

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 7, 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 920 of Chapter 9, Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for prevocational services, a habilitative service, provided to participants in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

These rules amend the previously published rules by reducing the billing unit from one (1) day to fifteen (15) minutes consistent with current billing requirements; requiring a provider to render at least eight (8) minutes of service for each billing unit; eliminating the requirement that services be provided for a minimum of five (5) hours per day, not including travel time; and requiring providers to attend the annual meeting to develop the client's individual support plan. The proposed changes in the billing unit will improve the fiscal integrity of the Medicaid Program and ensure compliance with the Health Insurance Portability and Accountability Act billing code requirements. Many persons receiving prevocational services may be unable to attend five (5) hours of prevocational services due to health-related issues. Elimination of the five (5) hour service requirement will ensure that individuals are provided the level of service in accordance with their needs. The inclusion of the service provider in the annual meetings or case conferences will ensure a more coordinated and comprehensive approach to the development of all services required by the client. Emergency action is necessary for the immediate preservation of the health, safety and welfare of Waiver participants who are in need of prevocational services.

The emergency rulemaking was adopted on November 14, 2006 and will become effective on the date of publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until March 14, 2007, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director gives notice of the 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 920 (Prevocational Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

920 PREVOCATIONAL SERVICES

- 920.1 The Medicaid program shall reimburse prevocational services for each client in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements in this section.
- 920.2 Clients who are not expected to be able to join the general work force or participate in transitional shelter workshops within one (1) year (excluding supported employment programs) may receive prevocational services.
- 920.3 Prevocational services are services designed to prepare a client for paid or unpaid employment, but not related to a specific job or skill.
- 920.4 Prevocational services eligible for reimbursement shall be as follows:
- (a) Assessment activities, including situational assessments provided at community businesses and other community resources;
 - (b) Socialization training, including the following services:
 - (1) Instructions;
 - (2) Interpersonal relations;
 - (3) Communications;
 - (4) Respecting the rights of others; and
 - (5) Problem solving;
 - (c) Work site skills development, which shall include, at a minimum, teaching the client the following concepts:
 - (1) Compliance with employer instructions;
 - (2) Attendance;
 - (3) Task completion; and
 - (4) Safety;
 - (d) Time-limited volunteering and other prevocational skills training indicated in the client's individual habilitation plan (IHP) or individual support plan (ISP); and
 - (e) Transportation to community activities necessary to carry out this service, provided that the transportation provider has a provider agreement to bill for transportation services pursuant to 29 DCMR §943.
- 920.5 Prevocational services may be provided in non-facility-based or facility based settings.

- 920.6 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District or State and local laws and regulations.
- 920.7 Before a provider of prevocational services may pay a client wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.
- 920.8 Prevocational services shall not be eligible for reimbursement if the services are available to the client through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*) or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. §§ 1400 *et seq.*) (hereinafter the "Acts"). Each client receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and individual habilitation plan (IHP) or individual support plan (ISP).
- 920.9 Each provider shall provide appropriate services for clients requiring physical assistance to participate in prevocational services activities, as well as access to first aid.
- 920.10 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each client's IHP or ISP. All prevocational services shall be reflected on the IHP or ISP as habilitative rather than explicit employment objectives.
- 920.11 Each prevocational services provider 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 prevocational services under the Waiver;
 - (c) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (d) Ensure that all prevocational services staff are qualified and properly supervised;
 - (e) Ensure that the service provided is consistent with the client's IHP or ISP;
 - (f) Participate in the annual ISP or IHP meeting or case conferences when indicated by MRDDA;

- (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
 - (h) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), US Department of Labor regulations 29 CFR §1910.1030; and
 - (i) Maintain a staff-to-client ratio; indicated in the IHP or ISP that ensures that the service meets the client's individual needs, and that services are provided appropriately and safely.
- 920.12 Each provider of prevocational services shall demonstrate through experience or academic attainment, the ability and qualification to provide prevocational services for clients with mental retardation and varying habilitation needs.
- 920.13 Each person providing prevocational services for a provider under section 920.11 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the client;
 - (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician.
 - (d) Have the ability to communicate with the client;
 - (e) Be able to read and write the English language;
 - (f) Have a high school diploma or a general educational development (GED) certificate;
 - (g) Complete required training; and
 - (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).
- 920.14 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2) years of combined supervisory and job coaching experience.
- 920.15 Prevocational services shall not be provided concurrently with day treatment, supported employment, or day habilitation services.
- 920.16 The billable unit of service for prevocational 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.

- 920.17 The reimbursement rate for prevocational services shall be \$5.00 per billing unit.
- 920.18 Payment is limited to twenty (20) units a day, not including travel time.
- 920.19 No payment shall be made for routine care and supervision, which is the responsibility of the family, group home provider or an employer.

