

## 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 of section 934 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Physical Therapy Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for physical therapy services provided to participants in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). The proposed amendment broadens the provider qualification standards to authorize therapists in private practice to provide physical therapy services. These rules also establish reimbursement rates for physical therapy services.

The Council of the District of Columbia and the Centers for Medicare and Medicaid Services have approved the modification to the Waiver to permit therapists in private practice to provide physical therapy services to Waiver participants. The standards for therapists in private practice were developed based on requirements set forth in the Medicare program. Emergency action is necessary for the immediate preservation of the health, safety and welfare of Waiver participants in need of physical therapy services.

The emergency rulemaking was adopted on September 21, 2005 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for one hundred and twenty and days or until January 19, 2006 unless superseded by publication by a Notice of Final Rulemaking in the *D.C. Register*.

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

Section 934 of Title 29 DCMR to read as follows:

**SECTION 934      PHYSICAL THERAPY SERVICES**

- 934.1      Physical therapy services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities subject to the requirements set forth in this section.
- 934.2      To be eligible for reimbursement, physical therapy services shall be:
- (a) Ordered by a physician; and

- (b) Reasonable and necessary to the treatment of the consumer's illness or injury, or to the restoration or maintenance of function affected by the injury or illness.

934.3 Each person providing physical therapy services shall be employed by a home health agency or be a physical therapist in private practice. The home health agency or therapist in private practice shall have a current Medicaid Provider Agreement that authorizes the service provider to bill for physical therapy services.

934.4 In addition to all other requirements set forth in this section, each physical therapist in private practice shall meet all of the conditions as set forth below:

- (a) Maintain a private office, even if services are always furnished in the consumer's home;
- (b) Meet all state and local licensure laws and rules;
- (c) Maintain at least one million dollars in liability insurance;
- (d) Ensure that services provided are consistent with the individual habilitation plan (IHP) or individual service plan (ISP);
- (e) If services are furnished in a private practice office space, that space shall be owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice; and
- (f) Assistants and aides shall be personally supervised by the physical therapist and employed directly by the physical therapist, by the partnership group to which the physical therapist belongs, or by the same private practice that employs the physical therapist. Personal supervision requires the physical therapist to be in the room during the performance of the service.

934.5 Each person providing physical therapy services shall be a physical therapist who meets all of the following requirements:

- (a) Is a graduate of a physical therapy curriculum approved by the American Physical Therapy Association or the Committee on Allied Health Education and Accreditation of the American Medical Association;
- (b) Has a minimum of two years of experience as a physical therapist;
- (c) Be at least eighteen (18) years of age;

- (d) Be acceptable to the consumer;
- (e) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
- (f) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
- (g) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD skin test or documentation from a physician stating that the person is free from communicable disease;
- (h) Have the ability to read and write the English language; and
- (i) Be able to recognize an emergency and be knowable about emergency procedures.

934.6 The duties of each person providing physical therapy services shall include, at a minimum, the following:

- (a) Preparing an initial assessment and evaluation of the consumer's medical histories;
- (b) Maintaining ongoing involvement and consultation with other service providers;
- (c) Ensuring that the consumer's needs are met in accordance with the IHP or ISP;
- (d) Measuring the consumer's strength, range of motion, balance and coordination, posture, muscle performance, respiration, and motor functions;
- (e) Developing treatment plans that describe treatment strategies, purposes, and anticipated outcomes;
- (f) Providing therapeutic exercises, gait training, and range of motion to help restore function, improve mobility, relieve pain, and prevent or limit permanent physical disabilities;
- (g) Providing ultrasound, short-wave, microwave, diathermy, hot packs, infrared, paraffin, and whirlpool therapies;
- (h) Providing consultation and instruction to the consumer, family or other caregivers;

- (i) Recording progress notes on each visit;
- (j) Conducting periodic examinations and modifying treatments for the consumer, when necessary;
- (k) Establishing a home exercise program; and
- (l) Monitoring the consumer's outcomes to determine if the therapeutic goals are met.

