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.)), 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 1925, entitled "Individualized Day Supports" 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 Register (DCMR).

These emergency and proposed rules establish standards governing reimbursement of individualized day supports 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 (5) year period beginning November 20, 2012. An amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Individualized day supports services provide crucial habilitation supports in the community to ensure that a person's community integration is increased and the particular skills necessary for independence and community involvement outside the home are developed and maintained in ways that enhance community integration outcomes. The current Notice of Final Rulemaking for 29 DCMR § 1925 (Individualized Day Supports) was published in the *D.C. Register* on March 7, 2014, at 61 DCR 001952. These rules amend the previously published final rules by: (1) clarifying the requirements for a person to participate in individualized day supports; (2) changing the requirements for what Medicaid reimbursable individualized day supports shall provide, including adding the provision of one nutritionally adequate meal per day for persons who live independently or with their families and select to receive this; (3) modifying the provider requirements; (4) adding documentation and reporting requirements, including detailed requirements for the initial community integration plan, ongoing community integration plan, and quarterly reports, as well as timeframes for reporting; (5) changing the requirements for a Direct Support Professional in individualized day supports; (6) requiring the development and review and revision, as needed, of a Positive Personal Profile and Job Search and Community Participation Plan; (7) adding minimum service authorization limits, and clarifying that the service may be authorized with other day or vocational supports, not to exceed a combined total of 40 services hours per week; (8) clarifying when transportation may be part of Medicaid

reimbursable individualized day supports; (9) describing limitations on individualized day supports; (10) clarifying that individualized day supports may commence at a facility-based day or vocational program, but that attendance at such program is not required; (11) allowing a DSP to be a relative of the person receiving services; (12) adding a 1:1 service ratio; and (13) reducing the rate for Individualized Day Supports small group service.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of individualized day supports services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by lack of access to individualized day supports services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on October 6, 2015, and became effective on that date. CMS has approved the corresponding amendment to the ID/DD Waiver with an effective date of September 24, 2015. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until February 2, 2016, 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*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 1925, INDIVIDUALIZED DAY SUPPORTS, is amended to read as follows:

1925 INDIVIDUALIZED DAY SUPPORTS

1925.1 This section establishes standards governing Medicaid eligibility for individualized day supports services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver), and shall establish conditions of participation for providers of individualized day supports services seeking Medicaid reimbursement.

1925.2 The following rules pertain only to Medicaid reimbursable individualized day supports services to be received by an individual enrolled in the ID/DD Waiver, hereinafter referred to as "person" or "persons".

1925.3 In order to receive Medicaid reimbursement for individualized day supports services, the person's Individual Support Plan (ISP) and Plan of Care, must document that the need for the service is consistent with the person's assessed needs and personally chosen goals including what is important to and for the person as documented in his or her Person-Centered Thinking and Discovery

Tools and recorded in the Individual Support Plan (ISP) and Plan of Care, and show at least one of the following:

(a) That the person chooses to participate in habilitation services in a variety of integrated and inclusive community-based settings which enable the person to attain or maintain his or her maximum functional level and gain greater independence;

(b) That the person is transitioning into retirement or is retired and chooses to continue habilitation services in a variety of integrated and inclusive community-based settings;

(c) That the person has person-centered ISP goals for community integration and participation including building, strengthening and maintaining relationships with persons not paid to be with the person or vocational exploration that may lead to further employment services and supports;

(d) That the person is likely to be successful in achieving one or more of his or her ISP goals through individualized day supports; or

(e) That the person has a documented need for individualized day supports due to medical or safety issues that are consistent with the Health Care Management Plan (HCMP) and Behavioral Support Plan.

1925.4 Medicaid reimbursable individualized day supports services shall:

(a) Be habilitative in nature;

(b) Be delivered in integrated, inclusive community settings; and

(c) Be provided in a group consisting of no more than two (2) persons.

