

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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. 744; 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 1932, entitled “Speech, Hearing, and Language 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 and proposed rules establish standards governing reimbursement of speech, hearing, and language 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, effective February 29, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Speech, hearing, and language services are aimed at helping persons with intellectual and developmental disabilities enhance their communication and hearing skills. The current Notice of Final Rulemaking for 29 DCMR § 1932 (Speech, Hearing and Language Services) was published in the *D.C. Register* on January 10, 2014, at 61 DCR 000230. A Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on November 27, 2015, at 62 DCR 015425, was adopted and became effective on November 16, 2015, and remains in effect until March 15, 2016, or adoption of this second emergency and proposed rulemaking, whichever occurs first. The first emergency and proposed rules amended the previously published rules at Subsections 1932.3, 1932.5, 1932.17 and 1932.18 by: (1) clarifying that speech, hearing and language services may only be provided to waiver recipients between the ages of eighteen (18) and twenty-one (21) if Early Periodic Screening and Diagnostic Treatment (EPSDT) has been fully utilized and the person has a need for further services; (2) describing the requirements for measureable and functional outcomes; (3) clarifying the role of the provider at the person’s Individual Support Plan (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) adding a timeframe for the initial assessment development of a therapy plan; and (6) modifying rates to reflect increased costs of providing service. DHCF received no public comments on the first emergency and proposed

rulemaking, but is promulgating this Notice of Second Emergency and Proposed Rulemaking to continue the substantive changes reflected in the first emergency and proposed rules as described above, and to further amend the rules by including rates that align with Waiver Year 4 in Subsections 1932.17 and 1932.18.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of speech, hearing and language services. The rates must be increased to attract new providers, correspond with Waiver Year 4, and meet the demand for services. By taking emergency action, this rule 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 March 9, 2016, and became effective on that date. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days or until July 7, 2016, 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*.

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

Subsections 1932.3, 1932.5, 1932.17 and 1932.18 of Section 1932, SPEECH, HEARING, AND LANGUAGE SERVICES, are amended to read as follows:

- 1932.3 To qualify for Medicaid reimbursement, speech, hearing, and language services shall be:
- (a) Ordered by a physician, if the person has a medically-related condition such as a history of aspiration, swallowing problems, tube feeding, or a tracheotomy;
 - (b) Recommended by the Support Team, if the person has a non-medical condition such as a receptive or expressive speech delay or disorder;
 - (c) Delivered to a person that is over the age of twenty-one (21), except that services may also be provided to a person enrolled in the Waiver who is between the ages of eighteen (18) and twenty-one (21) years old, in accordance with § 1932.15;
 - (d) Reasonable and necessary to treat the person's medical or non-medical communicative disorder; and
 - (e) Included in the person's Individual Support Plan (ISP) and Plan of Care.

1932.5 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing and language services shall comply with the following service delivery requirements:

- (a) Conduct a comprehensive assessment, within the first four (4) hours of service delivery, which shall include the following:
 - (1) A background review and current functional review of communication capabilities in different environments;
 - (2) An environmental review of communication in places of employment, residence, and other sites as necessary;
 - (3) The potential for use of augmentative and alternative speech devices, methods, or strategies;
 - (4) The potential for sign language or other expressive communication methods; and
 - (5) A needs assessment for the use of adaptive eating equipment.
- (b) Develop and implement a speech, hearing, and language treatment plan, within the first four (4) hours of service delivery, that describes treatment strategies, including direct therapy, training of caregivers, monitoring requirements and instructions, and 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;
- (c) Assist persons with voice disorders to develop proper control of vocal and respiratory systems for correct voice production, if applicable;
- (d) Conduct aural rehabilitation by teaching sign language and lip reading to people who have hearing loss, if applicable;
- (e) 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;
- (f) Record progress notes on each visit and submit quarterly reports;
- (g) Verify that the speech, hearing, and language assessment and treatment plan, and daily notes and quarterly reports, are delivered to the person, family or other caregiver, physician, and the Department on Disability

Services (DDS) Service Coordinator prior to the person's Support Team meeting;

- (h) Assess the need for the use of adaptive equipment;
- (i) 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;
- (j) Conduct periodic examinations to modify treatments, as appropriate, for the person receiving services and ensure that the speech pathologist's or audiologist's recommendations are incorporated into the ISP; when necessary; and
- (k) Complete documentation required to obtain or repair adaptive equipment in accordance with insurance requirements and Medicare and Medicaid guidelines, including required timelines for submission.

1932.17 The reimbursement rate for a speech, hearing and language assessment shall be one hundred dollars and thirty-two cents (\$100.32) an hour. The billable unit of service shall be fifteen (15) minutes and the reimbursement rate for each billable unit shall be twenty-five dollars and eight cents (\$25.08). A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

1932.18 The reimbursement rate for speech, hearing and language services shall be one hundred dollars and thirty-two cents (\$100.32) per hour. The billable unit of service for speech, hearing and language therapy services shall be fifteen (15) minutes and the reimbursement rate for each billable unit shall be twenty-five dollars and eight cents (\$25.08). A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

Comments on these second emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, 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 these second emergency and proposed rules may be obtained from the above address.