

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 emergency basis, of amendments to Section 1929, entitled “Residential Habilitation 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 residential habilitation 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). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Residential habilitation services provide essential supports whereby groups of individuals share a home managed by a provider agency. The current Notice of Final Rulemaking for 29 DCMR § 1929 (Residential Habilitation Services) was published in the *D.C. Register* on April 4, 2014, at 61 DCR 003553. These rules amend the previously published final rules by: (1) clarifying words and phrases to reflect more person-centered language and to simplify interpretation of the rule; (2) requiring the use of Department on Disability Services approved person-centered thinking and discovery tools; (3) clarifying requirements for daily progress notes; (4) modifying the rate methodology to account for time spent by staff during transportation, reducing the number of hours for direct support staff time during the day shift Monday through Friday, increasing the occupancy rate, and correcting an error in the rate model formula; (5) requiring that supports be aimed at skill building and include opportunities for community integration and competitive integrated employment; (6) adding wellness to the list of professional services; (7) clarifying requirements of minimum daily ratios; and (8) explaining when companion services may be used with residential habilitation services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of residential habilitation services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the residents’ health,

safety, and welfare are not threatened by lack of access to residential habilitation services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on February 11, 2016, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days from the adoption date or until June 10, 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 1929, RESIDENTIAL HABILITATION SERVICES, is deleted in its entirety and a new Section 1929 is added to read as follows:

1929 RESIDENTIAL HABILITATION SERVICES

- 1929.1 The purpose of this section is to establish standards governing Medicaid eligibility for residential habilitation services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of residential habilitation services.
- 1929.2 Residential habilitation services are supports, provided in a home shared by at least four (4), but no more than six (6) persons. The service assists each person in: acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community, based upon what is important to and for the person, as documented in his or her Individualized Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.
- 1929.3 In order to be eligible for Medicaid reimbursement, residential habilitation services shall be:
- (a) Provided to a person with a demonstrated need for continuous training, assistance, and supervision; and
 - (b) Authorized in accordance with each person's ISP and Plan of Care.
- 1929.4 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:
- (a) Use the Department on Disabilities Services (DDS) approved person-centered thinking tools and the person's Positive Personal Profile and Job

Search and Community Participation Plan to develop a functional assessment that includes identifying what is important to and for the person, within the first month of the person residing in the home. This assessment shall be reviewed and revised annually or more frequently as needed;

- (b) Participate as a member of the person's support team, at his or her request, including making recommendations for the development of the ISP and Plan of Care;
- (c) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are included in the current program and health support plans of the residential provider;
- (d) Develop program and health support plans with measurable outcomes using the functional assessment, DDS approved person-centered thinking tools, Positive Person Profiles and Job Search and Community Participation Plan, the ISP, Plan of Care, and other information as appropriate, to enable the person to safely reside in, and be integrated as a member of, his or her community and maintain his or her health;
- (e) Propose modifications to the ISP and Plan of Care, as appropriate; and
- (f) Review the person's ISP and Plan of Care goals, DDS-approved person centered thinking tools, Positive Person Profiles and Job Search and Community Participation Plan, objectives, and activities at least quarterly and more often, as necessary, and submit quarterly reports to the person, family, as appropriate, guardian, and DDS Service Coordinator in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1929.5 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, skill development, habilitation, and other supports, aimed at teaching the person to increase his or her skills and self-reliance. This shall include, but not be limited to, the following categories of support, unless the person has demonstrated independence and capacity in any of the following areas.

- (a) Eating and food preparation, including learning about healthy eating choices;
- (b) Personal hygiene;
- (c) Dressing;

- (d) Monitoring health and physical conditions;
- (e) Assistance with the administration of medication;
- (f) Communications;
- (g) Interpersonal and social skills including building and maintaining relationships;
- (h) Household chores;
- (i) Mobility;
- (j) Financial management;
- (k) Motor and perceptual skills;
- (l) Problem-solving and decision-making;
- (m) Human sexuality;
- (n) Providing opportunities to engage in community life, including but not limited to social, recreational, and religious activities utilizing community resources;
- (o) Ensuring that the person has appropriate and functioning adaptive equipment;
- (p) Providing opportunities for the person to seek employment and vocational supports to work in the community in a competitive and integrated setting, and
- (q) Other supports that are identified as important to or for the person in supports as identified in the person's ISP.

