

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 a new section 926 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Environmental Accessibility Adaptation (EAA) Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid program for EAA 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 authorize Medicaid reimbursement rates for EAA services for persons with mental retardation and developmental disabilities. The emergency rules were previously published, in a slightly different form, on February 21, 2003, at 50 DCR 1776. These rules differ from the previous rulemaking by: limiting the expenditure for environmental accessibility adaptation services to a lifetime expenditure rather than an annual one; eliminating a requirement for the Mental Retardation and Developmental Disability Administration to procure those services; and by limiting these services to participant's own homes, a foster home, or a rental property, provided that the landlord grants permission.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District of Columbia that the maintenance and expansion of EAA services to persons mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of EAA services for persons with mental retardation and developmental disabilities.

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

The emergency rulemaking was adopted on May 29, 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 September 26, 2003, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 926 to read as follows:

926 ENVIRONMENTAL ACCESSIBILITY ADAPTATION (EAA) SERVICES

926.1 The Medicaid Program shall reimburse for EAA services for each participant 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 for persons with mental retardation and developmental disabilities.

926.2 EAA services are physical adaptations to a home, required by a client's plan of care that are necessary to ensure the health, welfare, and safety of a client, or that enable a client to function with greater independence in the home, and without which the client would require institutionalization.

926.3 EAA services may include:

- (a) Installing ramps and grab-bars;
- (b) Widening doorways;
- (c) Modifying bathroom facilities; and
- (d) Installing specialized electric and plumbing systems that are necessary to accommodate medical equipment and supplies.

926.4 EAA services shall:

- (a) Be necessary to ensure the health, welfare, or safety of the client and enable the client to function with greater independence;
- (b) Be limited to a life-time expenditure of ten thousand dollars (\$10,000) per client;
- (c) Not be provided or reimbursed for clients eligible for the Department of Housing and Community Development, Handicap Accessibility Improvement Program (HAIP);
- (d) Be preauthorized;
- (e) Be installed in one of the following:
 - (1) The client's own home;
 - (2) A foster home in which the client resides; or

- (3) An apartment or other rental property in which the client resides, provided that the participant obtains the property owner's written consent to make environmental accessibility adaptations.
 - (f) Not include carpeting, roof repair, central air conditioning, or those adaptations or improvements to the home that are of general utility and have no direct medical or remedial benefit to the client; and
 - (g) Not include adaptations that increase the total square footage of the home or facility.
- 925.6 A case manager shall assist all eligible clients to gain access to the HAIP program.
- 926.7 EAA services shall be authorized by the interdisciplinary team and provided in accordance with the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 926.8 Each provider of EAA 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 that authorizes the provider to bill for EAA services under the Waiver; and
 - (c) Comply with applicable contractor licensing requirements in the District of Columbia or in the jurisdiction where services are provided.
- 926.9 Before approving EAA services, an evaluation is required from a licensed construction analyst or housing inspector that:
- (a) Substantiates that the home is structurally sound;
 - (b) States whether the home can accommodate the EAA and whether there are any construction stipulations; and
 - (c) Recommends how the EAA should be constructed.
- 926.10 EAA services shall be provided consistent with any stipulations or recommendations from the construction analyst or housing inspector, if an evaluation is obtained.

926.11 EAA services shall be provided in accordance with the applicable District, State or local building codes.

926.12 The reimbursement rates for EAA services shall be as follows:

UNIT (S) OF SERVICE	MAXIMUM UNIT RATE (INCLUDING INSTALLATION)
Specialized electric and plumbing systems	\$2,000
Doorway modifications	\$90 per linear foot
Bathroom Modifications	\$2,000
Ramp	\$90 per linear foot

926.99 **DEFINITIONS**

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

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

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 (IHP) as defined in the court-approved Joy Evans Exit Plan.

Comments on the proposed rules shall be submitted 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, within 30 days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, excepting holidays, from 8:15 A.M. to 4:45 P.M. 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 (the District) 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 a new section 946 to Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for residential habilitation 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 authorize Medicaid reimbursement for residential habilitation services for person with mental retardation.

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

The emergency rulemaking was adopted on June 6, 2003 and became effective on that date. The emergency rules will remain in effect for 120 days or until October 4, 2003, unless earlier superceded by another emergency rulemaking or by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also 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*.

Title 29 (Public Welfare)(May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 946 to read as follows:

SECTION 946 RESIDENTIAL HABILITATION SERVICES

- 946.1 Residential habilitation services shall be reimbursed by the Medicaid Program for each participant 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.
- 946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a group home for mentally retarded persons (GHMRP), that has at least four (4) but no more than six (6) clients.
- 946.3 Each GHMRP shall be licensed pursuant to 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 comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations, except as set forth in these rules.
- 946.4 Residential habilitation services shall only be available to clients with a demonstrated need for continuous training, assistance and supervision, and shall be authorized and provided in accordance with the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 946.5 Each provider of residential habilitation services shall assist with the acquisition, retention and improvement in skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the client to reside in the community.
- 946.6 Consistent with the requirements set forth in section 3521 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client of the GHMRP receive training and habilitation, when appropriate, which shall include but not be limited to the following areas:
- (a) Eating and drinking;
 - (b) Toileting;
 - (c) Personal hygiene;
 - (d) Dressing;
 - (e) Grooming;
 - (f) Health care;
 - (g) Communication;
 - (h) Interpersonal and social skills;
 - (i) Home management;
 - (j) Employment and work adjustment;
 - (k) Mobility;
 - (l) Time management;
 - (m) Financial management;
 - (n) Academic and pre-academic skills;

- (o) Motor and perceptual skills; "
- (p) Problem-solving and decision-making;
- (q) Human sexuality;
- (r) Aesthetic appreciation; and
- (s) Opportunity for social, recreational and religious activities utilizing community resources.

946.7 Consistent with the requirements set forth in section 3520 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client receives the professional services required to meet his or her goals as identified in the client's IHP or ISP. Professional services may include, but are not limited to the following disciplines or services:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational Therapy;
- (g) Physical Therapy;
- (h) Psychology;
- (i) Social Work;
- (j) Speech and language therapy; and
- (k) Recreation.

946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable the clients to gain access to Waiver and other community services and activities. Each provider of transportation services shall have a current District of Columbia Medicaid Provider Agreement that authorizes the provision of transportation services under the Waiver.

946.9 The minimum daily ratio of on-duty, direct care staff to clients in each GHMRP that serves severely physically handicapped clients, clients who are aggressive, assaultive or security risks, clients who manifest severely hyperactive or psychotic-like behavior, and other clients who require considerable adult guidance and supervision shall be not less than the following:

- (a) 1:4 during the waking hours of the day, approximately 6:00 a.m. to 10:00 p.m., when clients remain in the GHMRP during the day; and
- (b) 1:6 during sleeping, approximately 10:00 p.m. to 6:00 a.m.

