

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF THIRD 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. & 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 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 third emergency and proposed 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. & 2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The most recent Notice of Final Rulemaking for 29 DCMR § 1928 (Physical Therapy Services) was published in the *D.C. Register* on February 7, 2014, at 61 DCR 000989. A Notice of Emergency and Proposed Rulemaking, published in the *D.C. Register* on August 14, 2015, at 62 DCR 011308, was adopted on August 4, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remained in effect until December 2, 2015. The first emergency and proposed rules amended the previously published final 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 a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on January 1, 2016, at 63 DCR 000106. The second emergency and proposed rules further amended the previous emergency and proposed 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. The second emergency and proposed rules were adopted on December 17, 2015, became effective on that date, and will remain in effect until April 15, 2016, unless superseded by the adoption of this rulemaking. DHCF did not receive comments to the second emergency and proposed rulemaking but is promulgating this Notice of Third Emergency and Proposed Rulemaking 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.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of physical therapy services. The new service authorization requirements for providers of physical therapy services will promote more efficient service delivery management practices, enhance the quality of services, and attract new providers to meet the demand. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by the lapse in access to physical therapy services provided pursuant to the updated service authorization and delivery guidelines, it is necessary that these rules be published on an emergency basis.

The third emergency rulemaking was adopted on April 5, 2016, and became effective immediately. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until August 3, 2016, 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 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.

Comments on the 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 DHCFFPublicComments@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.