1925.5 Medicaid reimbursable individualized day supports services shall provide:

(a) Highly individualized, pre-planned activities and opportunities that occur within integrated and inclusive community settings and that emphasize the development of skills to support community participation and involvement, self-determination, community membership, community contribution, retirement or vocational exploration, and life skills training;

(b) Activities that maximize the person's functional abilities for successful participation in integrated community activities and opportunities that match a person's interests and goals;

(c) Activities that support the person's informed choice in identifying his or her own areas of interest and preferences;

(d) Activities that provide community-based opportunities for personal and adult skill development through socialization, participation in membership-based community groups and associations, and forming and maintaining relationships with other community members;

(e) Training in the safe and effective use of one or more modes of accessible public transportation and/or coordination and provision of transportation by the individualized day supports provider to support participation in community activities consistent with the intent of this service; and

(f) For persons who live in their own home or with their family and who select this, IDS may include provision of one nutritionally adequate meal including preparation, packaging, and delivery, as needed. The provision of meals shall take place during typical lunchtime hours (11 am – 1 pm) prepared based on the person's specific needs as per the Level of Need Assessment (LON), and when necessary, the nutritionist/doctor's recommendation. This meal must be one-third (1/3) of a person's Recommended Dietary Allowance (RDA) and must be comprised of foods the person enjoys eating when not medically contraindicated.

1925.6 In order to be eligible for Medicaid reimbursement, each individualized day supports provider entity shall:

(a) Comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR;

(b) For current providers, provide verification of passing the Department on Disability Services (DDS) Provider Certification Review (PCR) for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing day, employment, residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia, if applicable;

(c) Provide oversight, supervision and training of all Direct Service Personnel (DSP) providing individualized day supports; and

(d) Maintain a staff-to-person ratio as indicated in the ISP and Plan of Care up to a maximum ratio of one to two (1:2), while always ensuring that services meet the person's needs and are provided appropriately and safely.

1925.7 Services shall only be authorized for Medicaid reimbursement if the following conditions are met:

(a) DDS provides a written service authorization before service delivery begins;

(b) The individualized day supports service name and enrolled provider are identified in the ISP, Plan of Care and Summary of Support Services;

(c) The amount and frequency of services to be received is documented in the ISP, Plan of Care and Summary of Support Services;

(d) Services shall not conflict with the service limitations described under Subsection 1925.12;

(e) The staffing plan and initial community integration plan described under Subsection 1925.10 are submitted within three (3) business days of the start of services using the template required by DDS;

(f) An on-going community integration plan, using the template required by DDS, and described under Subsection 1925.10 is submitted thirty (30) calendar days, plus seven (7) business days, from the start date of the individualized day supports service and then within seven (7) business days after the conclusion of each ISP quarter; and

(g) A quarterly report, using the template required by DDS, is submitted within seven (7) business days after the conclusion of the each ISP quarter.

1925.8 Each Direct Support Professional (DSP) providing individualized day supports shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR, and requirements in Subsection 1925.9 in order to be eligible for Medicaid reimbursement.

1925.9 In order to be eligible for Medicaid reimbursement each **DSP** providing individualized day supports services shall meet the following requirements:

(a) Have at least one year experience working with people with Intellectual and Developmental Disabilities;

(b) Meet additional training requirements for an Individualized Day Supports DSP, as required by DDS policy and procedure, within one year of the effective date of the waiver amendment;

(c) Assist with the development of the initial and on-going community integration plans to implement the individualized day supports services;

(d) Coordinate the scheduled activities specified under the initial and on-going community integration plans;

(e) Assist with the writing of quarterly reports; and

(f) Utilize positive behavioral support strategies and crisis interventions as described in the approved Behavioral Support Plan to address emergency situations; and

(g) Support persons enrolled in the Waiver to learn to use public transportation.