1929.6

In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but shall not be limited to, the following disciplines:

- (a) Medicine;
- (b) Dentistry;

- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Psychology;
- (i) Social work;
- (j) Speech, Hearing and Language therapy;
- (k) Recreation; and
- (l) Wellness.

1929.7 In order to be eligible for Medicaid reimbursement, each Waiver provider shall ensure that transportation services are provided in accordance with Section 1904 (Provider Qualifications) of Chapter 19 of Title 29 DCMR.

1929.8 In order to be eligible for Medicaid reimbursement, each new Waiver provider of residential habilitation services shall:

- (a) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR;
- (b) Provide verification of passing the DDS Provider Certification Review (PCR) for in-home support, supported living or respite services for the last three (3) years.
- (c) For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia, if applicable;
- (d) Ensure that each residence is accessible to public transportation and emergency vehicles;

- (e) Have an executed, signed, current Human Care Agreement with DDS, if required by DDS; and
- (f) Be licensed as a Group Home for a Person with an Intellectual Disability (GHPID) in the District of Columbia or a similarly licensed group home in other states.

1929.9 In order to be eligible for Medicaid reimbursement, current Waiver providers shall demonstrate that a satisfactory rating was received pursuant to the DDS Provider Certification Review policy and procedure available at <http://dds.dc.gov> and remain compliant with those requirements described under § 1929.8.

1929.10 In order to be eligible for Medicaid reimbursement, each GHPID located in the District of Columbia shall provide services to at least four (4), but no more than six (6), persons and shall meet the following requirements:

- (a) Be 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.*), no later than sixty (60) days after approval as a Medicaid provider; and
- (b) Comply with the requirements set forth in Chapter 35 of Title 22-B of the District of Columbia Municipal Regulations (DCMR).

1929.11 In order to be eligible for Medicaid reimbursement, each out-of-state group home shall serve at least four (4), but no more than six (6), persons.

1929.12 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations, consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state.

1929.13 Each out-of-state provider shall comply with the following additional requirements:

- (a) Submit to DDS a certificate of registration to transact business within the District of Columbia issued pursuant to D.C. Official Code §§ 29-105.3 *et seq.*;
- (b) Remain in good standing in the jurisdiction where the program is located;
- (c) Submit to DDS a copy of the annual certification or survey performed by the host state and provider's corrective action plan, if applicable; and
- (d) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state, full access to all sites and records for audits and other reviews.

- 1929.14 In order to be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing residential habilitation services as an agent or employee of a provider shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1929.15 An acuity evaluation to set support levels shall be recommended by the Support Team and approved by the DDS Waiver Unit. DDS shall review current staffing levels, available health and behavioral records, and the results of the Level of Need Assessment and Screening Tool, or its successor, to determine if a person has a health, behavioral or functional acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level, if other acuity indicators are not in place.
- 1929.16 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHPID must meet the minimum staffing ratio requirements set forth in Chapter 35 of Title 22-B DCMR and described in §§ 1929.24 and 1929.25 (reimbursement rates), unless it is determined by DDS to require a higher acuity level.
- 1929.17 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall maintain the following documents for monitoring and audit reviews:
- (a) A current written staffing plan;
 - (b) A written explanation of staffing responsibilities when back-up staff is unavailable and the lack of immediate care poses a serious threat to the person's health and welfare;
 - (c) Daily attendance rosters;
 - (d) The financial documents required pursuant to the DDS Personal Funds policy available at <http://dds.dc.gov>;
 - (e) The records of any nursing care provided pursuant to physician ordered protocols and procedures, charting, and other supports indicated in the physician's orders relating to development and management of the Health Management Care Plan; and
 - (f) Any documents required to be maintained pursuant to the DDS Health and Wellness Standards and Policy available at <http://dds.dc.gov>.
- 1929.18 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements), Section 1909 (Records and Confidentiality of Information), Section 1911 (Individual Rights), and Section 1938 (Home and

Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; except that the progress notes as described in Section 1909.2(m) shall be maintained on a daily basis.

