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 (2014 Repl. & 2015 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 amendments to Section 1926, entitled "Occupational Therapy Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency rules establish standards governing reimbursement for occupational therapy services provided to participants in the Home and Community-Based Services Waiver 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 (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014). The amendment must also be approved by CMS, which will affect the effective date of the emergency rules.

Occupational therapy services are designed to maximize independence, assist in gaining skills, prevent further disability, and maintain health. The Notice of Final Rulemaking for 29 DCMR § 1926 (Occupational Therapy Services) was published in the *D.C. Register* on February 14, 2014, at 61 DCR 001284. These rules amend the previously published final rules by (1) clarifying that recordkeeping as required by § 1909 is limited to what is applicable for this service; (2) describing the requirements for measureable and functional outcomes; (3) requiring and describing the role of the provider at the person's ISP and other support team meetings; (4) clarifying that documentation for adaptive equipment must be completed within the timeframes required by the person's insurance for this to be a reimbursable activity; (5) describing requirements for progress notes; (6) clarifying requirements for routine assessment of adaptive equipment; (7) requiring that the provider must be selected by the person, and/or his or substitute decision maker; (8) clarifying that the required assessment must be comprehensive; and (9) modifying rates to reflect increased costs to provide services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of occupational therapy services. The new service authorization requirements for providers of occupational therapy services will promote more efficient service delivery management practices, enhance the quality of services, and attract new

providers to meet the demand. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by the lapse in access to occupational therapy services provided pursuant to the updated service authorization and delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on August 4, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until December 2, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking. 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 1926, OCCUPATIONAL THERAPY SERVICES, of Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER SERVICESFOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and amended to read as follows:

1926 OCCUPATIONAL THERAPY SERVICES

1926.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 1926.9 ("Medicaid Providers") and occupational therapy professionals enumerated in § 1926.8 ("professionals") to provide occupational therapy services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

1926.2 Occupational therapy services are services that are designed to maximize independence, prevent further disability, and maintain health.

1926.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing, or allowing any professional to provide, occupational therapy services. In its request for prior authorization, the Medicaid provider shall document the following:

(a) The person's need for occupational therapy services as demonstrated by a physician's order; and

(b) The name of the professional who will provide the occupational therapy services.

1926.4 In order to be eligible for Medicaid reimbursement, each occupational therapy professional shall conduct a comprehensive assessment of occupational therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.

1926.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person's caregiver, and a schedule for ongoing services. The therapy plan shall include:

(a) The anticipated and measurable functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP;

(b) A schedule of approved occupational therapy services to be provided; and

(c) Shall be submitted by the Medicaid provider to DDS before services are delivered.

1926.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's Individual Support Plan (ISP) and Plan of Care:

(a) The date, amount, and duration of occupational therapy services provided;

(b) The scope of the occupational therapy services provided; and

(c) The name of the professional who provided the occupational therapy services.

1926.7 Medicaid reimbursable occupational therapy services shall consist of the following activities:

(a) Consulting with the person, their family, caregivers and support team to develop the therapy plan;

(b) Implementing therapies described under the therapy plan;

(c) Recording progress notes and quarterly reports during each visit. Progress notes shall contain the following:

(1) Progress in meeting each goal in the ISP;

(2) Any unusual health or behavioral events or changes in status;

(3) The start and end time of any services received by the person; and

(4) Any matter requiring follow-up on the part of the service provider or DDS;

(d) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality and functioning of adaptive equipment to ensure it addresses the person's needs;

(e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission;

(f) Participating in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her; and

(g) Conducting periodic examinations and modified treatments for the person, as needed.

1926.8 Medicaid reimbursable occupational therapy services shall be provided by a licensed occupational therapist.

1926.9 Occupational therapy service providers, without regard to their employer of record, shall be selected by and be acceptable to the person receiving services, their guardian, or legal representative.

1926.10 In order to be eligible for Medicaid reimbursement, an occupational therapist shall be employed by the following providers:

(a) An ID/DD Waiver provider enrolled by DDS; and

(b) A Home Health Agency as defined in Section 1999 of Title 29 DCMR.

1926.11 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1926.12 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

(a) The physician's order;

(b) A copy of the occupational therapy assessment and therapy plan in accordance with the requirements of Subsections 1926.4 and 1926.5; and

(c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 or Title 29 DCMR, that are applicable to this service.

1926.13 If the person enrolled in the ID/DD Waiver is between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the ID/DD Waiver service is neither replacing nor duplicating EPSDT services.

1926.14 Medicaid reimbursable occupational therapy services shall be limited to four (4) hours per day and one-hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional occupational therapy services and approved by a DDS staff member designated to provide clinical oversight.

1926.15 The Medicaid reimbursement rate for occupational therapy services shall be one hundred dollars ($100.00) per hour. The billable unit of service shall be fifteen (15) minutes.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900, Washington, D.C. 20001, by telephone on (202) 442-8742, by 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 emergency and proposed rules may be obtained from the above address.