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 an emergency basis, of amendments to Section 1936, entitled "Wellness 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 Register (DCMR).

These emergency rules establish standards governing reimbursement of wellness 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 Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)). The amendment must also be approved by CMS, which will affect the effective date of the emergency rulemaking.

Wellness services are designed to promote and maintain good health and assist in increasing the person's independence, participation, emotional well-being, and productivity in their home, work, and community. Wellness services consist of the following five (5) types of services: bereavement counseling, fitness training, massage therapy, nutrition evaluation/consultation, and sexuality education. The current Notice of Final Rulemaking for 29 DCMR § 1936 (Wellness Services) was published in the *D.C. Register* on December 13, 2013, at 60 DCR 016834. These rules amend the previously published final rules to: (1) clarify the purpose of wellness services; (2) add small group fitness services; (3) clarify the requirements for a person to receive bereavement services; (4) describe the requirements for an assessment, service plan, progress notes, and quarterly report; (5) clarify the provider's role in the person's support team; (6) eliminate language regarding Direct Support Professional requirements; (7) add provider qualifications for fitness; (8) require that the provider be chosen by the person and/or his substitute decision-maker; (9) clarify service limitations; (10) increase rates to reflect market research; and (11) add definitions for small group fitness and stages of change.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of wellness services. The new requirements will enhance the quality of these services. Therefore, in order to ensure that the person's health, safety, and

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

The emergency rules were adopted on May 8, 2015, but these rules shall become effective for services rendered on or after May 8, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of May 8, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until September 5, 2015, unless superseded by publication of the Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking.

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 1936,WELLNESS SERVICES, of Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and amended to read as follows:

1936 WELLNESS SERVICES

1936.1 The purpose of this section is to establish standards governing Medicaid eligibility for wellness 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 wellness services in order to receive reimbursement.

1936.2 Wellness services are designed to promote and maintain good health, The provision of these services shall be 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 Individual Service Plan (ISP). Wellness services assist in increasing the person's independence, participation, prevent further disability, maintain health and increase emotional well-being, and productivity in their home, work, and community.

1936.3 The wellness services eligible for Medicaid reimbursement are:

(a) Bereavement Counseling;

(b) Fitness Training;

(c) Massage Therapy;

(d) Nutrition Evaluation/Consultation; and

(e) Sexuality Education.

1936.4 Fitness training is available as either an individual service, or in small group 1:2 setting, based upon the recommendation of the person's support team. When a person is enrolled in small group fitness, efforts should be made to match the person with another beneficiary of his or her choosing, or, if not available, with a person who has similar skills and interests.

1936.5 To be eligible for Medicaid reimbursement of bereavement counseling:

(a) The person must have experienced a loss through death, relocation, change in family structure, or loss of employment;

(b) The service must be recommended by the person's support team; and

(c) The service shall be identified as a need in the person's ISP and Plan of Care.

1936.6 To be eligible for Medicaid reimbursement of sexuality education, the services shall be:

(a) Recommended by the person's support team; and

(b) Identified as a need in the person's ISP and Plan of Care.

1936.7 To be eligible for Medicaid reimbursement of fitness training and massage therapy, the services shall be:

(a) Recommended by the person's support team;

(b) Identified as a need in the person's ISP and Plan of Care; and

(c) Ordered by a physician.

1936.8 To be eligible for Medicaid reimbursement of nutritional evaluation/consultation services, each person shall meet one or more of the following criteria:

(a) Have a history of being significantly above or below body weight;

(b) Have a history of gastrointestinal disorders;

(c) Have received a diagnosis of diabetes;

(d) Have a swallowing disorder; or

(e) Have a medical condition that can be a threat to health if nutrition is poorly managed.

1936.9 In addition to the requirements set forth in § 1936.8, nutritional evaluation/ consultative services shall be:

(a) Recommended by the person's support team;

(b) Identified as a need in the person's ISP and Plan of Care based upon the Stage of Change the person is in;

(c) Ordered by a physician; and

(d) Targeted to the identified Stage of Change.

1936.10 The specific wellness service delivered shall be consistent with the scope of the license or certification held by the professional. Service intensity, frequency, and duration shall be determined by the person's individual needs and documented in the person's ISP and Plan of Care.

