

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, 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), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 993 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Independent Habilitation Services provided by licensed or supervised professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on December 22, 2006 (53 DCR 10155). Comments were received and substantive changes have been made. These rules amend the December 22nd rules by increasing the reimbursement rate from \$13.80 per hour to \$15.00 per hour; increasing the number of hours that services may be provided to all consumers to 16 hours on the weekends; requiring annual CPR certifications by persons providing independent habilitation services; and other technical changes.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Wavier participants who are in need of independent habilitation services.

The emergency rulemaking was adopted on March 15, 2007, and will become effective one day after the date of publication of this notice in the *DC Register*. The emergency rules will remain in effect for 120 days or until July 12, 2007, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director gives notice of his intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 993 (Independent Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

993 INDEPENDENT HABILITATION SERVICES

993.1 The Medicaid Program shall reimburse independent habilitation services for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 993.2 Independent habilitation services provide periodic support for the consumer living in his or her own home or within a supervised apartment enabling the consumer to live independently and participate in community activities.
- 993.3 Independent Habilitation Services eligible for reimbursement are as follows:
- (a) Training in activities of daily living and independent living skills;
 - (b) Assistance in performing personal care tasks;
 - (c) Training on understanding and utilizing community resources;
 - (d) Training on, and assistance in the monitoring of health, nutrition, and physical condition;
 - (e) Training in adapting to a community and home environment, including: management of financial and personal affairs, and awareness of health and safety precautions; and
 - (f) Coordinating transportation to community events.
- 993.4 A consumer shall only be eligible for independent habilitation services when living in one of the following types of residences:
- (a) His or her own home;
 - (b) The home of an unpaid caregiver; or
 - (c) A supervised apartment.
- 993.5 If, the supervised apartment is located out of state, then each provider shall comply with the following additional requirements:
- (a) Obtain licensure or certification in accordance with host state's laws and regulations;
 - (b) Remain in good standing in the jurisdiction where the program is located;
 - (c) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action plan to Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA); 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 where services are provided and access to records during announced and unannounced visits or reviews.
- 993.6 Independent habilitation services shall not exceed forty (40) hours during a transitional period, when provided to a consumer residing in an institutional setting prior to his or her transition to a supervised apartment and when

authorized in the consumer's individual habilitation plan (IHP) or individual support plan (ISP).

- 993.7 Independent habilitation services shall be authorized by the consumer's interdisciplinary team and provided in accordance with each consumer's IHP or ISP.
- 993.8 The IHP or ISP shall indicate whether the staffing plan requires the participation of a licensed professional to meet the client's individual needs and include the level of supervision to maintain sufficient oversight and guidance to ensure the health, safety and welfare of the client.
- 993.9 A professional who participates in a staffing plan pursuant to section 993.7 shall be licensed to practice his or her profession 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.*); or be licensed to practice his or her profession within the jurisdiction where he or she provides the services.
- 993.10 Each provider of independent habilitation services shall:
- (a) Be a non-profit, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Independent Habilitation Services under the Waiver;
 - (c) Maintain a current Human Care Agreement with the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) for residential services, if provided by a paid caregiver;
 - (d) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (e) Ensure that all independent habilitation services staff are qualified and properly supervised;
 - (f) Ensure that the service provided is consistent with the consumer's IHP or ISP;
 - (g) Maintain documentation indicating the dates and times of staff training and type of training activities provided;
 - (h) Offer the Hepatitis B vaccination to each person providing services

pursuant to these rules;

- (i) Provide training in infection control procedures consistent with the Occupational Safety and Health Administration, U.S. Department of Labor regulations 29 CFR 1910.1030;
- (j) Maintain records that support billed services and document in each record the type of activity provided, inclusive of the date and time service was rendered;
- (k) Maintain a policy manual that contains the following subjects:
 - 1. Admission and discharge of consumer's;
 - 2. Operational procedures for consumer care;
 - 3. Consumer's rights and responsibilities;
 - 4. Procedures for emergency care, infection control and reporting of unusual incidents;
 - 5. Health and safety issues;
 - 6. Staffing and personnel;
 - 7. Financial and record-keeping requirements; and
 - 8. Quality Assurance.
- (l) Report the following changes to designated MRDDA staff:
 - (1) Inability to provide the required Waiver services;
 - (2) Unwillingness to provide the required Waiver services;
 - (3) Any changes in the consumer's function; and
 - (4) Suspected abuse or neglect.
- (m) Ensure that each supervised apartment is accessible to public transportation and emergency vehicles; and
- (n) Maintain a written staffing plan and provide a written staffing schedule for each site that services are provided.

