

DEPARTMENT OF HEALTH

NOTICE OF FINAL 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 of an amendment of section 934 (Physical Therapy Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for physical therapy services provided to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 14, 2007 (54 DCR 12068). No comments were received. The December 14th rulemaking changed the previously published rules at 53 DCR 97 (January 6, 2006), by providing for more effective planning and follow-up reporting. This rulemaking further changes the December 14th rulemaking by modifying the definition of private practice so that qualified social services agencies employing licensed physical therapists can provide physical therapy services.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 4, 2008 (55 DCR 003514). No comments were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 934 of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

934 PHYSICAL THERAPY SERVICES

934.1 Physical therapy services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and developmental disabilities 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.

934.2 To be eligible for reimbursement, physical therapy services shall be:

(a) Ordered by the person's physician;

- (b) Reasonable and necessary to the treatment of the person's illness, injury, or long term disability, or to the restoration or maintenance of function affected by the injury, illness, or long term disability; and
 - (c) Included in the person's individual habilitation plan or individual support plan and Plan of Care.

- 934.3 Each individual providing physical therapy services shall be an employee of a home health agency or a physical therapist in private practice with a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for physical therapy services under the Waiver.

- 934.4 In addition to the other requirements of this section, a physical therapist in private practice shall meet all of the following conditions:
 - (a) Maintain a private office, even if services are always furnished in the person's home;
 - (b) Meet all state and local licensure laws and rules;
 - (c) Maintain a minimum of one million dollars in professional liability insurance;
 - (d) If services are provided in a private practice office space, the space shall be owned, leased, or rented by the private practice and be used exclusively for the purpose of operating the private practice; and
 - (e) Physical therapy assistants and physical therapy aides shall be personally supervised by the physical therapist. Assistants and aids shall also be employed by the physical therapist or the partnership group to which the physical therapist belongs or the same private practice that employs the physical therapist. Personal supervision requires the physical therapist to be in the room during the performance of the service.

- 934.5 Each individual providing physical therapy services shall:
 - (a) Be a licensed physical therapist;
 - (b) Have a minimum of two (2) years of experience as a physical therapist;
 - (c) Be acceptable to the person to whom services are provided;

- (d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation thereof from a physician;
 - (e) Have the ability to communicate with the person to whom services are provided;
 - (f) Be able to read, write, and speak the English language; and
 - (g) 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; D.C. Official Code § 44-551 *et seq.*).
- 934.6 Each physical therapist, at least annually, shall provide the Department on Disability Services (DSS) and the Department of Health, Medical Assistance Administration, with a brochure, in printed or electronic form, listing his or her academic background, licensure information, experience, and the nature of his or her practice to assist Waiver enrollees in making provider selection decisions.
- 934.7 Physical therapists, without regard to their employer of record, shall be selected by the person to receive services, or that person's guardian or legal representative, and shall be answerable to the person receiving services. Any organization substituting practitioners for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Case Manager so that the person receiving services may select a new practitioner.
- 934.8 The duties of each provider shall include, at a minimum, the following:
- (a) Preparing a report that summarizes the physician's order, measures the person's strength, range of motion, balance and coordination, posture, muscle performance, respiration, and motor functions. Additionally, developing and describing treatment plans that provide treatment strategies, including direct therapy, training caregivers, monitoring requirements, monitoring instruments, monitoring instructions, and anticipated outcomes;
 - (b) Maintaining ongoing involvement and consultation with other service providers and caretakers;
 - (c) Ensuring that the person's needs are met in accordance with the physician's order;
 - (d) Providing consultation and instruction to the person, family, or other caregivers;

- (e) Recording progress notes on each visit; and
- (f) Conducting periodic examinations and modifying treatments for the person receiving services, when necessary.

- 934.9 The physical therapist shall be responsible for providing written documentation in the form of reports, assessments for physical therapy services, physician's orders, progress notes, and other pertinent documentation of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the services are and continue to be reasonable and necessary. The documentation shall include evidence that services did not exceed the authorized frequency and duration as authorized for physical therapy services in the physician's order. The home health agency or physical therapist in private practice shall maintain a copy of the documentation for at least six (6) years after concluding services to the person.
- 934.10 The reimbursement rate for physical therapy services shall be sixty-five dollars (\$65.00) an hour for a full assessment of the individual, preparation of summary documentation, and delivery of that documentation. The billable unit of service for physical therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to bill a unit of service. Billable services shall include updating medical records and verifying that the summary documentation was delivered to the person, or his or her guardian or legal representative, to the physician, and to DDS.
- 934.11 The reimbursement rate for ongoing physical therapy services shall be sixty-five dollars (\$65.00) per hour for the period specified in the physical therapy report and approved by the physician. The billable unit of service for physical therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to bill a unit of service.
- 934.12 For persons between the ages of 18 and 21 years, EPSDT under the District of Columbia State Plan for Medical Assistance shall be fully utilized before accessing physical therapy services under the Waiver.

934.99 DEFINITIONS

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

EPSDT – Early and Periodic Screening, Diagnostic and Treatment Services are designed for Medicaid-eligible children under the age of twenty-one (21) that include

periodic screenings to identify physical and mental conditions, vision, hearing and dental, as well as diagnostic and treatment services to correct conditions identified during screenings.

Individual Habilitation Plan (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 – The successor to the IHP as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Physical Therapist – An individual who is licensed to practice physical therapy pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed as a physical therapist in the jurisdiction where services are provided.

Physical Therapy Services – The practice of physical therapy, as defined by section 102(12)(A) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.02(12)(A)).

Physical Therapy Aide – An individual who works only under the direct supervision of a physical therapist, and whose activities do not require advanced training in, or complex application of, therapeutic procedures or other standard procedures involved in the practice of physical therapy.

Physical Therapy Assistant – An individual who is licensed to practice as a physical therapy assistant pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed to practice as a physical therapy assistant in the jurisdiction where services are provided.

Physician – An individual who is licensed to practice medicine pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed to practice medicine in the jurisdiction where services are provided.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Waiver.

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to pre-authorize Waiver services.

Private Practice – An individual whose practice is a partnership or an unincorporated solo practice. Private practice also includes an individual who is practicing physical therapy as an employee of an unincorporated practice, a

professional corporation, or other incorporated therapy practice. For the purposes of this rule, an individual who is licensed to practice physical therapy and is employed by a social services agency providing physical therapy service under this rule shall be considered in private practice. Private practice does not include individuals working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility, or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Progress Note – A dated, written notation by a member of the physical therapy services team that summarizes facts about a person's care and response to treatment during a given period of time.

Provider – An individual or business entity that provides physical therapy services pursuant to this chapter.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.