

## 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 (2006 Repl. & 2012 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) (2008 Repl.)), hereby gives notice of the adoption, on an emergency basis of a new Section 1920, entitled "Day Habilitation Services", of Chapter 19 (Home and Community Based Services for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). These emergency and proposed rules establish standards governing reimbursement of day habilitation and day habilitation one-to-one 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. Day habilitation services are aimed at developing activities and skills acquisition to support or further integrate community opportunities outside of a person's home and assist the person in developing a full life within the community. Day habilitation one-to-one services are provided to persons with intense medical behavioral supports who require a behavioral support plan or require intensive staffing and supports. These rules amend the previously published rules by: (1) deleting Section 945 and codifying the rules in Section 1920; (2) reducing the reimbursement rates for this service based on the new rate methodology; (3) specifying the eligibility criteria and service authorization requirements when day habilitation one-to-one services are utilized; and (4) omitting the option to provide day habilitation services in a person's home.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of day habilitation services. Based upon current reporting and record maintenance requirements, there are insufficient safeguards in place to make sure that providers are taking the necessary steps to ensure that beneficiaries are receiving high quality, appropriate services from qualified providers. By taking emergency action, this emergency and proposed rule will clarify the duties and responsibilities of day habilitation 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 July 3, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until October 30, 2013, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director 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 945 (Day Habilitation) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.**

**A new Section 1920 (Day Habilitation) is added to Chapter 19 (Home and Community Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:**

**1920 DAY HABILITATION SERVICES**

- 1920.1 The purpose of this section is to establish standards governing Medicaid eligibility for day habilitation for persons enrolled in the Home and Community-Based Services (HCBS) Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of day habilitation services.
- 1920.2 Day habilitation services are aimed at developing activities and skills acquisition to support or further integrate community opportunities outside of a person's home, to foster independence, autonomy or career exploration and encourage development of a full life in the person's community.
- 1920.3 Day habilitation services are intended to be different and separate from residential services. These services are delivered in group settings or can be provided as day habilitation one-to-one services.
- 1920.4 To be eligible for day habilitation services:
- (a) The service shall be recommended by the person's Support Team and included in the Individualized Support Plan (ISP) and Plan of Care; and
  - (b) A person shall have a demonstrated personal and/or social adjustment need that can be addressed through participation in an individualized habilitation program.
- 1920.5 Day habilitation one-to-one services shall consist of:
- (a) Intense behavioral supports that require a behavioral support plan; or
  - (b) Services for a person who has medical needs that require intensive staffing and supports.
- 1920.6 To be eligible for day habilitation one-to-one services, a person shall meet at least one of the following requirements:
- (a) Exhibit elopement which places the person at risk;

- (b) Exhibit behavior that poses serious bodily harm to self or others;
- (c) Exhibit destructive behavior that poses serious property damage, including fire-setting;
- (d) Have any other intense behavioral problem that has been deemed to require one-to-one supervision;
- (e) Exhibit sexually predatory behavior; or
- (f) Have a medical history of or high risk for, falls with injury, be physically fragile or have physical needs that do not require professional nursing but require intensive staffing.

1920.7 Day habilitation one-to-one services shall be authorized by a physician's order and approved by the Developmental Disabilities Administration's Restrictive Control Review Committee.

1920.8 Day habilitation services shall be provided pursuant to the following service delivery criteria:

- (a) The service may be provided in a group setting. However, persons within the group may also receive services on an individualized basis;
- (b) The services provided in a community-based venue shall offer skill-building activities to enhance the person's habilitation needs; and
- (c) The service shall be provided in the most integrated setting appropriate to the needs of the person.

1920.9 Day habilitation services shall consist of the following activities:

- (a) Training and skills development that increase participation in community activities, enhance community inclusion, and foster greater independence;
- (b) Activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences;
- (c) Activities that provide opportunities for socialization and leisure activities in the community;
- (d) Training in the safe and effective use of one or more modes of accessible public transportation;

- (e) Coordination of transportation to enable the person to participate in community activities; and
- (f) Individualized or group services that enable the person to attain his/her maximum functional level based on the ISP and Plan of Care.

1920.10 Each day habilitation provider shall develop a day habilitation plan for each person that corresponds with the person's ISP and Plan of Care that supports the interests, choices, goals and prioritized needs of the person. Activities set forth in the plan shall be functional, chosen by the person, correspond with habilitation needs and provide a pattern of life experiences common to other persons of similar age and the community-at-large. To develop the plan, the provider shall:

- (a) Use observation, conversation, and other interactions, as necessary, to develop a functional analysis of the person's capabilities within the first month of participation and annually thereafter;
- (b) Use the functional analysis, the ISP and Plan of Care, and other information available to develop a plan with measurable outcomes that develops to the extent possible the skills necessary to allow the person to reside and work in the community while maintaining the person's health and safety; and
- (c) Focus on enabling each person to attain his/her maximum functional level by coordinating Waiver services with other services provided by any licensed professionals listed in the person's ISP and Plan of Care.