934.7 The physical therapist shall be responsible for providing written documentation in the consumer's clinical record of the consumer's progress or lack of progress, medical conditions, functional losses and treatment goals that demonstrate that the services are and continue to be reasonable and necessary.

934.8 Physical therapy services shall be authorized and provided in accordance with each consumer's IHP or ISP.

934.9 The home health agency and the physical therapist in private practice shall maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration, assessments for physical therapy services, physician's orders, visit notes, progress notes, and other pertinent documentation for at least six (6) years after the consumer's date of discharge.

934.10 The home health agency shall ensure that the physical therapist is properly supervised and that the services provided are consistent with the consumer's IHP or ISP.

934.11 Services shall not exceed the authorized frequency and duration as authorized for physical therapy services in the IHP or ISP.

934.12 The reimbursement rate for physical therapy services shall be sixty-five dollars (\$65.00) for an initial assessment and \$65.00 per follow-up visit. The rate paid for the initial assessment includes the duration of time that it takes for each provider to complete a thorough assessment of the consumer and to develop a plan of care based on the identified needs.

934.99 **DEFINITIONS**

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

**Clinical Record** – A comprehensive compilation of medical and other data that identifies the consumer and justifies and describes the diagnosis and treatment of the consumer.

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

**Home Care Agency** – Shall have the same meaning as “home care agency” as set forth in 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.), and implementing rules.

**Individual Habilitation Plan (IHP)** – Shall have the same meaning 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 2-37; D.C Official Code, § 7-1304.03).

**Individual Service Plan** - The successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

**Physician** – A person who is authorized to practice medicine 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.) or licensed as a physician in the jurisdiction where services are provided.

**Physical Therapist** - A person who is licensed or authorized to practice physical therapy 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.) or licensed as a physical therapist in the jurisdiction where services are provided.

**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.

**Progress Note** – A dated, written notation by a member of the health care team that summarizes facts about a consumer’s care and response to treatment during a given period of time.

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., 5<sup>th</sup> Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules and Medicaid Waiver may be obtained from the same address.

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The Council of the District of Columbia and the Centers for Medicare and Medicaid Services have approved the modification to the Waiver to permit therapists in private practice to provide occupational therapy services to Waiver participants. The standards for therapists in private practice were developed based on requirements set forth in the Medicare program. Emergency action is necessary for the immediate preservation of the health, safety and welfare of Waiver participants in need of physical therapy services.

The emergency rulemaking was adopted on September 21, 2005 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for one hundred and twenty and days or until January 19, 2006, unless superseded by publication by a Notice of Final Rulemaking in the *D.C. Register*.

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

Section 935 of Title 29 DCMR is amended to read as follows:

**SECTION 935 OCCUPATIONAL THERAPY SERVICES**

- 935.1 Occupational therapy services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities subject to the requirements set forth in this section.
- 935.2 To be eligible for reimbursement, occupational therapy services shall be:

- (a) Ordered by a physician; and
  - (b) Reasonable and necessary to the treatment of the consumer's illness or injury, or to the restoration or maintenance of function affected by the injury or illness.
- 935.3 Each person providing occupational therapy services shall be employed by a home health agency or be an occupational therapist in private practice. The home health agency or therapist in private practice shall have a current District of Columbia Medicaid Provider Agreement that authorizes the service provider to bill for occupational therapy services.
- 935.4 In addition to all other requirements set forth in this section, each occupational therapist in private practice shall meet all of the conditions as set forth below:
- (a) Maintain a private office, even if services are always furnished in the consumer's home;
  - (b) Meet all state and local licensure laws and rules;
  - (c) Maintain at least one million dollars in liability insurance;
  - (d) Ensure that services provided are consistent with the individual habilitation plan (IHP) or individual service plan (ISP);
  - (e) If services are furnished in a private practice office space, that space shall be owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice; and
  - (f) Assistants and aides shall be personally supervised by the occupational therapist and employed directly by the occupational therapist, by the partnership group to which the occupational therapist belongs, or by the same private practice that employs the occupational therapist. Personal supervision requires the occupational therapist to be in the room during the performance of the service.
- 935.5 Each person providing occupational therapy services shall be an occupational therapist who meets all of the following requirements:
- (a) Is a graduate of an occupational therapy curriculum accredited jointly by the American Occupational Therapy Association, the Committee on Allied Health Education and the American Medical Association;
  - (b) Has a minimum of two years of experience as an occupational therapist;

