

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. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2020 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) (2018 Repl.)), hereby gives notice of the adoption of, on an emergency basis, and the intent to adopt, on a permanent basis, amendments to Sections 1915-1916, 1920, 1922, 1929-1931, 1934, 1936, 1939, and 1941 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).

The Department on Disability Services (DDS), Developmental Disabilities Administration, operates the Medicaid Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities (IDD Waiver) under the supervision of the Department of Health Care Finance (DHCF). The IDD 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, 2017.

These emergency and proposed rules are necessary to align requirements in regulation with those changes being proposed to the corresponding IDD Waiver Amendment. The amendment for the IDD Waiver contains three (3) types of changes to be effective in IDD Waiver Year 3, or upon approval by CMS, as follows: (1) changes to the amount, duration and scope of several services; (2) systemic changes that relate to systems improvements, including the new DDS Developmental Disabilities Administration (DDA) Formal Complaint System; and (3) reimbursement rate changes to comply with the District Universal Paid Leave Act and the Living Wage Act.

This emergency and proposed rulemaking makes amendments to eleven (11) IDD Waiver services as follows:

- (1) Host Home without Transportation Services, 29 DCMR § 1915.3, is amended to limit this service to people who have limited informal supports and would benefit from a family environment;
- (2) In-Home Supports Services, 29 DCMR § 1916.9, is amended to remove the reference to HCBS Setting Requirements, 29 DCMR 1938, because there is no reference to in-home supports services in the HCBS Setting Requirements rule;
- (3) Day Habilitation Services, 29 DCMR §§ 1920.19 and 1920.28, are amended to clarify in § 1920.19 that there will be no increase in the number of facility-based settings authorized for current providers, and no increase in the number of facility-based settings authorized for new providers with the exception of small group day

habilitation; and in § 1920.28 to make the duration for services consistent with §§ 1920.35 and 1920.36;

- (4) Employment Readiness Services, 29 DCMR § 1922.15, is amended to clarify that there will be no increase in the number of facility-based settings authorized for current or new providers;
- (5) Residential Habilitation Services, 29 DCMR § 1929, is amended to add a new § 1929.29 to state that there will be no new certified residential habilitation settings authorized either in the District of Columbia or out-of-state unless determined essential, in writing, by the DDS Deputy Director for DDA;
- (6) Respite Services, 29 DCMR §§ 1930.5, 1930.6, and 1930.13, are amended, respectively, to state that respite services cannot be offered in residential habilitation settings if that would cause the setting to be greater than four (4) people in the home or in an intermediate care facility;
- (7) Skilled Nursing Services, 29 DCMR § 1931, is amended to align with the Medicaid State Plan requirements by adding DHCF's Prior Authorization Form – 719A as an acceptable physician's order form;
- (8) Supported Living Services, 29 DCMR § 1934.9, which was "reserved," is amended to clarify that there will be no additional supported living residences approved unless determined essential, in writing, by the DDS Deputy Director for DDA;
- (9) Wellness Services, 29 DCMR §§ 1936.11, 1936.19 and 1936.21, are amended to provide the appropriate reference to an "initial assessment" in §§ 1936.11(a) and 1936.19(b) and to promote the use of natural supports and ensure appropriate service utilization/delivery by changing the amount and duration of these services in § 1936.21;
- (10) Companion Services, 29 DCMR § 1939, is amended to add a new § 1939.7(d) to clarify that the service shall not be provided to a person who requires a twenty-four (24) hour medical one-to-one for supervision at home or in the community; and
- (11) Assistive Technology Services, 29 DCMR § 1941, is amended to add a new § 1941.7(c) to expand provider qualifications to include all residential providers to automatically be enrolled as Assistive Technology Services providers.

To facilitate stakeholder input, copies of this Notice of Emergency and Proposed Rulemaking and a redlined version of these regulatory changes are available on the DDS website at: <https://dds.dc.gov/idd-waiver-amendment>.

The IDD Waiver serves some of the District's most vulnerable residents. In order to prevent impediments that adversely affect access to quality Medicaid services delivered by eligible Medicaid providers, DHCF is taking emergency action for the immediate preservation of the

health, safety and welfare of persons receiving these services. These rules must be in place upon the effective date of the amendment.

