

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF 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 intent to adopt a new Section 989, entitled “Long Term Care Services and Supports Assessment Process” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR.

These proposed rules establish standards governing the assessment process for the level of need for beneficiaries who receive Long Term Care Services and Supports (LTCSS), with the exception of Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IDD) services, and Home and Community-based Waiver Services for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

LTCSS provide beneficiaries with crucial services including assistance with basic tasks of everyday life. These include those services provided in institutional/facility based settings, and supports and services provided in the community and/or in a person’s home.

LTCSS are designed to assist beneficiaries with a range of services and supports over an extended period of time. These rules: (1) establish standards for the implementation of a standardized tool for assessing a person’s needs for LTCSS; and (2) establish numerical scores pertaining to the level of need necessary to establish eligibility for a range of LTCSS.

The Director also gives notice of the intent to take final rulemaking action to adopt this proposed rule not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

A new Section 989 (Long Term Care Services and Supports Assessment Process) is added to Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR to read as follows:

989 LONG TERM CARE SERVICES AND SUPPORTS ASSESSMENT PROCESS

989.1 The purpose of this section is to establish the Department of Health Care Finance (DHCF) standards governing the Medicaid assessment process for Long Term Care Services and Supports (LTCSS) and to establish numerical scores pertaining to the level of need necessary to establish eligibility for a range of LTCSS.

989.2 LTCSS are designed to assist beneficiaries with a range of services and supports including assistance with basic tasks of everyday life over an extended period of

time. These include, but are not limited to, the elderly and physical disabilities home and community-based waiver (EPD Waiver), Personal Care Assistance (PCA) services, nursing home services, Adult Day Health Program (ADHP) services under the home and community-based state plan benefit, and other non-IDD LTCSS.

- 989.3 A person who is seeking Medicaid LTCSS for the first time shall submit his or her application for services to DHCF or its designated agent.
- 989.4 DHCF or its designated agent shall conduct the initial face-to-face assessment following the receipt of a request for an assessment for LTCSS. An initial request for an assessment or a subsequent request based upon a change in acuity level, or at the time of reassessment, may be made by a person, the person's representative or a provider.
- 989.5 DHCF or its designated agent shall be responsible for conducting a face-to-face assessment of each person using a standardized needs-based assessment tool to determine his/her need for LTCSS. The assessment shall:
- (a) Confirm and document the person's functional limitations, behavioral and medical support needs;
 - (b) Be developed in consultation with the person and his/her representative and/or support team;
 - (c) Document the person's unmet need for services taking into account the contribution of informal supports and other non-Medicaid resources in meeting his/her need for assistance; and
 - (d) Determine the person's level of need for LTCSS.
- 989.6 Based upon the results of the face-to-face assessment conducted in accordance with Subsection 989.5, DHCF or its authorized agent shall issue to the person an assessment determination that specifies his/her level of need for LTCSS.
- 989.7 The face-to-face assessment using the standardized assessment tool to determine each person's level of need for LTCSS shall result in a total numerical score which includes three (3) separate scores pertaining to his/her assessed cognitive/behavioral, functional, and skilled care needs.
- 989.8 The total numerical score consists of a value between zero to thirty one (0-31); which may include a score of up to twenty three (23) on the functional assessment, a score of up to five (5) on the skilled needs assessment, and a score of up to three (3) on the cognitive behavioral assessment.
- 989.9 The total numerical scores indicating a person's need for LTCSS are as follows:

- (a) four (4) or higher for personal care aid services;
- (b) four (4) or five (5) for adult day health acuity level 1 services;
- (c) six (6) or higher for adult day health acuity level 2 services; and
- (d) nine (9) or higher for nursing home, EPD Waiver, or other programs/services that require a nursing home level of care.

- 989.10 A person shall only be deemed to have a level of need for PCA under Subsection 989.9, if his/her functional score without medication management is four (4) or higher.
- 989.11 Based upon the total scores, DHCF or its designated agent shall issue to the person a notice of the results of the LTCSS service assessment that specifies his/her level of need for a range of LTCSS for which the person is eligible.
- 989.12 The person shall have the right to choose a provider based upon the level of need and the ability of the provider to safely care for him/her in the least restrictive setting.
- 989.13 DHCF or its designated agent shall conduct a reassessment at least every one hundred and eighty (180) days, or upon significant change in the person's condition for the receipt of PCA services. For all other LTCSS, a reassessment shall be conducted at least once every twelve (12) months or upon significant change in the person's condition.
- 989.14 If the person meets the level of need as determined by a numerical score affiliated with each long-term care service in accordance with Subsection 989.9, and chooses to participate in a long-term care program, DHCF or its authorized agent shall refer the person to the long-term care service provider of his/her choice.
- 989.15 DHCF or its authorized agent shall maintain the completed standardized assessment tool and documentation reflecting that the person was given a free choice of providers from a list of qualified providers.
- 989.16 If the person has not made a choice, or needs further assistance, DHCF or its authorized agent shall refer the person to the Aging and Disability Resource Center for additional assistance and options counseling.
- 989.17 If based upon the assessment or reassessment conducted pursuant to this section, a person is found to be ineligible for LTCSS, DHCF or its agent shall issue a Beneficiary Denial or Change of Services Letter informing the person of his or her right to appeal the denial, reduction or termination of services in accordance with federal and District law and regulations.

989.99 DEFINITIONS

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

Beneficiary - A person deemed eligible to receive Medicaid services.

Person - An applicant who submits a service assessment request to DHCF and/or its designated agent to determine his/her level of need for long-term care services and supports.

Acuity level - The intensity of services required for a Medicaid beneficiary wherein those with a high acuity level require more care and those with lower acuity level require less care.

Face-to-face assessment - An assessment that is conducted in-person by a registered nurse to determine an applicant's need for long-term care services.

Provider - the individual, organization, or corporation, public or private, that provides long-term care services and seeks reimbursement for providing those services under the Medicaid program.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Interim Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.