DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), 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. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Section 1925, entitled "Individualized Day Supports Services", of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

These final rules establish standards governing reimbursement of individualized day supports services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services, for a five-year period beginning November 20th, 2012. Individualized day supports services provide crucial habilitation supports in the community to ensure that a person's social skills are enhanced outside of his/her home to foster independence and encourage community integration. These rules amend the previously published final rules by: (1) establishing that providers of individualized day support services shall possess at least one (1) year of experience providing day services to individuals with intellectual and/or developmental disabilities instead of five (5) years of experience; (2) amending the list of documents that providers shall maintain for monitoring and audit reviews by adding a contingency plan to describe how the individualized day supports will be provided when the regular staff person is unavailable and/or when back-up staff is unavailable; (3) changing the name of the individualized activity plan to "community integration plan" and revising its components; and (4) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 27, 2013 at 60 DCR 13415 and a Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on January 17th, 2014 at 61 DCR 00458. One comment was received and no substantive changes have been made. Section 1925.5(f) was deleted because it was redundant and contained the same requirements as set forth in Section 1915.5(e). The final rules were adopted on February 20, 2014 and shall become effective upon publication of this notice in the *D.C. Register*.

A new Section 1925 (Individualized Day Supports) is added to Chapter 19 (Home and Community Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1925 INDIVIDUALIZED DAY SUPPORTS

1925.1 This section establishes standards governing Medicaid eligibility for individualized day supports services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver), and shall establish conditions of participation for providers of individualized day supports services seeking Medicaid reimbursement.

1925.2 The following rules pertain only to Medicaid reimbursable individualized day supports services to be received by an individual enrolled in the ID/DD Waiver, hereinafter referred to as "person" or "persons".

1925.3 In order to receive Medicaid reimbursement for individualized day supports services, a provider must document that the need for the service is consistent with the person's Individual Support Plan (ISP) and Plan of Care, and show at least one of the following:

(a) That the person chooses to participate in habilitation services in a non-traditional community-based setting;

(b) That the person is transitioning into retirement or is retired and chooses to continue habilitation services;

(c) That the person has individual ISP goals for community integration and participation;

(d) That the person is likely to be successful in achieving his or her ISP goals; or

(e) That the person has a documented need for individualized day supports due to medical or safety issues that are consistent with the Health Care Management Plan (HCMP) and Behavioral Support Plan.

1925.4 Medicaid reimbursable individualized day supports services shall:

(a) Be habilitative in nature;

(b) Be delivered in a community setting; and

(c) Be provided in a group consisting of no more than two (2) persons.

1925.5 Medicaid reimbursable individualized day supports services shall provide:

(a) Highly individualized, structured activities that emphasize social skills development, and/or vocational exploration, and life skills training, within an inclusive community setting;

(b) Activities that maximize the person's functional levels;

(c) Activities that support the person's choice in identifying his or her own areas of interest and preferences;

(d) Activities that provide opportunities for socialization including leisure activities that enhance adult skill development in the community; and

(e) Training in the safe and effective use of one or more modes of accessible public transportation and/ or coordination and provision of transportation to participate in community activities consistent with this service.

1925.6 In order to be eligible for Medicaid reimbursement, each individualized day supports provider entity shall:

(a) Comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR;

(b) Have a minimum of one (1) year of experience providing day services to persons with intellectual disabilities and/or developmental disabilities;

(c) For current providers, provide verification of passing the Department on Disability Services (DDS) provider certification review for at least three (3) years;

(d) Provide oversight, supervision and training of all Direct Service Personnel (DSP) providing individualized day supports; and

(e) Maintain a staff-to-person ratio as indicated in the ISP and Plan of Care up to a maximum ratio of one to two (1:2), ensuring that services meet the person's needs and are provided appropriately and safely.

1925.7 Services shall only be authorized for Medicaid reimbursement if the following conditions are met:

(a) DDS provides a written service authorization before beginning service delivery;

(b) The individualized day support service name and enrolled provider are identified in the ISP, Plan of Care and Summary of Support Services;

(c) The amount and frequency of services to be received is documented in the ISP, Plan of Care and Summary of Support Services;

(d) Services shall not conflict with the service limitations described under Subsection 1925.11;

(e) The staffing plan and community integration plan described under Subsection 1925.8 are submitted upon commencement of services; and

(f) The quarterly reports shall be submitted within seven (7) business days after the commencement of the first quarter and each subsequent quarter.

1925.8 Each DSP providing individualized day supports shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR, in order to be eligible for Medicaid Reimbursement.

1925.9 In order to be eligible for Medicaid reimbursement each DSP providing individualized day supports services shall meet the following requirements:

(a) Assist with the development of the community integration plan to implement the individualized day supports services;

(b) Coordinate the scheduled activities specified under the community integration plan; and

(c) Utilize positive behavioral support strategies and crisis interventions as described in the approved Behavioral Support Plan to address emergency situations.

1925.10 Each provider entity of individualized day supports services shall, in order to be eligible for Medicaid reimbursement, maintain documents for monitoring and audit reviews as described under Section 1909 (Records and Confidentiality of Information) of Chapter 19, of Title 29 of the DCMR and maintain the following additional records:

(a) A contingency plan that describes how the individualized day supports will be provided when the regular staff person is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the supports will be provided when back-up staff are unavailable;

(b) The community integration plan containing the following information:

(1) The name of the person receiving the services;

(2) The title of the staff person rendering services;

(3) The schedule of activities taking place in the community, including the date, start and end time that the person receiving services will participate in;

(4) The goals, including measurable outcomes which promote community integration, for all services identified in the ISP and Plan of Care;

(5) The strategies that are being used to support the person to achieve his or her goals as in his or her ISP and Plan of Care;

(6) The teaching strategies that are being implemented to achieve the goal and a response to the following questions: What worked well for the person? What didn't work well for the person?;

(7) The observations that are noted by the DSP regarding the person receiving services' newly acquired skills that should be included in the person's amended or annual ISP; and

(8) The learning styles of the person.

1925.11 In order to be eligible for Medicaid reimbursement, each Provider shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1925.12 Medicaid shall only reimburse individualized day supports services for six (6) hours per day, and up to five (5) days a week.

1925.13 Medicaid does not reimburse the person's family and other individuals who reside with the person receiving individualized day supports services to qualify as a DSP.

1925.14 A DSP shall not perform individualized day support services if he/she also provides the person with the following ID/DD Waiver services:

(a) Residential Habilitation;

(b) Supported Living;

(c) Shared Living;

(d) Host Home; and

(h) In-Home Supports.

1925.15 Individualized day supports shall be billed at the unit rate. The reimbursement rate shall be six dollars and eleven cents ($6.11) per billable unit or twenty-four dollars and forty-four cents ($24.44) per hour. This service shall not exceed 1,560 hours per year or 6,250 units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of services to bill for one (1) unit of service.

1925.16 Individualized day supports services shall not be billed concurrently with the following services:

(a) Supported Employment;

(b) Employment Readiness;

(c) Day Habilitation;

(d) Respite; and

(e) Shared Living.

Section 1999 (DEFINITIONS) is amended by adding the following:

Community integration plan - A plan that includes structured activities and practical experiences by incorporating goals and strategies that best meets the individual's interests, needs and learning styles, and that can be implemented within a flexible time period.

Person – An individual enrolled in the Home and Community Based Services Waiver for Individuals with Intellectual and Developmental Disabilities.