The emergency rulemaking was adopted on November 24, 2020 and will become effective on the date approved by CMS following its review of the proposed IDD Waiver amendment or November 1, 2020, whichever is later. The emergency rules shall remain in effect for no longer than one hundred and twenty (120) days from the adoption date or until March 24, 2021, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. 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 DISABILITY, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsection 1915.3 of Section 1915, HOST HOME WITHOUT TRANSPORTATION SERVICES, is amended to read as follows:

- 1915.3 To be eligible for Medicaid reimbursement of host home without transportation services, each person shall have limited informal supports, benefit from living in a family environment, and demonstrate a need for support for up to twenty-four (24) hours per day, and the services shall be:
- (a) Provided in a private home, referred to as “host home,” which may be leased or owned by the principal care provider, who lives in the home; and
 - (b) Identified as a need in the person’s Individual Support Plan (ISP) and Plan of Care.

Subsection 1916.9 of Section 1916, IN-HOME SUPPORTS SERVICES, is amended to read as follows:

- 1916.9 Each provider shall comply with the requirements under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR, Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR, except that the progress notes as described in Subsection 1909.2(m) shall be maintained on a per visit basis.

Subsections 1920.19 and 1920.28 of Section 1920, DAY HABILITATION SERVICES, are amended to read as follows:

- 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. There shall be no increase in the number of facility-based settings authorized for current providers. No facility-

based settings will be authorized for newly enrolling providers, with the exception of small group day habilitation.

1920.28 Small group day habilitation services shall be provided for a maximum of eight (8) hours a day, not to exceed forty (40) hours per week and two thousand eighty (2,080) hours annually.

Subsection 1922.15 of Section 1922, EMPLOYMENT READINESS SERVICES, is amended to read as follows:

1922.15 When employment readiness services are provided in a facility, each facility shall comply with all applicable federal, District, or state and local laws and regulations in order to receive Medicaid reimbursement. Effective November 1, 2020, no increase in the number of facility-based settings shall be authorized. Current providers shall be prohibited from increasing the number of facility-based settings at which services are provided; and newly enrolling providers shall be prohibited from providing services at any facility-based settings.

A new Subsection 1929.29 of Section 1929, RESIDENTIAL HABILITATION SERVICES, is added to read as follows:

1929.29 Effective November 1, 2020, no new residential habilitation settings shall be authorized unless determined essential, in writing, by the Department on Disability Services (DDS) Deputy Director for Developmental Disabilities Administration (DDA).

Subsections 1930.5, 1930.6, and 1930.13 of Section 1931, RESPITE SERVICES, are amended to read as follows:

1930.5 Medicaid reimbursable daily respite services shall be provided in:

- (a) A Group Home for a Person with an Intellectual Disability (GHPID) meeting the requirements set forth in Chapter 35 of Title 22 of the DCMR and certified as an ICF/IID in accordance with the federal conditions of participation;
- (b) A DDS certified Residential Habilitation Services facility unless the respite placement will cause the setting to have greater than four (4) people in the home; or
- (c) A DDS certified Supported Living Residence operated by a provider who has an approved human care agreement with DDS that stipulates the conditions for accepting respite placements.

1930.6 Medicaid reimbursable hourly respite services shall be provided:

- (a) By a home care agency licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*) in accordance with the requirements of Chapter 39 of Title 22-B of the DCMR; and
- (b) In a person's home or another residential setting that would meet the requirements of certifications issued by DDS.

1930.13 Medicaid reimbursement is not available for respite services provided to persons receiving Supported Living, Host Home, or Residential Habilitation Services, or persons residing in an ICF/IID.

Subsection 1931.5 of Section 1931, SKILLED NURSING SERVICES, is amended to read as follows:

1931.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:

- (a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person's medical history and the duties that the skilled nurse would perform and a skilled nurse checklist. A Prior Authorization Form – 719A from the Department of Health Care Finance will suffice as the physician's order in accordance with the requirements set forth in this section; and
- (b) Be authorized in accordance with each person's ISP and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.

Subsection 1934.9 of Section 1934, SUPPORTED LIVING SERVICES, is amended to read as follows:

1934.9 Effective November 1, 2020, there shall be no additional supported living residences (SLRs) approved unless determined essential, in writing, by the DDS Deputy Director for the DDA.

Subsections 1936.11, 1936.19, 1936.21 of Section 1936, WELLNESS SERVICES, is amended to read as follows:

1936.11 In order to be eligible for Medicaid reimbursement, each professional providing wellness services shall:

- (a) Conduct an initial assessment within the first four (4) hours of service delivery with long term and short term goals;

- (b) Develop and implement a person-centered plan consistent with the person's choices, goals and prioritized needs that describes wellness strategies 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. The plan shall include treatment strategies including direct therapy, caregiver training, monitoring requirements and instructions, and specific outcomes;
- (c) Deliver the completed plan to the person, family, guardian, residential provider, or other caregiver, and the DDS Service Coordinator prior to the Support Team meeting;
- (d) Participate in the ISP and Support Team meetings, when invited by the person, to provide consultative services and recommendations specific to the wellness professional's area of expertise with the focus on how the person is doing in achieving the functional goals that are important to him or her;
- (e) Provide necessary information to the person, family, guardian, residential provider, or other caregivers and assist in planning and implementing the approved ISP and Plan of Care;
- (f) Record progress notes on each visit which contain the following:
 - (1) The person's 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.
- (g) Submit quarterly reports in accordance with the requirements in Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR; and
- (h) Conduct periodic examinations and modify treatments for the person receiving services, as necessary.