1920.11 Each day habilitation provider shall meet the following provider qualification and enrollment requirements:

- (a) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR; and
- (b) Maintain the required staff-to-person ratio, indicated on the person's ISP and Plan of Care, to a maximum staffing ratio of 1:4.

1920.12 Each direct support professional (DSP) providing day habilitation services for a provider shall comply with Section 1906 (Requirements of Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1920.13 All day habilitation services shall be authorized in accordance with the following requirements:

- (a) The Department on Disability Services shall provide a written service authorization before the commencement of services;

- (b) The day habilitation DSP providing one-to-one services shall be trained in physical management techniques, positive behavioral support practices and other training required to implement the person's behavioral support plan;
- (c) The service name and provider entity delivering services shall be identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care and Summary of Supports and Services shall document the amount and frequency of services to be received;
- (e) Completion of the person's day habilitation plan;
- (f) Approval of the behavioral support plan for persons receiving day habilitation one-to-one services; and
- (g) Accurate completion by the DSP of the behavioral data sheets for persons receiving day habilitation one-to-one services.

1920.14 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1920.15 Each provider shall comply with the requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1920.16 The reimbursement rate for day habilitation services shall be fifteen dollars and twenty cents (\$15.20) per hour. Services shall be provided for a maximum of eight (8) hours per day. The billable unit of service for day habilitation services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service. The reimbursement rate for day habilitation services shall be three dollars and eighty cents (\$3.80) per billable unit.

1920.17 The reimbursement rate for day habilitation one-to-one services shall be twenty-seven dollars and eight cents (\$27.08). The billable unit of service for day habilitation one-to-one services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service. The reimbursement rate for day habilitation one-to-one services shall be six dollars and seventy seven cents (\$6.77) per billable unit.

1920.18 Day habilitation services and day habilitation one-to-one services shall be provided for a maximum of eight (8) hours a day, not to exceed forty (40) hours per week and two thousand and eighty hours (2080) hours annually.

- 1920.19 Day habilitation services shall not be provided concurrently with supported employment or employment readiness services.
- 1920.20 No payment shall be made for care and supervision normally provided by the family or natural caregivers, residential provider, or employer.
- 1920.21 Provisions shall be made by the day habilitation provider for persons who arrive early and depart late.
- 1920.22 Time spent in transportation to and from the program shall not be included in the total amount of services provided per day.

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

**Behavioral Support Plan (BSP)** - A plan that is a component of the ISP that outlines positive supports and strategies to help a person ameliorate and/or eliminate the negative impact of one or more challenging behaviors that have a negative impact on a person's ability to achieve his/her goals.

**Day Habilitation Plan** - A person-centered plan developed by the day habilitation provider, based on a person-centered planning process that takes into account the results of a functional analysis, ISP, Plan of Care and other available information which lists services and outlines preferences, interests, and measurable outcomes to enable the person to reside, work and participate in the community, and maintain the person's health.

**Direct support professional (DSP)** - A person who works directly with people with developmental disabilities with the aim of assisting the individual to become integrated into his or her community or the least restrictive environment.

**Family** - Any person who is related to the person by blood, marriage, or adoption.

**Functional Analysis** - The process of identifying a person's specific strengths, preferences, developmental needs, and need for services by identifying the person's present developmental level, health status, expressed needs and desires of the person and his or her family, and environmental or other conditions that would facilitate or impede the person's growth and development

**Staffing Plan** - A written document that includes the numbers and titles of staff assigned to the particular person, for a specified time period and scheduled for a given site and/or shift to successfully provide oversight and to ensure the maintenance of the health, safety and well-being of the person receiving services.

**Summary of Supports and Services** - A written document that lists the various supports and services to be received by a person and a component of the person's ISP.

**Support Team** - A group of people providing support to a person with an intellectual/developmental disability, who have the responsibility of performing a comprehensive person-centered evaluation to support the development, implementation and monitoring of the person's person-centered ISP and Plan of Care.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 899 North Capitol Street, NE, Suite 6037, Washington, D.C. 20002, via telephone on (202) 442-9115, via email at [DHCF\\_Publiccomments@dc.gov](mailto:DHCF_Publiccomments@dc.gov), or online at [www.dcregs.dc.gov](http://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 rule may be obtained from the above address.