1925.10 Each provider approved to provide individualized day supports services shall, in order to be eligible for Medicaid reimbursement, maintain documents for monitoring and audit reviews as described under Section 1909 (Records and Confidentiality of Information) of Chapter 19, of Title 29 DCMR, and maintain the following additional records:

(a) A contingency plan that describes how the individualized day supports will be provided when the primary DSP is unavailable; and, if the lack of immediate support poses a serious threat to the person's health and welfare, how the support will be provided when back-up DSPs are also unavailable;

(b) An initial community integration plan, during the first thirty (30) days a person is receiving individualized day supports, utilizing the template required by DDS and containing the following information:

(1) The name of the person receiving the service;

(2) Service start date;

(3) The names of the primary and back-up DSPs that will be delivering the service during the first thirty (30) days of service;

(4) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;

(5) Goals in ISP that trigger authorization for individualized day supports;

(6) Schedule of service and calendar of activities for the first thirty (30) days;

(7) Back-up activities for the first thirty (30) days; and

(8) Goals to be achieved in the first thirty (30) days of service and methods that will be used to achieve the goals.

(c) After a person has received individualized day supports for thirty (30) calendar days, an on-going community integration plan utilizing the template required by DDS and containing the following information:

(1) The name of the person receiving the services;

(2) The names of the primary and back-up DSPs delivering services;

(3) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;

(4) Goals for the service falling under any of the following categories: Community Membership; Relationships & Natural Supports; Career Exploration & Employment; Retirement (for individuals 61 or older); Community Contribution; Self-Determination; Community Navigation; Wellness/Fitness, or others as listed in the community integration plan template;

(5) The highly individualized, integrated community activity/activities or opportunity/opportunities that will support achievement of the goals;

(6) Specific skills the person will be assisted to learn that can help with achievement of his/her goals and help the person participate successfully, and as independently as possible, in the Activities/Opportunities;

(7) Measureable outcomes promoting community integration which are expected and will indicate the goals have been achieved;

(8) Calendar of activities for the quarter and back-up activities for the quarter; and

(9) Teaching objectives, strategies and measurable outcomes for skill development goals;

(d) Within seven (7) business days of the conclusion of each ISP quarter, submit to the DDS service coordinator a quarterly report, utilizing the template required by DDS and containing the following information:

(1) Description of person's attendance and participation;

(2) Description of person's relationship with the assigned DSPs;

(3) Description of the person's relationships with others paired with the person to receive the service, if applicable;

(4) Description of how the activities and opportunities offered through individualized day supports contributed to the achievement of the person's service goals;

(5) Description of skill development gains and next steps to continue progress on skill development; and

(6) Description of career and vocational exploration activities and outcomes for working-age participants in individualized day supports.

(e) A Positive Personal Profile and Job Search and Community Participation Plan shall be developed annually and reviewed at least quarterly, and that is updated as needed, based upon what is being learned about the person's needs and interests by the individualized day supports provider. Positive Personal Profile and Job Search and Community Participation Plan shall be used to inform, and attached to, the initial and on-going community integration plans.

1925.11 In order to be eligible for Medicaid reimbursement, each Provider approved to provide individualized day supports services shall comply with Section 1908 (Reporting Requirements); Section 1909 (Records and Confidentiality of Information), except that quarterly reports shall meet the requirements within Subsection 1925.10, above; and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1925.12 Medicaid shall only reimburse individualized day supports services for a minimum of two (2) and a maximum of six (6) hours per day; and a minimum of four (4) and a maximum of thirty (30) hours per week. This service may be offered in combination with Day Habilitation, Employment Readiness, Supported Employment services as a wraparound service in combination with any of the aforementioned services. When two or more of these services are offered, a person may not receive more than a combined total of forty (40) hours per week of services.

1925.13 Individualized day supports are an alternative to facility-based day programs and shall take place during regular Monday to Friday day program hours; except that individualized day supports may occur during non-traditional hours for persons who are employed during the day and would benefit from the service. Additional variances may be approved by the DDS Director, or his or her designee, based upon the person's assessed needs, schedule of other activities, and recommendations of the person's support team.

