

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, effective January 13, 1997, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 1918 to Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Professional Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for professional services to be provided by licensed or certified professionals to participants in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver).

This is a new rule which authorizes a variety of professional services that are beneficial and support the general health of Waiver participants. These professional services also increase opportunities for community inclusion of persons enrolled in the Waiver. The services included in this rule are Massage Therapy, Sexuality Education, Acupuncture, Art Therapy, Music Therapy, Dance Therapy, Drama Therapy, and Fitness Training. This rule sets reimbursement rates for these professional services and limits the total expenditure to \$2,250.00 per participant per year.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the corresponding Waiver with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 21, 2007 (54 DCR 012381). No comments on the proposed rules 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*.

A new section 1918 (Professional Services) of Chapter 19 of Title 29 DCMR is adopted to reads as follows:

1918 PROFESSIONAL SERVICES

1918.1 Professional services shall be reimbursed by the District of Columbia Medicaid Program for each participant 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.

1918.2 To be eligible for reimbursement, professional services shall be:

- (a) Recommended by a physician for massage therapy, fitness training, or acupuncture;
- (b) Reasonable and necessary for the treatment, restoration or maintenance of function affected by injury, illness or long term disability; and
- (c) Included in the person's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care.

1918.3 The professional services eligible for reimbursement shall be:

- (a) Massage Therapy;
- (b) Sexuality Education;
- (c) Art Therapy;
- (d) Dance Therapy;
- (e) Drama Therapy;
- (f) Fitness Training;
- (g) Acupuncture; and
- (h) Music Therapy.

1918.4 The specific professional service delivered shall be consistent with the scope of the license or certification held by the professional. Service intensity, frequency, and duration shall be determined by individual need. The professional services may be short-term, intermittent, or long-term, depending on the need. The interdisciplinary team developing the plan of support shall determine service utilization.

1918.5 Sexuality Education shall be delivered by:

- (a) A Sexuality Education Specialist; or
- (b) Any of the following professionals with specialized training in Sexuality Education:
 - (1) Psychologist;
 - (2) Psychiatrist;
 - (3) Licensed Clinical Social Worker; or
 - (4) Licensed Professional Counselor.

- 1918.6 The following professional services shall be delivered by credentialed professionals as set forth in the definition section of this rule:
- (a) Massage Therapy;
 - (b) Art Therapy;
 - (c) Dance Therapy;
 - (d) Drama Therapy;
 - (e) Fitness Training;
 - (f) Acupuncture; and
 - (g) Music Therapy.
- 1918.7 Each professional, within the first two (2) hours of services, shall conduct an assessment and develop an individualized plan for the person that is in keeping with his or her choices, goals and prioritized needs. The individualized plan shall identify specific outcomes for the person. The completed plan shall be delivered to the person, family, guardian, other caretaker, or Department on Disability Services (DDS) Case Manager.
- 1918.8 Professional services may be utilized to:
- (a) Provide training in sexuality and personal awareness, reproduction education, how to avoid victimization and safe sexual practices;
 - (b) Assist in increasing the individual's independence, participation, emotional well-being and productivity in their home, work and community;
 - (c) Provide training or therapy to an individual necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individuals needs;
 - (d) Perform assessments and/or re-assessments and recommendations;
 - (e) Provide consultative services and recommendations specific to the expert content; and
 - (f) Provide necessary information to the individual, family, caregivers, and/or team to assist in planning and implementing plans per the approved IHP or ISP and Plan of Care.
- 1918.9 Services shall be provided by an agency or professional in private practice. Each professional and agency shall meet the requirements set forth in Chapter 19 of Title 29 DCMR.
- 1918.10 The agency or professional in private practice shall have a current Medicaid Provider Agreement that authorizes the service provider to bill for Professional Services.
- 1918.11 Each person providing professional services shall be acceptable to the person.

