

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 Chapter 9 of Title 29 DCMR, "Public Welfare," a new section 942. These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for family training services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for family training services.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of family training services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of family training services. A substantially similar notice of emergency and proposed rulemaking was published February 21, 2003, at 50 DCR 1780, which expired on April 18, 2003. This notice includes a change limiting this service to 52 sessions per year and supersedes the previously published notice.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of family training services.

The emergency rulemaking was adopted on August 5, 2003, and will become effective on the date of publication of this notice of emergency rulemaking in the D.C. Register. The emergency rules will expire on December 3, 2003, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

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

Title 29 DCMR is amended by adding a new section 942, to read as follows:

942 FAMILY TRAINING SERVICES

942.1 The Medicaid Program shall reimburse for family training 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.

- 942.2 Family training services are training and counseling services for the families of clients.
- 942.3 Family training services eligible for reimbursement shall include the following services:
- (a) Instruction about treatment regimens;
 - (b) Training on the use of equipment specified in the individual habilitation plan (IHP) or the individual support plan (ISP);
 - (c) Training on understanding the needs of the client;
 - (d) Counseling to address the psychosocial needs of the family;
 - (e) Training to prepare a family to make informed choices and to coordinate services for its family member; and
 - (f) Follow-up training necessary to safely maintain the client at home.
- 942.4 Family training services shall not exceed fifty-two (52) training or counseling sessions per year.
- 942.5 Family training services shall be authorized by the client's interdisciplinary team and provided in accordance with each client's IHP or ISP.
- 942.6 Each provider of family training services shall:
- (a) Be a non-profit organization, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement for the provision of services that authorizes the provider to bill for family training services under the Waiver;
 - (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (d) Ensure that all family training services staff are qualified and properly supervised;
 - (e) Ensure that the service provided is consistent with the client's IHP or ISP;
 - (f) Offer the Hepatitis B vaccination to each person providing direct care services pursuant to these rules;

- (g) 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 CFR 1910.1030;
- (h) Provide training to the families in the frequency and duration of care as delineated in the IHP/ISP; and
- (i) Maintain documentation in each client's clinical record regarding the initial assessment of the family's training needs, the goals to be accomplished, the training provided on each visit, and the outcome of each training.

942.7 Each person providing family training services shall:

- (a) Be licensed to practice independent social work, independent clinical social work, professional counseling, occupational therapy, physical therapy, psychology, or registered nursing 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 § 3-1201.01 *et seq.*); or
- (b) Be licensed to practice his or her profession within the jurisdiction where services are provided; or
- (c) Be a special education teacher with a Master's Degree in Special Education with an emphasis in developmental disabilities from an accredited college or university and experience working with persons with mental retardation and developmental disabilities.

942.8 Each person providing family training services 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 of communicable diseases as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free of communicable diseases;
- (d) Be able to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Complete required training;
- (g) Have the ability to provide family training services consistent with the

client's IHP or ISP; 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; D.C. Official Code § 44-551 *et seq.*), and the rules implementing the act.

942.9 The billable unit of service shall be one (1) hour. The reimbursement rate for family training services shall be sixty dollars per hour (\$60.00/hr.) for the initial service and fifty dollars per hour (\$50.00/hr.) for any follow-up services.

942.99 **DEFINITIONS**

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

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

Family- one or more persons related to a client by blood, marriage, or some other legal relationship, such as a foster family, who live with or provide care to a client, and may include parents, spouse, children, relatives, foster family, or in-laws. This term does not include individuals who are employed to care for the client.

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

Comments on the proposed rules should be sent in writing to Wanda Tucker, Interim Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, not later than 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 Monday through Friday between the hours of 8:15 A.M. and 4:45 P. M..

D.C. OFFICE OF PERSONNEL**NOTICE OF EMERGENCY RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (the CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*) (2001), as amended on an emergency basis by the Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2003 (the Act), effective July 22, 2003 (D.C. Law 15-23, 50 DCR 4339), hereby gives notice of the adoption of the following emergency rules. These rules explain the requirements for the payment of an active duty pay differential to each District government employee who has been called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom. The Act provides that implementing rules must be issued within thirty (30) days of its effective date. The utilization of emergency rulemaking is the only available means of complying with this requirement and, thereby, providing for the continuation of payment of the differential authorized by the Act for eligible employees. Therefore, to ensure the welfare of the public, action was taken on July 30, 2003 to adopt the following rules on an emergency basis effective July 30, 2003. These rules will remain in effect for up to one hundred twenty (120) days from July 30, 2003 unless earlier superseded by another rulemaking notice.