1936.19

In order to be eligible for Medicaid reimbursement, services shall be authorized in accordance with the following requirements:

- (a) DDS shall provide a written service authorization before the commencement of services;

- (b) The provider shall conduct an initial assessment and develop a person-centered plan within the first four (4) hours of service delivery which:
 - (1) Describes wellness strategies 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
 - (2) Includes training goals and techniques in the ISP that will assist the caregivers;
- (c) The service name and provider entity delivering services shall be identified in the ISP and Plan of Care; and
- (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received.

1936.21 Wellness services shall be limited as follows:

- (a) Massage Therapy shall be limited to fifty-two (52) hours per ISP year. Additional hours up to one hundred (100) hours per year may be authorized before the expiration of the ISP year with approval by DDS Deputy Director for DDA based upon assessed medical or clinical need;
- (b) Sexuality Education shall be limited to fifty-two (52) hours per ISP year. Additional hours up to one hundred (100) hours per year may be authorized before the expiration of the ISP year with approval by DDS Deputy Director for DDA based upon assessed medical or clinical need;
- (c) Fitness Training and Small Group Fitness Training shall be limited to fifty-two (52) hours per ISP year for people receiving host home, supported living, residential habilitation or in-home supports services, or who otherwise have natural supports available that can assist the person practice the fitness skills they need to achieve their fitness goals. Additional hours up to one hundred four (104) hours per year may be authorized before the expiration of the ISP year, and when the person's health and safety are at risk, for people who in live in natural homes without in-home supports services and do not have such natural supports available that can assist the person practice the fitness skills they need to achieve their fitness goals. Requests for additional hours may be approved when accompanied by a physician's order or if the request passes a clinical review by staff designated by DDS;
- (d) Nutrition Counseling shall be limited to twenty-six (26) hours per ISP year and to people who have natural or paid supports to help them implement the learning and nutrition goals outside of the time with the dietician or nutritionist. Additional hours up to one hundred four (104) may be

authorized before the expiration of the ISP year with approval by DDS Deputy Director for DDA based upon assessed medical or clinical need; and

- (e) Bereavement Counseling shall be limited to one hundred (100) hours per ISP year. Additional hours may be authorized before the expiration of the ISP year and when the person's health and safety are at risk and the person is demonstrating progress towards achieving established outcome and/or maintenance of goals.

Subsection 1939.7 of Section 1939, COMPANION SERVICES is amended to read as follows:

1939.7 To be eligible for Medicaid reimbursement, companion services shall not:

- (a) Exceed eight (8) hours per twenty-four (24) hour day;
- (b) Exceed forty (40) hours per week when used with Residential Habilitation, 24-Hour Supported Living, and 24-Hour Supported Living with Transportation Services, or when used in combination with Personal Care Services or any other Waiver day or vocational support services, including but not limited to Day Habilitation, Employment Readiness, Supported Employment, Small Group Supported Employment, or Individualized Day Supports as part of a person's traditional Monday to Friday day/vocational programming time;
- (c) Include the provider/employee's transportation time to or from the person's home, or the provider/employee's break time; and
- (d) Be provided to a person who requires 24-hour medical one-to-one supports at home or in the community.

Subsection 1941.7 of Section 1941, ASSISTIVE TECHNOLOGY SERVICES, is amended to read as follows:

1941.7 Assistive technology services may be provided by the following agency provider types:

- (a) An Assistive Technology Professional Agency or Supplier that is an approved vendor for the Rehabilitation Services Administration;
- (b) A licensed provider agency of any of the following clinical services: occupational therapy, physical therapy, and speech, hearing and language pathology; or

- (c) A provider who is enrolled as a Residential Habilitation, Supported Living, Host Home, or In-Home Supports Services provider with a current Medicaid provider agreement is automatically qualified as an Assistive Technology Services provider for people who receive residential services from that provider.

Comments on these emergency and proposed rules should be submitted in writing to Melisa Byrd, Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street NW, Suite 900, Washington, DC 20001, via telephone at (202) 442-8742, via email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules may be obtained from the above address.