

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.

- 946.10 The minimum daily ratio of on-duty, direct care staff to clients present in each GHMRP that serves clients who require training in basic independent-living skills shall be not less than the following:
- (a) 1:6 during the waking hours, approximately 6:00 a.m. to 2:00 p.m., when clients remain in the GHMRP during the day;
 - (b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m., and
 - (c) 1:6 during sleeping hours, approximately 10:00 p.m. to 6:00 a.m.
- 946.11 The minimum daily ratio of on-duty direct care staff to clients in each GHMRP that serves clients who are in day programs such as sheltered workshops, vocational training, supported or competitive employment programs, and who have acquired basic independent-living and survival skills shall not be less than 1:6 at all times that clients are in the GHMRP.
- 946.12 The minimum daily staffing levels set forth in sections 946.9 through 946.11 in each GHMRP shall be increased if required by the client, as indicated in the client's IHP or ISP.
- 946.13 Each provider of residential habilitation services shall:
- (a) Be a non-profit or other business entity;
 - (b) Be a member of the interdisciplinary team;
 - (c) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation services under the Waiver;
 - (d) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) for each client;
 - (e) Ensure that all residential habilitation services staff are qualified and properly supervised;
 - (f) Ensure that the services provided are consistent with the client's IHP or ISP;
 - (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
 - (h) Provide staff training in infection control procedures consistent with the standards established by the federal Centers for Disease Control and Prevention (CDC);
 - (i) Ensure that each staff member or employee has been screened for communicable disease six months prior to providing services to any client, in accordance with the guidelines issued by the CDC, and that each employee or staff member is certified to be free of communicable disease; and

- (j) Ensure compliance with all of MRDDA's policies governing reporting of unusual incidents, human rights, behavior management and protection of clients' funds.
- 946.14 Each person providing residential habilitation services for a provider under section 946.13 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be screened annually for communicable disease, according to the guidelines issued by the CDC and demonstrate that he or she is free of communicable disease;
 - (c) Be able to read and write the English language;
 - (d) Agree to carry out the responsibilities to provide residential habilitation services consistent with the client's IHP or ISP;
 - (e) Have a high school diploma or general educational development (GED) certificate; and
 - (f) 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.*).
- 946.15 Each client's case manager shall monitor the delivery of services by conducting visits at least eight (8) times per calendar year to ensure that services are delivered in accordance with the IHP and ISP.
- 946.16 Each provider of residential habilitation services shall maintain progress notes monthly or more frequently if indicated, conduct periodic reviews of progress and maintain financial records of expenditures of public funds for each client.
- 946.17 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the client's date of discharge.
- 946.18 Residential habilitation services shall not be reimbursed when provided by a member of the client's family.
- 946.19 Reimbursement for residential habilitation services shall not include:
- (a) The cost of room and board;
 - (b) The cost of facility maintenance, upkeep and improvement;
 - (c) Routine care and supervision that would be expected to be provided by a family or group home provider; or

- (d) Activities or supervision for which a payment is made by a source other than Medicaid.
- 946.20 The reimbursement rate for residential habilitation services shall be as follows:
 - (a) \$103.00 per diem, without an acuity adjustment; or
 - (b) \$135.00 per diem, including an acuity adjustment.
- 946.21 Each client shall be screened by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) using the Health Risk Screening Tool (HRST). If the client's health care level is 3 or above as determined by the HRST, the rate shall include an acuity adjustment and reimbursement shall be made in accordance with section 946.20(b) of these rules.
- 946.22 If the reimbursement rate includes an acuity adjustment as set forth in section 946.20(b) of these rules, skilled nursing services and preventative, consultative and crisis support services shall be subject to the following limitations:
 - (a) Skilled nursing services shall not be billed in excess of the initial assessment and one (1) visit per quarter; and
 - (b) Preventative, consultative and crisis support services shall not be billed in excess of the initial assessment and one (1) visit per quarter.
- 946.23 Residential habilitation services shall not be billed concurrently with the following Waiver services:
 - (a) Environmental Accessibility Adaptation;
 - (b) Homemaker;
 - (c) Attendant care;
 - (d) Family Training;
 - (e) Independent Habilitation;
 - (f) Personal Care Services;
 - (g) Respite;
 - (h) Chore;
 - (i) Adult Companion; or
 - (j) Personal Emergency Response System (PERS).
- 946.24 Residential habilitation services shall not be billed when the client is hospitalized, on vacation or for any other period in which the client is not residing at the GHMRP.

946.25 MRDDA shall be responsible for payment of nursing services for the administration of medication to clients when the client is unable to self-administer or take medication independently. Nursing services attributable to the administration of medication shall not be billed as Waiver services.

946.99 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.

Direct Care Staff- individuals employed to work in the GHMRP who render the day-to-day personal assistance clients require in order to meet the goals of their IHP or ISP.

Group Home for Mentally Retarded Persons or GHMRP- a community residence facility, other than an intermediate care facility for persons with mental retardation, that provides a home-like environment for at least four (4) but no more than six (6) related or unrelated mentally retarded individuals who require specialized living arrangements and maintains necessary staff, programs, support services and equipment for their care and habilitation.

Health Risk Screening Tool- a mechanism for evaluating and identifying the diagnostic and training needs required by the client to ensure the client's health and safety in the least restrictive environment.

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 § 7-1304.3).

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

Interdisciplinary team- a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons which has the responsibility of performing a comprehensive evaluation of each client and participating in the development, implementation, and monitoring of the client's IHP or ISP.

Comments of 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.