DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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 (2012 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 of a new Section 1932, entitled "Speech, Hearing, and Language Services", of Chapter 19 (Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities), Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of speech, hearing, and language services provided to participants in the Home and Community-Based Waiver Services 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. Speech, hearing, and language services are aimed at helping persons with intellectual and developmental disabilities enhance their communication and hearing skills. These rules amend the previously published rules by: (1) deleting Section 932 and re-codifying the rules in Section 1932; (2) establishing service authorization requirements for Medicaid reimbursement of speech, hearing, and language services; (3) specifying documents that the provider should maintain for monitoring and audit reviews; and (4) establishing requirements to request additional hours for services beyond the limitations.

A Notice of Emergency and Proposed rulemaking was published in the *D.C. Register* on October 18, 2013 (60 DCR 014851). One comment was received and considered. No substantive changes have been made. The Director adopted these rules as final on December 23, 2013 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 932 (Speech, Hearing, and Language Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1932 (Speech, Hearing, and Language Services) is added to Chapter 19 (Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1932 SPEECH, HEARING, AND LANGUAGE SERVICES

1932.1 The purpose of this section is to establish standards governing Medicaid eligibility for speech, hearing, and language services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of speech, hearing, and language services.

1932.2 Speech, hearing, and language services are therapeutic interventions to address communicative and speech disorders to maximize a person's expressive and receptive communication skills.

1932.3 To qualify for Medicaid reimbursement, speech, hearing, and language services shall be:

(a) Ordered by a physician, if the person has a medically-related condition such as a history of aspiration, swallowing problems, tube feeding, or a tracheotomy;

(b) Recommended by the Support Team, if the person has a non-medical condition such as a receptive or expressive speech delay or disorder;

(c) Delivered to person that is over the age of twenty-one (21);

(d) Reasonable and necessary to treat the person's medical or non-medical communicative disorder; and

(e) Included in the person's Individual Support Plan (ISP) and Plan of Care.

1932.4 In order to be eligible for Medicaid reimbursement, speech, hearing and language services shall be used to address the following conditions:

(a) Swallowing and feeding disorders;

(b) Receptive and expressive communication disorders;

(c) Voice impairments; and

(d) Articulatory and motor speech disorders.

1932.5 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing and language services shall comply with the following service delivery requirements:

(a) Conduct a comprehensive assessment, which shall include the following:

(1) A background review and current functional review of communication capabilities in different environments;

(2) An environmental review of communication in places of employment, residence, and other sites as necessary;

(3) The potential for use of augmentative and alternative speech devices, methods, or strategies;

(4) The potential for sign language or other expressive communication methods; and

(5) A needs assessment for the use of adaptive eating equipment.

(b) Develop and implement the speech, hearing, and language treatment plan that describes treatment strategies, including direct therapy, training of caregivers, monitoring requirements and instructions, and anticipated outcomes;

(c) Assist persons with voice disorders to develop proper control of vocal and respiratory systems for correct voice production, if applicable;

(d) Conduct aural rehabilitation by teaching sign language and lip reading to people who have hearing loss, if applicable;

(e) Participate in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content;

(f) Record progress notes on each visit and submit quarterly reports;

(g) Verify that the speech, hearing, and language assessment and treatment plan, and daily notes and quarterly reports, are delivered to the person, family or other caregiver, physician, and the Department on Disability Services (DDS) Service Coordinator prior to the person's Support Team meeting;

(h) Assess the need for the use of adaptive equipment;

(i) 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;

(j) Conduct periodic examinations to modify treatments, as appropriate, for the person receiving services and ensure that the speech pathologist's or audiologist's recommendations are incorporated into the ISP; when necessary; and

(k) Complete documentation required to obtain or repair adaptive equipment in accordance with insurance requirements and Medicare and Medicaid guidelines.

1932.6 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing, and language services shall:

(a) Be employed by a home health agency or a Waiver provider;

(b) Be a speech pathologist or audiologist in a private practice; or

(c) Be an assistant working under the direct supervision of a licensed speech pathologist or audiologist.