993.11 Providers shall ensure that the individual's residence conforms with all applicable health, sanitation, fire, building and zoning codes as promulgated by the Government of the District of Columbia or the jurisdiction where services are provided; is handicapped accessible; barrier-free and consistent with the consumer's ISP or IHP..

993.12 Each person providing independent habilitation services pursuant to section 993.9 shall meet all the following requirements:

- (a) Be at least eighteen (18) years of age;

- (b) Be acceptable to the consumer;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual purified protein derivative of tuberculin (PPD) Skin Test or documentation from a physician;
- (d) Have the ability to communicate with the consumer;
- (e) Be able to read and write the English language;
- (f) Have a high school diploma or a general educational development (GED) certificate;
- (g) Have at least one (1) year of experience working with persons with developmental disabilities;
- (h) Complete training as required by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (i) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (Act), effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*) and any rules issued pursuant to the Act;
- (j) Complete training in First Aid; and
- (k) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification.

993.13 Each provider of independent habilitation services shall review the consumer's ISP or IHP goals, objectives and activities at least quarterly and more, often as needed. The provider shall propose modifications to the ISP or IHP as appropriate. The results of these reviews shall be submitted to the consumer's case manager within 30 days of the end of each quarter.

993.14 Each provider shall develop an Individual Program Plan (IPP) for each consumer receiving independent habilitation services. The IPP shall contain at a minimum all of the following:

- (a) The consumer's goals;
- (b) A sequence of measurable objectives to meet the identified outcomes or training goals;
- (c) Listing of all services to be rendered;

- (d) Schedule of services to accomplish the goals;
 - (e) Timetable for the accomplishment of the goals;
 - (f) Provider staff responsible for coordination and integration of services specified in the ISP or IHP; and
 - (g) Total number of projected hours per week of Waiver services.
- 993.15 The billable unit of service shall be one (1) hour.
- 993.16 The reimbursement rate shall be fifteen dollars (\$15.00) per billable unit and shall not exceed eight (8) hours per day, Monday through Friday and sixteen (16) hours per day Saturday and Sunday.
- 993.17 Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the consumer in a face-to-face environment.
- 993.18 Each provider of independent habilitation services shall coordinate the delivery of necessary preventative, consultative and crisis support services, personal care services, skilled nursing services and transportation services from approved Waiver providers of those services in accordance with the requirements of the ISP or IHP.
- 993.19 Reimbursement for independent habilitation services shall not include:
- (a) Room and board costs;
 - (b) Protective oversight costs;
 - (c) Routine care and general supervision expected from the family or provider;
 - (d) Overhead or administrative costs;
 - (e) Building maintenance costs;
 - (f) Household supplies, including towels and linens; or
 - (g) Services or costs for which payment is made by a source other than Medicaid.
- 993.20 Independent Habilitation Services shall not be billed concurrently with the following Waiver services:
- a. Homemaker, except when the client is living in his or her own home;
 - b. Adult companion;
 - c. Day Habilitation;
 - d. Supportive employment;
 - e. Prevocational;
 - f. Chore, except when the consumer is living in his or her own home;
 - g. Residential habilitation services;
 - h. Respite; or
 - i. Family training.

993.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Consumer- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable disease- that term as set forth in section 201 of Title 22 of the District of Columbia Municipal Regulations.

Individual Habilitation Plan (IHP)- that plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

Individual Support Plan (ISP)- the successor plan to the Individual Habilitation Plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Supervised Apartments- A living arrangement located in or outside the District of Columbia for one to three consumers with mental retardation and developmental disabilities that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement. The oversight of living arrangements located outside of the District of Columbia shall be performed by the host state in accordance with the terms and conditions of an agreement between the District of Columbia and the host state. The living arrangement site where services are provided is not limited to an apartment, but may include a condominium or townhouse.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.