services.

The District of Columbia Medicaid Program also is 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, has 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 012063). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

**Section 907 of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:**

**907 PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES**

- 907.1 Personal emergency response system (PERS) 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.
- 907.2 PERS services shall provide access to emergency assistance through a two-way communication system that dials a twenty-four (24) hour response center. The system shall include a console or receiving base, which is connected to the user's telephone, a portable emergency response activator, and a response center that monitors calls.
- 907.3 PERS services eligible for reimbursement shall include:

- (a) In-home installation of all equipment necessary to make the system operational;
- (b) Person and caregiver instruction on usage, maintenance, and emergency protocol;
- (c) Equipment maintenance;
- (d) Twenty-four (24) hour, seven (7) days per week response center monitored by trained operators capable of determining if an emergency exists and notifying emergency services and the person's responder; and
- (e) Equipment testing and monitoring.

907.4 PERS services shall only be provided to persons who:

- (a) Live alone or who are alone for significant parts of the day;
- (b) Have no regular caregiver for extended periods of time;
- (c) Would otherwise require extensive routine supervision; and
- (d) Have and demonstrate the capacity to understand how properly to use the system.

907.5 PERS services shall:

- (a) Have activation by a remote wireless device, such as a portable "help" button to allow for mobility;
- (b) Have hands-free voice-to-voice communication with the response center through the PERS console unit;
- (c) Be repaired or replaced by the provider within twenty-four (24) hours after the provider has been notified of a malfunction;
- (d) Have an emergency response activator that:
  - (1) Is activated by breath or touch and is usable by persons who have vision or hearing impairments or have a physical disability; and
  - (2) Will operate during a power failure for a minimum of twenty-four (24) hours; and
- (e) Submit to the appropriate Department on Disability Services case manager within twenty-four (24) hours of an emergency signal response, a written repeat detailing, at a minimum, the date and time of each emergency response to a

person receiving PERS services. Emergency signal responses do not include test signals or activations a person made in error.

- 907.6 All PERS equipment shall comply with all applicable Federal Communication Commission laws, rules, and the applicable Underwriter's Laboratories, Inc. standards.
- 907.7 The person for whom PERS services are provided shall choose the respondent that will answer emergency calls through the PERS. Respondents may be relatives, friends, neighbors, or medical personal.
- 907.8 Medical personnel that the person selects to serve as respondents shall be licensed to practice medicine, registered nursing, practical nursing, or physician assistance pursuant to section 501 of the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01), or be licensed to practice their respective profession within the jurisdiction where they provide service.
- 907.9 PERS services shall be authorized by the interdisciplinary team and provided in accordance with each person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.
- 907.10 Each provider of PERS services shall:
- (a) Be a non-profit, home health agency, social service agency, or another business entity;
  - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for PERS Services under the Waiver;
  - (c) Ensure that all staff are qualified and properly supervised;
  - (d) Ensure that the services provided are consistent with the person's IHP or ISP and Plan of Care; and
  - (e) Have a plan (or access to necessary personnel) effectively to meet the needs of English speaking, non-English speaking, and non-verbal persons.
- 907.11 Each person providing PERS services for a provider who will be in direct contact with the person shall meet all of the requirements set forth in section 1911 of Title 29 DCMR. In addition, each person providing PERS skills who will be in direct contact with the person also shall have the language and communication skills to respond to emergency contacts (*i.e.*, calling emergency 911 on behalf of the person).
- 907.12 The billable units for PERS services shall be:
- (a) The initial installation; and

- (b) The monthly rental and service fee.
- 907.13 PERS services shall be reimbursed as follows:
- (a) Fifty dollars (\$50.00) for the initial installation; and
  - (b) Thirty dollars (\$30.00) for the monthly rental and service fee.
- 907.14 Providers of PERS services shall maintain records related to the provision of PERS services for a period of not less than six (6) years.
- 907.15 PERS shall not be provided to persons receiving Supported Living Services or Residential Habilitation Services, and shall only be provided in the person's place of residence.
- 907.99 DEFINITIONS**

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

**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 IHP as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

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

**Person** – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the 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 pre-authorize Waiver services.

**Waiver** – 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.