1932.7 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing, and language services shall also comply with the following requirements:

(a) Be a speech-language pathologist or audiologist licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) and implementing rules;

(b) Have a minimum of two (2) years of experience as a licensed speech-language pathologist or audiologist;

(c) Have a Certificate of Clinical Competence in the area of Audiology or Speech Pathology granted by the American Speech-Language-Hearing Association; and

(d) Comply with Section 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1932.8 In order to be eligible for Medicaid reimbursement, a speech pathologist assistant or audiologist assistant shall meet the following requirements:

(a) Be personally supervised by the speech pathologist or audiologist. Personal supervision requires the speech pathologist or audiologist to be in the room during the performance of the service; and

(b) Be employed by the speech pathologist or audiologist or by the speech pathologist or audiologist's employer; and

(c) Comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1932.9 Speech, hearing and language service providers, without regard to their employer of record, shall be selected by the person receiving services, their guardian, or legal representative and shall be answerable to the person receiving services.

1932.10 Any provider substituting professionals for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Service Coordinator to evaluate the continuation of services.

1932.11 In order to be eligible for Medicaid reimbursement, the speech pathologist or audiologist in a private practice shall meet all of the following conditions:

(a) Maintain a private office, even if services are always furnished in the person's home;

(b) Meet all state and local licensure laws and rules;

(c) Maintain a minimum of one (1) million dollars in liability insurance;

(d) Ensure that speech, hearing, and language services are provided consistent with the person's ISP and Plan of Care; and

(e) Maintain a space that is owned, leased or rented by the private practice and is used exclusively for the purpose of operating the private practice.

1932.12 In order to be eligible for Medicaid reimbursement, services shall only be authorized for reimbursement in accordance with the following provider requirements:

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

(b) The provider shall conduct an assessment within the first four (4) hours of service delivery and develop a speech, hearing, and language treatment plan with training goals and techniques that will assist the caregivers;

(c) The service name and provider 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; and

(e) Services shall be provided consistent with the service limitations described under Section 1932.16.

1932.13 In order to be eligible for Medicaid reimbursement, each home health agency, Waiver provider, or licensed speech pathologist or audiologist shall maintain the following documents for monitoring and audit reviews:

(a) A copy of the speech, hearing, and language assessment and treatment plan;

(b) A copy of the physician's orders and other pertinent documentation of the person's progress;

(c) A copy of the daily progress notes, containing the following information:

(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) A copy of the quarterly reports used to verify the functioning of the person's adaptive equipment; and

(e) Any other documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1932.14 In order to be eligible for Medicaid reimbursement, each provider shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1932.15 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21) years old, the DDS Service Coordinator shall ensure that Early Periodic Screening and Diagnostic Treatment (EPSDT) services under the District of Columbia State Plan for Medical Assistance are fully utilized before accessing speech, hearing and language services under the Waiver.

1932.16 Speech, hearing, and language 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 speech, hearing, and language services or if approved by a designated staff member at DDA.

1932.17 The reimbursement rate for a speech, hearing and language assessment shall be sixty-five dollars ($65.00) an hour. The billable unit of service shall be fifteen (15) minutes and the reimbursement rate for each billable unit shall be $16.25. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

1932.18 The reimbursement rate for speech, hearing and language services shall be sixty-five dollars ($65.00) per hour. The billable unit of service for speech, hearing and language therapy services shall be fifteen (15) minutes and the reimbursement rate for each billable unit shall be $16.25. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

Section 1999 (DEFINITIONS) is amended by adding the following:

Audiologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the area of audiology granted by the American Speech and Hearing Association (ASHA) or is licensed or certified as an audiologist in the state where the services are provided.

Audiologist Assistant - Support personnel who, following academic or on-the-job training, perform tasks prescribed, directed, and supervised by ASHA-certified audiologists.

EPSDT - Early and Periodic Screening, Diagnostic, and Treatment Services are designed for Medicaid-eligible children under the age of twenty-one (21) that include periodic screenings to identify physical and mental conditions, vision, hearing, and dental, as well as diagnostic and treatment services to correct conditions identified during screenings.

Private Practice - An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Speech Pathologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the areas of speech pathology granted by the American Speech and Hearing Association (ASHA) or is licensed or certified as a speech pathologist in the state where the services are provided.

Speech Pathologist Assistant- Support personnel who, following academic or on-the-job training, perform tasks prescribed, directed, and supervised by ASHA-certified speech language pathologists.