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 an amendment to Section 1920, entitled "Day Habilitation Services," of Chapter 19 (Home and Community-Based Services Waiver 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 one-to-one services and day habilitation small group 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 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.

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. The Notice of Final Rulemaking for 29 DCMR § 1920 (Day Habilitation Services) was published in the *D.C. Register* on November 8, 2013, at 60 DCR 015530. These rules amend the previously published final rules by: (1) clarifying the purpose of day habilitation services; (2) adding a nursing component to the service definition for the purpose of medication administration, and staff training and monitoring of waiver participants' Health Care Management Plans; (3) modifying the rate to reflect the approved methodology in accordance with the ID/DD Waiver; (4) adding small group day habilitation for people with higher intensity needs and describing the conditions in which services may be delivered; (5) specifying that the required staff to person ratio for small group day habilitation is 1:3; (6) introducing a small group day habilitation rate for the staffing ratio of 1:3; (7) adding the provision of one nutritionally adequate meal per day for people who live independently or with their families and who select to receive a meal; (8) adding to the list of activities that day habilitation shall consist of, including requiring activities to support community integration and

inclusion; (9) requiring the development of a Positive Personal Profile, Job Search and Community Participation Plan; (10) requiring an individualized daily schedule; (11) requiring that, if day habilitation is provided in a facility, it must provide opportunities for community engagement, inclusion and integration; (12) requiring that all day habilitation providers comply with Section 1938 of Chapter 19 of Title 29 of the DCMR; (13) requiring that quarterly reports include a description of the person's activities in the community that support community integration and inclusion; and (14) bar the payment of stipends by the day habilitation provider to a waiver beneficiary.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on October 14, 2015 and became effective for services rendered on or after October 14, 2015. CSM has approved the corresponding amendments to the ID/DD Waiver with an effective date of September 24, 2015. The emergency rules shall remain in effect for one hundred and twenty (120) days from the adoption date or until February 11, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules 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 on 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 1920, DAY HABILITATION SERVICES, is amended 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 Individuals 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 meaningful adult activities and skills acquisition to: support or further community integration, inclusion, and exploration, improve communication skills; improve or maintain physical, occupational and/or speech and language functional skills; foster independence, self-determination and self-advocacy and autonomy; support people to build and maintain relationships; facilitate the exploration of employment and/or integrated retirement opportunities; help a person achieve valued social roles; and to foster

and encourage people on their pathway to community integration, employment and the 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 Day habilitation services may also be delivered in small group settings at a ratio of one-to-three for people with higher intensity support needs. Small group day habilitation settings must include integrated skills building in the community and support access to the greater community. It cannot be:

(a) Provided in the same building as a large day habilitation facility setting; or

(b) Delivered in groups larger than fifteen (15) people.

1920.5 To be eligible for day habilitation services:

(a) The service shall be requested by the person and 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.

1920.6 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.

1920.7 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 health, safety, or well-being of 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, and have a physician's order for one-to-one staffing support.

1920.8 Day habilitation one-to-one services shall be authorized and approved in accordance with DDS/DDA policies and procedures available at http://dds.dc.gov/page/policies-and-procedures-dda.

1920.9 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 must 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.

1920.10 Day habilitation services shall consist of the following activities that are based on what is important to and for the person as documented in his or her Individualized Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools:

(a) Training and skills development that increase participation in community activities, enhance community inclusion, and foster greater independence, self-determination and self-advocacy;

(b) A diversity of 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, community explorations, and activities that support the person to build and maintain relationships;

(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;

(f) Activities to support community integration and inclusion. These must occur in the community in groups not to exceed four (4) participants and must be based on people's interests and preferences as reflected in their Individualized Support Plan and Person-Centered Thinking and Discovery tools; and

(g) Individualized or group services that enable the person to attain his/her maximum functional level based on the ISP and Plan of Care.

1920.11 Day habilitation services shall include a nursing component for the purposes of:

(a) Medication administration;

(b) Staff training in components of the Health Care Management Plan (regardless of the author of the plan); and

(c) Oversight of Health Care Management Plans (regardless of the author of the plan).

