

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 (2012 Repl. & 2013 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 repeal of Section 994, entitled "Respite Services" and adoption, on an emergency basis, of a new Section 1930, entitled "Respite Services" of Chapter 19 (Home and Community-based Waiver Services for Persons 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 respite services provided to participants in the Home and Community-Based 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 and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. These rules amend the previously published rules by: (1) specifying the service authorization requirements for respite services; (2) identifying documents that providers must maintain for monitoring and audit reviews; and (3) establishing new requirements for requesting extended or on-going respite services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of respite services. The ID/DD Waiver serves some of the District's most vulnerable residents. Respite care services are essential because they provide relief to the person's family or primary caregiver to allow them the flexibility to attend and/or participate in planned or emergency situations. This service is necessary to prevent individuals from being institutionalized and or sent to a program located outside of the District of Columbia.

The emergency rulemaking was adopted on October 28, 2013 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until February 24, 2014, 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*.

Section 994 (Respite Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1930 (Respite Services) is added to Chapter 19 (Home and Community-Based services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1930 RESPITE SERVICES

1930.1 The purpose of this chapter is to establish standards governing Medicaid eligibility for respite services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for respite providers.

1930.2 Respite services provide relief to a person's family or primary caregiver to enable them to participate in scheduled or unscheduled time away from the person, and to prevent gaps in the delivery of the person's services.

1930.3 Medicaid-eligible respite services shall:

- (a) Consist of daily or hourly respite;
- (a) Be authorized by the person's support team and provided in accordance with the ISP and Plan of Care; and
- (b) Be provided to persons who live in their own home, or their families' home.

1930.4 To be eligible for Medicaid reimbursement, providers shall ensure that each person receives hands-on supports including, but not be limited to, the following areas:

- (a) Assistance with activities of daily living;
- (b) Coordination and provision of transportation to participate in community activities consistent with the person's ISP and Plan of Care; and
- (c) Monitoring of the person's health and physical condition, as well as assistance with medication administration or other medical needs.

1930.5 Medicaid reimbursable daily respite services shall be provided by:

- (a) A Group Home for Mentally Retarded Persons meeting the requirements set forth in Chapter 35 of Title 22 of the DCMR and certified as an intermediate care facility for persons with mental retardation in accordance with the federal conditions of participation;
 - (b) A Department on Disability Services (DDS) certified Residential Habilitation Services facility; 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 by a home health 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.
- 1930.7 To be eligible for Medicaid reimbursement all respite providers shall:
- (a) Be certified by DDS as a Respite Provider Agency pursuant to the DDS Provider Certification Review Policy; and
 - (b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.
- 1930.8 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1930.9 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.
- 1930.10 To be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing respite services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.
- 1930.11 Medicaid reimbursement is not available if respite services are provided by the following individuals or provider:
- (a) The person's primary caregiver;

- (b) A spouse, parent of a minor child, or legal guardian of the person receiving respite services; or
 - (c) A provider already receiving reimbursement for the general care of the person.
- 1930.12 A relative not listed under Section 1930.11(b), including the person's sibling, aunt, uncle, or cousin, may deliver respite services if they meet the DSP requirements referenced under Section 1930.10 and are employed and trained by the respite provider.
- 1930.13 Medicaid reimbursement is not available for respite services when those services are provided to persons receiving Supported Living, Host Home or Residential Habilitation Services.
- 1930.14 Medicaid reimbursement for hourly respite services shall be nineteen dollars and ninety six cents (\$19.96) per hour and shall be limited to seven hundred twenty (720) hours per calendar year.
- 1930.15 The limitation set forth in § 1930.14 may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker and may only be extended until other arrangements are made for the person.
- 1930.16 Any request for reimbursement of hours in excess of seven hundred and twenty (720) shall be submitted to DDS for approval and include a justification and supporting documentation.
- 1930.17 To be eligible for Medicaid reimbursement, hourly respite services billed on the same day cannot exceed the reimbursement rate for daily respite services.
- 1930.18 Medicaid reimbursement for daily respite services shall be three hundred ten dollars (\$310) per day and shall be limited to thirty (30) days per calendar year.
- 1930.19 Daily respite service may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker and may only be extended until other arrangements are made for the person.
- 1930.20 Any request for hours in excess of thirty (30) calendar days shall be submitted to DDS for approval and include a justification and supporting documentation.

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., M.P.H., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 899 North Capitol Street, NE, 6th Floor, Washington DC 20002, via telephone on (202) 442-9115, 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 are available from the above address.