

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 928 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Adaptive Equipment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for adaptive equipment devices and related 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). The rules also authorize reimbursement for adaptive equipment devices and related services. There are numerous types of adaptive equipment devices authorized pursuant to this Waiver. Therefore, descriptions of each adaptive equipment device and corresponding reimbursement rate are set forth in a separate fee schedule maintained by the Medical Assistance Administration. The fee schedule is available upon request.

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

The emergency rulemaking was adopted on April 2, 2003 and became effective on that date. The emergency rules will remain in effect for 120 days or until July 31, 2003, unless earlier superseded by another emergency rulemaking of by publication of a notice of final rulemaking in the *D.C. Register*.

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 Title 29 DCMR by adding the following new section 928 to Chapter 9 (Medicaid Program) to read as follows:

SECTION 928 ADAPTIVE EQUIPMENT SERVICES

928.1 Adaptive equipment 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 in this section.

- 928.2 Adaptive equipment services eligible for reimbursement are as follows:
- (a) Adapted or Modified Equipment for Activities of Daily Living;
 - (b) Adaptive Communication Devices;
 - (c) Functional Mobility Aids;
 - (d) Installation costs, if applicable; and
 - (e) Repair and Maintenance Costs.
- 928.3 All adaptive equipment devices shall be the most cost-effective method of meeting the client's needs and comply with applicable standards of manufacture, design, usage and installation.
- 928.4 All requests for adaptive equipment services shall be supported by a physician's order and related clinical assessment performed by a speech pathologist, audiologist, physical therapist or occupational therapist.
- 928.5 Any physician or clinician performing the required assessment set forth in section 928.5 shall not be a provider of adaptive equipment nor have a financial relationship with a provider or manufacturer of adaptive equipment.
- 928.6 Providers of speech, language and hearing services shall meet all of the requirements set forth in section 932 of Title 29 DCMR.
- 928.7 Providers of physical therapy services shall meet all of the requirements set forth in section 934 of Title 29 DCMR.
- 928.8 Providers of occupational therapy services shall meet all of the requirements set forth in section 935 of Title 29 DCMR.
- 928.9 Adaptive equipment services shall be pre-authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 928.10 The client's IHP or ISP shall indicate whether the equipment is for initial use or replacement.
- 928.11 The Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) shall approve or deny the request for adaptive equipment based upon its review of the following:
- (a) Form 719A;
 - (b) Clinical Assessment;
 - (c) Physician's Order;

- (d) Results of the Health-Risk Screening Tool;
- (e) ISP or IHP with identified outcomes; and
- (f) Vendor information.

928.12 MRDDA shall submit the approved 719A Form to the Department of Health, Medical Assistance Administration (MAA) for appropriate action.

928.13 Each provider of adaptive equipment 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 adaptive equipment services; and
- (c) 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.*).

928.14 Adaptive equipment services expenditures shall be limited to three thousand dollars (\$3,000.00) per client during any one (1) year period, which shall commence on the date that the service is authorized.

928.15 MAA shall maintain the fee schedules which sets forth the description and reimbursement amount for adaptive equipment services.

928.99 **DEFINITIONS**

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

Activities of Daily Living - The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

Adapted or Modified Equipment - Equipment and supplies the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that would assist a client with impairments related to activities of daily living and is necessary for the client to meet functional goals toward a least restrictive environment.

Adaptive Communication Device - A speech, hearing, visual or other communication aid the client would not be qualified to receive under the

District's Medicaid Durable Medical Equipment Program that provides a client with severe communication impairment the ability to meet their functional communication goals toward a least restrictive environment .

Audiologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the area of audiology granted by the American Speech Hearing Language Association or is licensed or certified as a audiologist in the state where the services are provided.

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.

Functional Mobility Aids - Equipment and supplies the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that would assist a client with impairments related to mobility in and out of the home and is necessary for the client to meet mobility goals towards a least restrictive environment.

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

Occupational Therapist - A person who is licensed or authorized to practice occupational therapy 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 *et seq.*) or licensed as an occupational therapist in the jurisdiction where services are being provided.

Physical Therapist - A person who is licensed or authorized to practice physical therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1201 *et seq.*) or licensed as a physical therapist in the jurisdiction where services are provided.

Speech Pathologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the areas of speech pathology or audiology granted by the American Speech Hearing Language Association or is licensed or certified as a speech pathologist in the state where the services are provided.

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, DC 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.