1920.12 Day habilitation services shall include a nutritionally adequate meal for participants who live independently or in the family home and who select to receive a meal. The meal shall be provided during lunch hours, meet one-third of a person's daily Recommended Dietary Allowance, be based on the person's preferences, and not be medically contraindicated.

1920.13 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. In order to develop this plan, the provider must first develop a Positive Personal Profile (PPP) and Job Search and Community Participation Plan; the initial PPP and Job Search and Community Participation Plan shall be developed within thirty (30) days of the initiation of services and shall be updated at least annually. Activities set forth in the day habilitation 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, including assessments such as a vocational assessment, 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, Person-Centered Thinking and Discovery tools, and other information available to identify what is important to and for the person and 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 or 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.

1920.14 Each provider of Medicaid reimbursable day habilitation services shall develop, with the person, an individualized schedule of daily activities based upon the person's goals and activities as identified in his or her ISP, and consistent with what is in his or her Person-Centered Thinking and Discovery tools, of meaningful adult activities that support the person on his or her pathway to employment and community integration and inclusion.

1920.15 Day habilitation providers may not pay a stipend to a person for attendance or participation in activities at the day habilitation program.

1920.16 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.

1920.17 In addition to the requirements at Section 1920.16, providers of small group day habilitation shall provide documentation that the program manager of the HCBS Waiver provider agency has at least three (3) years of experience working with people with intellectual and developmental disabilities who have complex medical and/or behavioral needs.

1920.18 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.

1920.19 To receive Medicaid reimbursement, day habilitation services shall be provided in the community or in a facility-based setting that provides opportunities for community engagement, inclusion and integration.

1920.20 Each provider of Medicaid reimbursable day habilitation services shall comply with the requirements under Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 of the DCMR.

1920.21 All day habilitation services shall be authorized in accordance with the following requirements:

(a) The Department on Disability Services (DDS) 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 health care management plan and behavioral support plan, as applicable;

(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 or the physician's order for one-to-one staffing support for persons receiving day habilitation one-to-one services; and

(g) When required by a person's BSP, accurate completion by the DSP of the behavioral data sheets for persons receiving day habilitation one-to-one services.

1920.22 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. Additionally, quarterly reports shall include a description of the person's activities in the community that support community integration and inclusion.

1920.23 Each provider shall comply with the requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1920.24 The reimbursement rate for day habilitation services shall be twenty-one dollars and seventy-two cents ($21.72) 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 five dollars and forty-three cents ($5.43) per billable unit.

1920.25 The reimbursement rate for day habilitation one-to-one services shall be forty-one dollars and twelve cents ($41.12). 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 ten dollars and twenty-eight cents ($10.28) per billable unit.

1920.26 The reimbursement rate for small group day habilitation services shall be thirty-two dollars and eighty cents ($32.80). The billable unit of service for small group day habilitation 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 small group day habilitation services shall be eight and twenty cents ($8.20) per billable unit.

1920.27 For people who live independently or with family and select to receive a meal, the rate is increased by $7.30 per day that the person receives a meal, and an additional $5.00 per day that the person receives a meal, if that meal is delivered by a third-party vendor.

1920.28 Day habilitation services, small group day habilitation, 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.

1920.29 Day habilitation services shall not be provided concurrently with Supported Employment or Employment Readiness services.

1920.30 No payment shall be made for care and supervision normally provided by the family or natural caregivers, residential provider, or employer.

1920.31 Provisions shall be made by the day habilitation provider for persons who arrive early and depart late.

1920.32 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 or 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.

Small Group Day Habilitation – Day habilitation services delivered in small group settings at a ratio of one-to-three for people with higher intensity support needs in a setting not to exceed fifteen (15) people.

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.

Stipend – Nominal fee paid to a person for attendance and/ or participation in activities designed to achieve his or her goals, as identified in the person's ISP.

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 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.