- (c) Be at least eighteen years of age;
- (d) Be acceptable to the consumer;
- (e) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
- (f) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
- (g) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD skin test or documentation from a physician stating that the person is free from communicable disease;
- (h) Have the ability to read and write the English language;
- (i) Have the ability to communicate with the consumer; and
- (j) Be able to recognize an emergency and be knowledgeable about emergency procedures.

935.6 The goals of each person providing occupational therapy services shall include, at a minimum, improving the following:

- (a) The consumer's level of independence in activities of daily living;
- (b) The consumer's level of sensory and integrative functions; and
- (c) The consumer's physical functions, basic motor skills and reasoning abilities.

935.7 The duties of the occupational therapist shall include, at a minimum, the following:

- (a) Evaluating each consumer's ability to manage normal daily functions that are threatened or impaired by mental retardation, developmental deficits, physical disability and mental illness;
- (b) Maintaining ongoing involvement and consultation with other service providers;
- (c) Ensuring that the consumer's needs are met in accordance with the IHP or ISP;

- (d) Developing treatment plans for consumers that describe treatment strategy, purpose and anticipated outcomes;
- (e) Designing, fabricating, and fitting orthotic or self help devices for the consumer such as wheelchairs, splints, and aids for eating and dressing;
- (f) Providing vocational and pre-vocational assessment and training such as learning how to use computer-aided equipment and other assistive technology;
- (g) Establishing a home exercise program for the consumer;
- (h) Utilizing task-oriented activities for consumers to prevent or correct physical or emotional disabilities and to enhance developmental and functional skills;
- (i) Providing consultation and instruction to the consumer, family or other caregivers;
- (j) Recording progress notes for each visit with the consumer;
- (k) Conducting periodic examinations and modifying treatments for the consumer, when necessary; and
- (l) Monitoring the consumer's outcomes to determine if the therapeutic goals are met.

935.8 The occupational therapist shall be responsible for providing written documentation in the consumer's clinical record of the consumer's progress or lack of progress, medical conditions, functional losses and treatment goals that demonstrate that the services are and continue to be reasonable and necessary.

935.9 Occupational therapy services shall be authorized and provided in accordance with each consumer's IHP or ISP.

935.10 The home health agency and the occupational therapist in private practice shall maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration, assessments for occupational therapy services, physician's orders, visit notes, progress notes, and other pertinent documentation for at least six (6) years after the consumer's date of discharge.

935.11 The home health agency shall ensure that the occupational therapist is properly supervised and that the services provided are consistent with the consumer's IHP or ISP.

- 935.12 Services shall not exceed the authorized frequency and duration for occupational therapy services as authorized in the IHP or ISP.
- 934.13 The reimbursement rate for occupational therapy services shall be sixty dollars (\$60.00) for the initial assessment and \$60.00 for a follow-up visit. The rate paid for the initial assessment includes the duration of time that it takes for each provider to complete a thorough assessment of the consumer and to develop a plan of care based on the identified needs.

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**Individual Service Plan** - The successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

**Occupational Therapist** - A person who is licensed or authorized to practice occupational therapy 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 § 2-1201, *et seq.*) or licensed as an occupational therapist in the jurisdiction where services are provided.

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