- 1929.19 Residential habilitation services shall not be billed concurrently with the following Waiver services:
- (a) Environmental Accessibility Adaptation;
 - (b) Vehicle Modifications;
 - (c) Supported Living;
 - (d) Respite;
 - (e) Host Home;
 - (f) Companion, except that Companion services can be used with Residential Habilitation services during regular daytime hours on Mondays through Fridays, not to exceed more than forty (40) hours per week, or in combination with any other waiver day or vocational support service, including Day Habilitation, Employment Readiness, Supported Employment and Individualized Day Supports not to exceed forty (40) hours per week;
 - (g) In-Home Supports;
 - (h) Personal Emergency Response System; and
 - (i) Skilled Nursing.
- 1929.20 Residential habilitation services shall not be reimbursed by Medicaid when provided by a member of the person's family.
- 1929.21 Medicaid reimbursement for residential habilitation services shall not include:
- (a) Cost of room and board;
 - (b) Cost of facility maintenance, upkeep, and improvement;
 - (c) Activities for which payment is made by a source other than Medicaid;
 - (d) Time when the person is in school or employed;

- (e) Payment for the same day that a person is receiving Medicaid reimbursable services such as acute care hospitalization, short and long-term rehabilitation or nursing home care; and
- (f) Payment for a day when the person has not been supported by the residential habilitation services provider for any part of a twenty-four (24) hour period.

1929.22 The reimbursement rate for residential habilitation services shall only include time when staff is awake and on duty and shall include:

- (a) All supervision provided by the direct support staff;
- (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of and training on the person's Health Management Care Plan;
- (c) Transportation;
- (d) Programmatic supplies and fees;
- (e) Quality assurance costs, such as Incident Management Systems and staff development; and
- (f) General administrative fees for Waiver services.

1929.23 The reimbursement rate for residential habilitation services shall be a daily rate.

1929.24 The reimbursement rate for residential habilitation services for a GHPID with four (4) persons shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred and sixty-six dollars and seventy-eight cents (\$266.78) for a direct care staff support ratio of 1:4 for all awake and overnight hours;
- (b) The Moderate Support Level 2 daily rate shall be three hundred seventy four dollars and eighty-seven cents (\$374.87) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred and twenty dollars and three cents (\$420.03) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;

- (d) The Intensive Support daily rate shall be five hundred and ten dollars and eighty-two cents (\$510.82) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate shall be six hundred and six dollars and thirty-one cents (\$606.31) for twenty-four (24) hour licensed practical nursing services.

1929.25 The reimbursement rate for residential habilitation services for a GHPID with five (5) to six (6) persons shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred and eighty-nine dollars and fourteen cents (\$289.14) for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;
- (b) The Moderate Support Level 2 daily rate shall be three hundred fifty-seven dollars and twenty-nine cents (\$357.29) for a direct care staff support ratio of 2:5 or 2:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be three hundred and ninety-seven dollars and ninety-two cents (\$397.92) for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate shall be four hundred and ninety-five dollars and ninety-eight cents (\$495.98) for increased direct care staff support for sleep hours to 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate shall be five hundred and seven dollars and seventeen cents (\$507.17) for twenty-four (24) hour licensed practical nursing services.

1929.26 The reimbursement rates assume a ninety-five percent (95%) annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays.

1929.27 Daily activities may include but are not limited to Day Habilitation, Employment Readiness, Individualized Day Supports, Companion, Supported Employment or employment.

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 900S, 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.