

## 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 920 to Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for prevocational services, a habilitative service provided 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 prevocational services for persons 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 prevocational 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 prevocational services. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of prevocational services.

The emergency rulemaking was adopted on April 9, 2003 and became effective on that date. The emergency rules will remain in effect for 120 days or until August 7, 2003 unless earlier superceded by another emergency rulemaking or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director also gives notice of his 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 920 to Chapter 9 (Medicaid Program) to read as follows:**

**920           PREVOCATIONAL SERVICES**

- 920.1           The Medicaid program shall reimburse for prevocational 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 in this section.

- 920.2 Clients who are not expected to be able to join the general work force or participate in transitional shelter workshops within (1) year (excluding supported employment programs) may receive prevocational services.
- 920.3 Prevocational services are services designed to prepare a client for paid or unpaid employment, but not to a specific job skill.
- 920.4 Prevocational services eligible for reimbursement shall be as follows:
- (a) Prevocational assessment activities, including situational assessments provided at community businesses and other community resources;
  - (b) Social skills training, including the following services:
    - (1) Instructions;
    - (2) Interpersonal relations;
    - (3) Communication;
    - (4) Respecting the rights of others; and
    - (5) Problem solving;
  - (c) The development of work site skills, which shall include, at a minimum, teaching the client the following concepts:
    - (1) Compliance with employer instructions;
    - (2) Attendance;
    - (3) Task completion; and
    - (4) Safety;
  - (d) Time-limited volunteering and other prevocational skills training indicated in the client's individual habilitation plan (IHP) or individual support plan (ISP); and
  - (e) Transportation to community activities necessary to carry out this service.
- 920.5 Prevocational services may be provided in non-facility-based or facility-based settings.

- 920.6 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or State and local laws and regulations.
- 920.7 Before a provider of prevocational services may pay a client wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.
- 920.8 Prevocational services are ineligible for reimbursement if the services are available to the client through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*) or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*) (hereinafter the "Acts"). Each client receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and individual habilitation plan (IHP) or individual support plan (ISP).
- 920.9 Each provider shall provide appropriate services for each client requiring physical assistance to participate in prevocational services activities and ensure that each client has access to first aid.
- 920.10 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each client's IHP or ISP. All prevocational services shall be reflected on the IHP or ISP as habilitative rather than explicit employment objectives.
- 920.11 Each prevocational services provider shall:
- (a) Be a non-profit, 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 prevocational services under the Waiver;
  - (c) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
  - (d) Ensure that all prevocational 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 services pursuant to these rules;
  - (g) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), US Department of Labor regulations 29 CFR 1910.1030; and
  - (h) Maintain a staff-to-client ratio, indicated in the IHP or ISP that ensures that the service meets the client's individual needs, and that services are provided appropriately and safely.
- 920.12 Each provider of prevocational services shall demonstrate, through experience or academic attainment, the ability and qualification to provide prevocational services for individuals with mental retardation with varying habilitation needs.
- 920.13 Each person providing prevocational services for a provider under section 920.11 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 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;
  - (d) Have the ability to communicate with the client;
  - (e) Be able to read and write the English language;
  - (f) Have a high school diploma or a general educational development (GED) certificate;
  - (g) Complete required training; 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), 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.).
- 920.14 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2)

years of combined supervisory and job coaching experience.

920.15 Prevocational services shall not be provided concurrently with day treatment, supported employment, or day habilitation services.

920.16 The reimbursement rate for prevocational services shall be one hundred dollars (\$100.00) per day. Services shall be provided for a minimum of five (5) hours per day, not including travel time.

920.17 No payment shall be made for routine care and supervision, which is the responsibility of the family, group home provider or an employer.

920.99 **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.

**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, § 7-1304.03).

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

**Situational Assessment** — Provides competitive or real work sites in the community for the systemic assessment and observation of the client; identifies work site characteristics and client adaptations, training procedures, support needs related to the client's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

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., 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 may be obtained Monday through Friday, excepting holidays, from 8:15 A.M. to 4:45 P.M. from the same address.

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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 945 to Chapter 9 of Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations (DCMR), entitled "Day Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for day habilitation services, a habilitative service, 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 day 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 day 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 day habilitation services. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of day habilitation services.

The emergency rulemaking was adopted on April 14, 2003 and became effective on that date. The emergency rules will remain in effect for 120 days or until August 13, 2003, unless earlier superseded by another emergency rulemaking or by publication of 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 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 945 to Chapter 9 (Medicaid Program) to read as follows:**

**SECTION 945 DAY HABILITATION SERVICES**

- 945.1 Day 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.

- 945.2 Day habilitation services for persons with mental retardation shall be designed to support the client outside the home through training and skills development, which will enable the client to experience greater participation in community-integrated activities.
- 945.3 Day habilitation services eligible for reimbursement shall be as follows:
- (a) Training and skills development that increases participation in community activities and fosters independence;
  - (b) Activities that will allow the client the opportunity to choose and identify their own areas of interest and preferences;
  - (c) Activities that provide opportunities for socialization and leisure activities in the community; and
  - (d) Transportation necessary to participate in community activities.
- 945.4 Day habilitation services may be provided in non-facility based or facility based settings as determined by the needs of the client. When services are provided in a facility based setting, each facility shall comply with all applicable federal, District, or State and local laws and regulations.
- 945.5 The provision of day habilitation services shall be coordinated with any other service identified in the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 945.6 Day habilitation services shall be pre-authorized and provided in accordance with the IHP or ISP. The IHP or ISP shall indicate if the staffing plan requires the participation of a licensed professional and identify the type of professional to provide the service in accordance with the client's needs.
- 945.7 Each professional providing day habilitation services shall be licensed to practice his or her respective profession 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 § 3-1202 *et seq.* ) or be licensed to practice his or her profession in the jurisdiction where services are provided.
- 945.8 A copy of the client's IHP or ISP shall be maintained in all of the following locations:
- (a) The client's home;
  - (b) The client's file maintained by case manager; and
  - (c) The day habilitation provider.