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

(a) Conduct an intake 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 Department on Disability Services (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.

1936.12 In order to be eligible for Medicaid reimbursement, each professional providing nutrition evaluation/consultation services shall comply with the following additional requirements, as needed:

(a) Conduct a comprehensive nutritional assessment within the first four (4) hours of delivering the service;

(b) Conduct a partial nutritional evaluation to include an anthropometric assessment;

(c) Perform a biochemical or clinical dietary appraisal;

(d) Analyze food-drug interaction potential, including allergies;

(e) Perform a health and safety environmental review of food preparation and storage areas;

(f) Assess the need for a therapeutic diet that includes an altered/textured diet due to oral-motor problems;

(g) Conduct a needs assessment for adaptive eating equipment and dysphagia management;

(h) Conduct a nutrition evaluation and provide consulting services on a variety of subjects, including recommendations for the use of adaptive

equipment, to promote improved health and increase the person's ability to manage his or her own diet or that of his or her child(ren) in an effective manner; and

(i) Provide education to include menu development, shopping, food preparation, food storage, and food preparation procedures consistent with the physician's orders.

1936.13 Each professional providing wellness services shall be employed by a Home and Community-Based Services Waiver provider agency or by a professional service provider who is in private practice as an independent clinician as described in Subsection 1904.2 of Title 29 DCMR.

1936.14 Each provider shall comply with the requirements set forth under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1936.15 In order to be eligible for Medicaid reimbursement, professionals delivering wellness services shall meet the following licensure and certification requirements:

(a) Bereavement counseling services shall be performed by a professional counselor licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2014 Supp.)) and certified by the American Academy of Grief Counseling as a grief counselor;

(b) Fitness services shall be performed by professional fitness trainers who have been certified by the American Fitness Professionals and Associates, or who have a bachelor's degree in physical education, health education, exercise, science or kinesiology, or recreational therapists;

(c) Dietetic and nutrition counselors shall be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2014 Supp.)); and

(d) Massage Therapists shall be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2014 Supp.)) and certified by the National Verification Board for Therapeutic Massage and Bodywork.

1936.16 In order to be eligible for Medicaid reimbursement, sexuality education services shall be delivered by:

(a) A Sexuality Education Specialist who is certified to practice sexuality education by the American Association of Sexuality Educators, Counselors and Therapists Credentialing Board; or

(b) Any of the following professionals with specialized training in Sexuality Education:

(1) Psychologist;

(2) Psychiatrist;

(3) Licensed Clinical Social Worker; or

(4) Licensed Professional Counselor.

1936.17 Each Wellness service provider, and professional, without regard to their employer of record, shall be selected by the person receiving services or his or her authorized representative, and shall be answerable to the person receiving services.

1936.18 Any provider substituting treating 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.

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 intake 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

1936.20 Each Provider shall comply with the requirements described under Section 1908 (Reporting Requirement), Section 1909 (Records and Confidentiality of

Information) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1936.21 Wellness services shall be limited to one-hundred (100) hours per calendar year per service. Additional hours may be authorized before the expiration of the ISP and Plan of Care year and when the person's health and safety are at risk. 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.

1936.22 The person may utilize one (1) or more wellness services in the same day, but not at the same time.

1936.23 The Medicaid reimbursement rate for wellness services shall be:

(a) Sixty dollars and eighty cents ($60.80) per hour for Massage Therapy;

(b) Seventy-five dollars and ninety-six cents ($75.96) per hour for Sexuality Education;

(c) Seventy-five dollars ($75.00) per hour for Fitness Training;

(d) Forty-five dollars ($45.00) per hour for Small Group Fitness Training;

(e) Sixty-five dollars ($65.00) per hour for Nutrition Counseling; and

(f) Sixty-five dollars ($65.00) per hour for Bereavement Counseling.

1936.24 The billable unit of service for wellness services shall be fifteen (15) minutes. 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:

Small group fitness training – Exercise training designed to improve health and wellness delivered in small group settings at a ratio of one-to-two for people who want to exercise with a partner.

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 900 South, 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.