CHAPTER 11**CLASSIFICATION AND COMPENSATION**

Section 1155 is amended to read as follows:

**1155 OPERATION ENDURING FREEDOM AND OPERATION IRAQI
FREEDOM PAY DIFFERENTIAL**

1155.1 Any full-time permanent employee, term employee, or an employee on a Temporary Appointment Pending Establishment of a Register (TAPER appointment) who serves in a reserve component of the armed forces and who has been ordered to active duty, or was retained for duty as a result of Operation Enduring Freedom, or in preparation for a potential conflict with Iraq, or as a result of Operation Iraqi Freedom, shall be entitled to apply for and receive, or continue to receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.

- 1155.2 An employee as described in § 1155.1 shall not be required to be released from active duty before making application for and receiving the pay differential. However, if the employee has not been released from active duty when he or she makes application for the pay differential, the employee shall provide all documentation required in § 1155.9, except that in lieu of providing a copy of the military orders releasing the employee from active duty, the employee shall provide a letter from his or her commanding officer attesting to the fact that the employee, as of the date of application for the pay differential, is still in an active duty status.
- 1155.3 A pay differential received pursuant to this section shall not be considered basic pay for any purpose.
- 1155.4 Any eligible employee, upon making application for the pay differential and upon approval of the application by his or her department or agency head, shall receive a pay differential that equals the difference between the employee's District government basic pay reduced by the employee's basic military pay.
- 1155.5 The estate of any eligible employee who has been killed while in active duty or who is missing in action as a result of active duty shall be eligible to collect any pay differential to which the employee would have been entitled upon making application on behalf of the employee and upon approval of the application by the employee's department or agency head.
- 1155.6 The period of entitlement to the pay differential shall not exceed:
- (a) The period following the formal inception of Operation Enduring Freedom through the date the employee is released from active duty occasioned by Operation Enduring Freedom; or
 - (b) The period following the formal inception of the preparations for a potential conflict with Iraq and the period following the formal inception of Operation Iraqi Freedom through the date the employee is released from active duty occasioned by, the preparation for, or, Operation Iraqi Freedom.
- 1155.7 The pay differential shall not be payable for any period following the employee's release from active duty and the employee's return to his or her District government position.
- 1155.8 The pay differential shall not be payable for any days for which the employee received pay by reason of any annual leave, military leave, compensatory time, or any other form of paid leave taken by the employee.
- 1155.9 In making application for the pay differential, the employee shall:
- (a) Provide a copy of the military orders activating the employee

for full-time active military service for the Operation Enduring Freedom conflict, or, in preparation for, or, as a result of, the Operation Iraqi Freedom conflict;

- (b) Provide a copy of the military orders releasing the employee from full-time active military service for the Operation Enduring Freedom conflict, or, for the preparation for, or, the Operation Iraqi Freedom conflict; and
- (c) Provide all military pay documentation required to calculate the differential amount.

1155.10 A pay differential under this section shall be paid by the agency that last employed the eligible employee before the employee was ordered to active duty as specified in § 1155.1, out of the agency's funds or appropriations then currently available for salaries and expenses.

1155.99 DEFINITIONS

Active duty — full-time duty in the active military service of the United States for the Operation Enduring Freedom conflict, or, in preparation for, or, for the Operation Iraqi Freedom conflict.

Armed forces — has the meaning prescribed in 10 U.S.C. § 101 (a)(4).

Basic military pay — the basic pay under 37 U.S.C. § 204.

Basic pay — the employee's scheduled rate of pay plus any additional pay that is defined as basic pay for annuity computation purposes in the retirement system in which the employee is a participant.

Employee — any full-time permanent employee, term employee, or an employee on a TAPER appointment who serves in a reserve component of the United States Armed Forces and who has been called to active duty as a result of the Operation Enduring Freedom conflict, or in preparation for, or as a result of the Operation Iraqi Freedom conflict.

Operation Enduring Freedom — the period encompassed within Executive Order 13223 Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, effective September 14, 2001, and amended by Amendment to Executive Order 13223, effective January 16, 2002 and ending on the date the employee is released from active duty occasioned by Operation Enduring Freedom.

Operation Iraqi Freedom — the period encompassed within the Joint Resolution entitled Authorization for Use of Military Force Against Iraq Resolution of 2002, approved October 16, 2002 (P.L. 107-243) and ending on the date the employee is released from active duty occasioned by Operation Iraqi Freedom.

Reserve component — has the meaning prescribed in 37 U.S.C. § 101(24).