- 1918.12 Each professional shall provide DDS and the Department of Health, Medical Assistance Administration a brochure listing his or her academic background, licensure information, experience and the nature of his or her practice to assist those who will receive services in making their provider selection.
- 1918.13 Professionals, without regard to their employer of record, shall be selected by the person receiving services or his or her guardian or legal representative and shall be answerable to the person receiving services. Any provider substituting professionals 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 to evaluate continuation of services.
- 1918.14 Each professional shall be responsible for providing written documentation in the form of reports, visit notes, progress notes, and other pertinent documentation of the person's progress or lack of progress. The documentation shall include evidence that services did not exceed the authorized frequency and duration as authorized in the individualized plan required pursuant to section 1918.7. The agency or professional in private practice shall maintain a copy of the documentation for at least six (6) years after the person's date of service.
- 1918.15 The reimbursement rate for professional services shall be:
- (a) Sixty dollars (\$60.00) per hour for Massage Therapy;
 - (b) Seventy five dollars (\$75.00) per hour for Sexuality Education;
 - (c) Forty five dollars (\$45.00) per hour for Art Therapy;
 - (d) Forty five dollars (\$45.00) per hour for Dance Therapy;
 - (e) Forty five dollars (\$45.00) per hour for Drama Therapy;
 - (f) Seventy five dollars (\$75.00) per hour for Fitness Trainer;
 - (g) Seventy dollars (\$70.00) per hour for Acupuncture; and
 - (h) Forty five dollars (\$45.00) per hour for Music Therapy.
- 1918.16 The billable unit of service for professional 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 to bill a unit of service.
- 1918.17 Professional services shall be limited to a maximum of two thousand, two hundred and fifty dollars (\$2,250.00) per participant per year and in accordance with the person's IHP or ISP and Plan of Care. Additional

services may be prior authorized if the participant reaches the limitation before the expiration of the IHP or ISP and Plan of Care year and the participant's health and safety are at risk. The need for ongoing services shall be approved by a physician and DDS.

1918.99 DEFINITIONS

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

Acupuncture – A professional service under this section which shall be provided by a person who is authorized to practice acupuncture pursuant to Chapter 47 of Title 17 of the District of Columbia Municipal Regulations (DCMR).

Art Therapy – A professional service under this section which shall be provided by a person who is certified to practice art therapy pursuant to certification by the American Art Therapy Association, Inc. and/or credentialing of the Art Therapy Credentialing Board.

Clinical Record – A comprehensive compilation of medical and other data that identifies the person and justifies and describes the diagnosis and treatment of the person.

Dance Therapy – A professional service under this section which shall be provided by a person who is authorized to practice dance therapy pursuant to Chapter 71 (Dance Therapy) of Title 17 DCMR.

Drama Therapy – A professional service under this section which shall be provided by a person who is certified to practice drama therapy pursuant to the National Association for Drama Therapy.

Fitness Trainer – A person who is certified to practice fitness training pursuant to Fitness Standards Council (FSC) Personal Trainer Accreditation.

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 (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in

the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Licensed Clinical Social Worker – A person who is licensed as an independent clinical social worker 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 § 3-1202 *et seq.*) or licensed as an independent clinical social worker in the jurisdiction where the services are being provided.

Licensed Professional Counselor – A person who is licensed to practice professional counseling 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 § 3-1202 *et seq.*) or licensed as a professional counselor in the jurisdiction where the services are being provided.

Massage Therapy – A professional service under this section provided by a person who is authorized to practice massage therapy pursuant Chapter 75 of Title 17 DCMR.

Music Therapy – A professional service under this section provided by a person who is certified by the Certification Board for Music Therapists, which is managed by the American Music Therapy Association.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Physician – A person who is authorized to practice medicine 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 physician in the jurisdiction where services are provided.

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 prior authorize Waiver services.

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

Psychiatrist – A person who is licensed to practice psychiatry 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 § 3-1202 *et seq.*) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist – A person who is licensed to practice psychology 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 § 3-1202 *et seq.*) or licensed as a psychologist in the jurisdiction where the services are being provided.

Sexuality Education Specialist – A person who is certified to practice sexuality education pursuant to certification by the American Association of Sexuality Educators, Counselors and Therapists (AASECT) Credentialing Board.

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.