

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 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 of amendments to Section 1928, entitled “Physical 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 final rules establish standards governing reimbursement for physical 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. Physical therapy services treat physical dysfunctions or reduce the degree of pain associated with movement to prevent disability, promote mobility, maintain health and maximize independence.

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 Fiscal Year 2015 Budget Support Act of 2015, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2016 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The rules for Physical Therapy Services (29 DCMR § 1928), have undergone three sets of emergency and proposed rulemakings since August 2015. The Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on August 14, 2015, at 62 DCR 011308, amended the rules by (1) including in the description of physical therapy services that they prevent regression of a person’s functional abilities; (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) modifying rates to reflect increased costs of providing service; and (9) adding physical therapy assistants who work under the direct supervision of a licensed physical therapist to the list of providers for physical therapy services.

DHCF received one comment in response to the first emergency and proposed rules and promulgated the Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on January 1, 2016, at 63 DCR 000106, and further amended the rules to include physician's assistants and nurse practitioners as authorized medical providers to make referrals to physical therapists and to renumber the last six provisions to correct a numbering error.

DHCF did not receive comments to the second emergency and proposed rulemaking but promulgated the Notice of Third Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on April 15, 2016, at 63 DCR 005801, to continue the changes reflected in the first two notices of emergency and proposed rulemaking described above and to increase the reimbursement rate in Subsection 1928.17 to correspond with Waiver Year 4 rates. The third emergency rulemaking was adopted on April 5, 2016, became effective immediately, and shall remain in effect until August 3, 2016, or until superseded by publication of this Notice of Final Rulemaking in the *D.C. Register*. DHCF received no comments to the third emergency and proposed rulemaking and no changes have been made.

The Director of DHCF adopted these rules as final on July 7, 2016, and they shall become effective on 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 1928, PHYSICAL THERAPY SERVICES, is deleted in its entirety and amended to read as follows:

1928 PHYSICAL THERAPY SERVICES

- 1928.1 This section establishes the conditions for Medicaid providers enumerated in § 1928.10 ("Medicaid Providers") and physical therapy services professionals enumerated in § 1928.8 ("professionals") to provide physical therapy services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1928.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability and regression of functional abilities, promote mobility, maintain health and maximize independence. These services are delivered in the person's home or day service setting.
- 1928.3 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 physical therapy services. In its

request for prior authorization, the Medicaid provider shall document the following:

- (a) The ID/DD Waiver participant’s need for physical therapy services as demonstrated by a physician’s, physician’s assistant’s, or nurse practitioner’s order; and
- (b) The name of the professional who will provide the physical therapy services.

1928.4 In order to be eligible for Medicaid reimbursement, each physical therapy professional shall conduct an assessment of physical therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.

1928.5 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 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 and a schedule of approved physical therapy services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.

1928.6 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 physical therapy services provided;
- (b) The scope of the physical therapy services provided; and
- (c) The name of the professional who provided the physical therapy services.

1928.7 Medicaid reimbursable physical therapy services shall consist of the following activities:

- (a) Consulting with the person, his or her family, caregivers, and support team to develop the therapy plan;
- (b) Implementing therapies described under the therapy plan;
- (c) Recording progress notes on each visit and submitting quarterly reports. Progress notes shall contain the following:
 - (1) Progress in meeting each goal in the ISP;
 - (2) Any unusual health or behavioral events or change 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 assess (at least annually and more frequently as needed) the appropriateness and quality 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; and
 - (f) Conducting periodic examinations and modified treatments for the person, as needed.
- 1928.8 Medicaid reimbursable physical therapy services shall be provided by a licensed physical therapist or a Physical Therapy Assistant working under the direct supervision of a licensed physical therapist.
- 1928.9 Physical therapy service providers, without regard to their employer of record, shall be selected by and be acceptable to the person receiving services, his or her guardian, or legal representative.
- 1928.10 In order to be eligible for Medicaid reimbursement, a physical 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.
- 1928.11 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1928.12 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:
- (a) The physician's, physician's assistant's, or nurse practitioner's order;
 - (b) A copy of the physical therapy assessment and therapy plan in accordance with the requirements of Subsections 1928.4 and 1928.5; and
 - (c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

- 1928.13 Each Medicaid provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1928.14 In order to be eligible for Medicaid reimbursement, each individual providing physical therapy services shall participate 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.
- 1928.15 If the person enrolled in the ID/DD Waiver is between the ages of eighteen (18) and twenty-one (21) years, 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.
- 1928.16 Medicaid reimbursable physical 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 physical therapy services and approved by a DDS staff member designated to provide clinical oversight.
- 1928.17 The Medicaid reimbursement rate for physical therapy services shall be one hundred dollars and thirty-two cents (\$100.32) per hour. The billable unit of service shall be fifteen (15) minutes.