

**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 718.8 of Chapter 7 of Title 29 of the District of Columbia Municipal Regulations (DCMR), governing day treatment programs.

These rules amend reimbursement rates negotiated for day treatment programs. The basic rates are set by agreement between the individual providers and the Department of Health, Medical Assistance Administration (MAA). In 1997, MAA reduced by ten percent (10%) the rate of any center whose negotiated rate was above sixty dollars (\$60.00) per day and reduced by fifteen percent (15%) the rate of any center whose negotiated rate was above one hundred and fifty dollars (\$150.00). These rules will increase the rates to the levels paid prior to the 1997 rate reduction. The Medicaid Program projects an increase in local and federal expenditures of approximately eight hundred thousand dollars (\$800,000) annually as a result of the increased reimbursement rates. Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons in need of day treatment services.

The emergency rulemaking was adopted on May 30, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rulemaking will remain in effect for 120 days or until September 28, 2003 unless earlier superceded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*, whichever comes first.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 emergency and proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend section 718.8 (Reimbursement Policy) of Chapter 7 of Title 29 DCMR to read as follows:

718.8 The following day treatment programs shall have the rates listed for services rendered on or after the effective date of these rules:

<u>Provider Name</u>	<u>Rate</u>
Whitman Walker	\$158.82
NCC Infant Day Treatment	\$125.92
St. John's Day Treatment	\$122.00
Art and Drama Therapy Institute- Provider Number 0301710	\$114.09

<u>Provider Name</u>	<u>Rate</u>
Brookland	\$108.28
PSI-Provider Number 0301820	\$105.00
Psychiatric Center Chartered- Provider Number 0300320	\$81.00
United Cerebral Palsy	\$85.84

Comments on the proposed rules should be sent in writing to Wanda R. 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.

DISTRICT OF COLUMBIA 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 939 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Chore Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for chore 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 chore services.

On February 7, 2003 a notice of emergency and proposed rulemaking was published in the DC Register (50 DCR 1239). These emergency rules amend the previously published rules by adding a section to limit the number of hours a client may receive chore services during a one year period to ensure that total expenditures for all home and community-based services and other Medicaid services under the waiver does not exceed the amount that would be incurred by the State's Medicaid program for these individuals in an institutional setting. This cost neutrality requirement is included in the Waiver application approved by the Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of chore services.

The emergency rulemaking was adopted on May 29, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until September 27, 2003 unless earlier superseded by another emergency rulemaking or 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*.

Amend Chapter 9 (Medicaid Program) of Title 29 DCMR by adding the following new section 939, to read as follows:

SECTION 939 CHORE SERVICES

939.1 Chore services shall be reimbursed by the Medicaid Program 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.

- 939.2 Chore services are services consisting of heavy, periodic, non-medical, non-continuous household remediation tasks intended to place the home environment in a clean, sanitary and safe environment and prepare the home environment for ongoing routine homemaker services.
- 939.3 Chore services eligible for reimbursement shall include, but not be limited to the following services:
- (a) Washing windows, walls and floors;
 - (b) Moving heavy items of furniture in order to provide safe access and egress;
 - (c) Tacking down loose rugs and flooring;
 - (d) Performing non-skilled minor home repairs; and
 - (e) Yard maintenance and snow removal necessary to permit safe access to the home.
- 939.4 Chore services ineligible for reimbursement include:
- (a) Hands-on care;
 - (b) Cooking;
 - (c) Grocery shopping; and
 - (d) Respite.
- 939.5 Chore services are not reimbursable when:
- (a) The client or anyone else in the household is capable of performing these services or paying to have the services done;
 - (b) A third party payer is responsible for the provision of the services;
 - (c) Services are available without cost from a community or volunteer agency;
 - (d) Provided by the client's spouse or a family member; or

- (e) In the case of rental property, the rental lease agreement indicates that the services are the responsibility of the landlord.
- 939.6 Chore services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 939.7 Each provider of chore services shall:
- (a) Be a non-profit, home health agency, social service entity or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for chore services under the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (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 each chore aide is 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 services pursuant to these rules; and
 - (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.
- 939.8 Each person providing chore services shall:
- (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 disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from a communicable disease;
 - (d) Be able to communicate with the client;
 - (e) Be able to read and write the English language;

- (f) Complete pre-service and in-service training approved by MRDDA;
- (g) Have the ability to provide chore 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 of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personal Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Law 14-98, D.C. Official Code § 44-551 *et seq.*).

- 939.9 The billable unit of service for chore services shall be one hour.
- 939.10 The reimbursement rate for chore services shall be fifteen dollars (\$15.00) per hour.
- 939.11 Chore services shall be limited to 32 hours per client during any one (1)-year period, which shall commence on the date that the services are authorized.

939.99 **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- 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)-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 2-137; 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 should be sent in writing to Wanda R. 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.

DEPARTMENT OF MENTAL HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Mental Health, pursuant to the authority set forth in section 114 of the Department of Mental Health Establishment Amendment Act of 2001, effective December 28, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.14(2)(A))(2001) ("Establishment Act"), hereby gives notice of the adoption on an emergency basis of the following amendment to Title 29 of the District of Columbia Municipal Regulations (DCMR), Chapter 9, entitled "Medicaid Program." The amendment modifies Chapter 9, section 948.1(d), entitled "Standards for Participation of Residential Treatment Centers for Children and Youth," by broadening the range of accreditations that DMH will recognize in its consideration of residential treatment centers for certification as providers of Medicaid reimbursable services. The amendment accomplishes this objective by adopting language that conforms to the standards applied by the federal government in approving residential treatment centers for participation in the Medicaid and Medicare programs. (See 42 CFR § 440.160 and 42 CFR § 441.151). These sections authorize reimbursement of inpatient psychiatric services for individuals under age 21 in residential treatment centers that are accredited by "the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State," whereas the accreditation recognized under Title 29 DCMR is limited to just the Joint Commission on Accreditation of Healthcare Organizations.

Emergency action is required in order to allow the Department of Mental Health to more effectively carry out its mandate under section 112(g)(3)(A) of the Establishment Act (D.C. Official Code § 7-1131.12(g)(3)(A)) (2001), to certify residential treatment centers for children and youth. Further, the amendment will allow the Department to submit Medicaid claims and offset the payments it makes to residential treatment providers by receiving reimbursement for the federal government's share of the costs under Medicaid.

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

This emergency rule was adopted on April 11, 2003 and became effective immediately upon that date. The emergency rule will expire on August 9, 2003 (120 days after the effective date), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 29 DCMR, Chapter 9 is amended to read as follows:

- § 948.1(d) Be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the Department of Mental Health.

All parties desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with David Norman, Acting General Counsel, Department of Mental Health, 64 New York Avenue, N.E., Fourth Floor, Washington, D.C. 20002 or dave.norman@dc.gov. Copies of this rule may be obtained from the above address.