1925.14 Time spent in transportation to and from individualized day supports shall not be included in the total amount of services provided per day. However, individualized day supports may include the time a DSP spends accompanying

the person on public transportation (excluding Medicaid funded non-emergency transportation) for the purposes of training the person to travel independently using public transportation. Individualized day supports and Medicaid funded non-emergency transportation may not be billed during the same period of time. Medicaid funded non-emergency transportation may not be used during the provision of individualized day supports. Medicaid funded non-emergency transportation may be used to transport the person to and from individualized day supports; however, it should not preclude opportunities for the person to learn to use public transportation as part of participation in individualized day supports.

1925.15 Personal care/assistance may be a component of individualized day supports as necessary to meet the needs of a person but may not comprise the entirety of the service.

1925.16 This service shall not provide reimbursement to Senior Centers funded by the federal Older Americans Act authorized to provide services to older adults.

1925.17 The Individualized Day Program does not include activities that are the responsibility of the Supported Living, Residential Supports, Host Home or In-Home Supports provider, such as cooking or laundry activities.

1925.18 A person receiving individualized day supports may meet his or her DSP at a facility-based day habilitation or employment readiness setting, but only if this is necessary and appropriate for the person receiving the services. Individualized day services shall not occur in a facility-based setting. On site attendance at the facility-based day habilitation or employment readiness program is not a requirement to receive services that originate from that setting.

1925.19 A DSP may be the person's relative, but may not be legally responsible for the person, or the person's legal guardian.

1925.20 A DSP shall not perform individualized day support services with a person if he or she also provides the same person with the following ID/DD Waiver services:

(a) Residential Habilitation;

(b) Supported Living;

(d) Host Home; or

(e) In-Home Supports.

1925.21 Each provider of Medicaid reimbursable individualized day supports services shall comply with the requirements under Section 1937 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR.

1925. 22 Individualized day supports may be authorized as either a one-to-one service for a person, or in in small group settings not to exceed 1:2 based upon the person's assessed needs; and for limited times, as approved by DDS, based on the ability to match the participant with an appropriate peer to participate with for small group IDS.

1925.23 Individualized day supports shall be billed at the unit rate established for the staffing ratio noted in the service authorization. The reimbursement rate for 1:1 staffing ratio shall be nine dollars and forty cents ($9.40) per billable unit or thirty-seven dollars and sixty cents per hour ($37.60). The reimbursement rate for 1:2 staffing ratio shall be five dollars and thirty-one cents ($5.31) per billable unit or twenty-one dollars and twenty-four cents ($21.24) per hour. For persons who live independently or with family and select to receive a meal, the rate is increased by seven dollars and thirty cents ($7.30) per day that the person receives a meal. This service shall not exceed one thousand, five hundred and sixty (1,560) hours per year or ix thousand two hundred and forty (6,240) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of services to bill for one (1) unit of service.

1925.24 The individualized day supports rate includes funding for transportation and activities for the person and the DSP. When the person and/or his support team identifies activities with costs that would create a hardship for the individualized day supports provider, and the person has the ability to pay, the provider may submit a written request for approval from the DDS Director, or his or her designee, to have the person contribute to the cost of the individualized day supports activities.

1925.25 Persons receiving individualized day supports services may receive two (2) or more types of non-residential habilitation services, (*e.g.,* Supported Employment, Small Group Supported Employment, Employment Readiness, Companion, and/or Day Habilitation); however, more than one (1) service may not be billed during the same period of time (*e.g.,* the same fifteen (15) minute unit).

Section 1999, DEFINITIONS, is amended by adding the following:

Community participation plan – A plan to achieve specific individualized goals for community integration, including vocational exploration or retirement, and to build skills that support the individualized goals for community integration, through a pre-planned schedule of structured community-based activities and practical community-based opportunities that best meet the person's interests, goals for community involvement, support needs and learning styles. Community integration plans can be Initial, for the first thirty (30) days of services, or ongoing, thereafter.

Comments on these 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 South, 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.