920.99 DEFINITIONS

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

Client - an individual who has mental retardation and has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Communicable Disease - that term as set forth in Section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan or IHP - that term 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 or ISP - the successor plan to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Situational Assessment - Provides competitive or real work sites in the community for the systemic assessment and observation of the client; identifies work site characteristics and client adaptations, training procedures, support needs related to the client's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

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.

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 945 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulation (DCMR), entitled "Day Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Day Habilitation Services, a habilitative service provided by qualified professionals to participants in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules by reducing the billing unit from one day to fifteen (15) minutes consistent with current billing requirements and requiring providers to attend the annual meeting to develop the client's individual support. The proposed changes in the billing unit will improve the fiscal integrity of the Medicaid Program and ensure compliance with the Health Insurance Portability and Accountability Act billing code requirements. The inclusion of the day habilitation service provider in the annual meetings or case conferences will ensure a more coordinated and comprehensive approach to the development of all services required by the client. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of day habilitation services.

The emergency rulemaking was adopted on November 14, 2006 and will become effective on the date of publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until March 14, 2007, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director gives notice of the 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 945 (Day Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

SECTION 945 DAY HABILITATION SERVICES

945.1 Day habilitation services shall be reimbursed by the Medicaid Program for each client with mental retardation in the Home and Community-based

Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 945.2 Day habilitation services for clients with mental retardation shall be designed to support the client's training and skills development outside of the home through training and skills development, which will enable the client to experience greater participation in community-integrated activities.
- 945.3 Day habilitation services eligible for reimbursement shall be as follows:
- (a) Training and skills development that increases participation in community activities and fosters independence;
 - (b) Activities that allow clients the opportunity to choose their own areas of interests and preferences;
 - (c) Activities that provide client opportunities for socialization and leisure activities in the community; and
 - (d) Transportation to community activities. The transportation provider shall have a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.
- 945.4 Day habilitation services may be provided in non-facility based or facility based settings as determined by the needs of the client. When services are provided in a facility based setting, each facility shall comply with all applicable federal, District or State and local laws and regulations.
- 945.5 The provision of day habilitation services shall be coordinated with any other service identified in the client's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP).
- 945.6 Day habilitation services shall be pre-authorized and provided in accordance with the IHP or ISP. The IHP or ISP shall indicate if the staffing plan requires the participation of a licensed professional and identify the type of professional to provide the service in accordance with the client's needs.
- 945.7 Each professional providing day habilitation services shall be licensed to practice his or her respective 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 §§ 3-1202 *et seq.*) or be licensed to practice his or her profession in the jurisdiction where services are provided.
- 945.8 A copy of the client's IHP or ISP shall be maintained in all of the following locations:

- (a) The client's home;
- (b) The client's file maintained by the case manager; and
- (c) The day habilitation provider.

945.9 Each provider of day habilitation services shall:

- (a) Be a public or private agency licensed to do business in the District of Columbia, Maryland, or Virginia;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for day habilitation services;
- (c) Ensure that all staff are qualified and properly supervised;
- (d) Ensure that the service provided is consistent with the client's IHP or ISP;
- (e) Develop a quality assurance system to evaluate the effectiveness of services provided;
- (f) Maintain the required staff-to-client ratio indicated on the client's IHP or ISP;
- (g) Participate in the annual ISP or IHP meeting or case conferences when indicated by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (h) Ensure that services are provided appropriately and safely;
- (i) Develop a staffing plan which includes licensed professionals, where applicable and appropriate;
- (j) Maintain records which document staff training and licensure for a period of not less than six (6) years;
- (k) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine;
- (l) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor, as set forth in 29 C.F.R. § 1910.1030; and
- (m) Have a plan to provide interpreters for non-English speaking clients.

945.10 Each provider of day habilitation services shall provide appropriate supervision of all day habilitation staff. The supervisor shall be an employee of the day habilitation services provider and make site visits to assess the level of services provided. Periodic site visits shall be conducted and documented at least twice per year and more frequently, if warranted.

945.11 Each person providing day habilitation services for a provider under section 945.9 shall meet all of the following requirements:

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

- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
- (d) Have a high school diploma or general educational development (GED) certificate;
- (e) Have a least one (1) year's experience working with clients with mental retardation;
- (f) Agree to carry out the responsibilities to provide services consistent with the client's IHP or ISP;
- (g) Complete pre-service and in-service training approved by MRDDA;
- (h) Have the ability to communicate with the client;
- (i) Be able to read and write the English language; and
- (j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§44-551 *et seq.*).

- 945.12 Day habilitation services shall not be provided concurrently with day treatment, supported employment, or prevocational services.
- 945.13 The reimbursement rate for day habilitation services shall be five dollars (\$5.00) per unit.
- 945.14 Day habilitation services shall be provided for a maximum of twenty (20) fifteen (15) minute units a day, not including travel time.
- 945.15 No payment shall be made for routine care and supervision. These services shall be the responsibility of the family, group home provider or employer.

945.99 DEFINITIONS

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

Client - 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 (Waiver).

Communicable Disease - Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, 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 to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

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.