

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. 774; 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 to section 930 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Nutrition Evaluation and Consultation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for nutrition evaluation and consultation services provided by licensed nutritionists and dietitians to participants in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules, 49 DCR 244 (January 11, 2002), to change the name of the rule, to add more effective planning of follow up reporting and to set limits on the amount of nutrition evaluation and consultation services.

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 Waiver with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 7, 2007 (54 DCR 011735). 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*.

Section 930 (Nutritional Counseling Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

930 NUTRITION EVALUATION AND CONSULTATION SERVICES

930.1 Nutrition evaluation and consultation 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.

930.2 To be eligible for reimbursement, nutrition evaluation and consultation services shall be:

- (a) Ordered by a physician if the individual has any history of weight that is significantly above or below recommended body weight, a history

of gastrointestinal disorders, diabetes, swallowing disorders, or other medical conditions that can be a threat to health if nutrition is poorly managed;

- (b) Recommended by the interdisciplinary team if the issues are not medical in nature;
- (c) Reasonable and necessary to the treatment of the person's illness, injury, or long term disability or for the restoration or maintenance of function affected by the injury, illness or long term disability; and
- (d) Included in the person's IHP or ISP and Plan of Care.

930.3 Nutrition evaluation and consultation services may be used to address:

- (a) Evidence of weight gain or loss that creates health risk;
- (b) The need for a therapeutic diet;
- (c) The need for a diet with altered texture due to oral-motor problems;
- (d) The need for a diet related to allergies or other food intolerances or drug-nutrient interactions;
- (e) The need for counseling for the person and staff on the specifics of the needed diet plan;
- (f) The need for counseling on shopping, cooking, meal planning or meal preparation;
- (g) The need for counseling on safe storage and cooking of food;
- (h) The need for counseling on nutritional information about foods;
- (i) The need for counseling on how to eat a healthy, balanced diet within the constraints of special dietary needs, etc.; and/or,
- (j) The need for counseling the individual on how to develop a cycle of menus that incorporates his/her preferences and choices and ensures optimal outcomes.

930.4 Nutrition evaluation and consultation services shall include, as necessary, the following:

- (a) Comprehensive nutritional assessments;

- (b) Partial nutritional evaluations to include anthropometric assessments;
- (c) Biochemical, clinical dietary appraisals;
- (d) Food-drug interaction potential;
- (e) Health and safety environmental review of food preparation and storage areas;
- (f) Needs assessments for adaptive eating equipment and dysphagia management; or
- (g) Nutrition evaluation and consultation services on a wide variety of issues to promote improved health and increase the person's ability to manage their own diet in an effective manner including menu development, shopping, food preparation, food storage, and food preparation procedures based on physician's orders.

930.5 Nutritional counselors, without regard to their employer of record, shall be selected by the person receiving services or their guardian or legal representative to provide services to the person receiving services, and will be answerable to the person receiving services. Any organization substituting practitioners for more than a two week period or four visits due to emergency or lack of availability will request a case conference with the Department on Disability Services (DDS) Case Manager so that the person receiving services can select a new practitioner.

930.6 The nutrition evaluation and consultation services provider shall be responsible for providing written documentation in the form of reports, assessments, physician's orders, visit notes, progress notes, and other pertinent documentation of the person's progress or lack of progress, medical conditions, functional gains and 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. The agency or nutrition evaluation and consultation services provider in private practice shall maintain a copy of the documentation for at least six (6) years after the person's date of service.

930.7 Each person providing nutrition evaluation and consultation services shall meet all of the following requirements:

- (a) Be licensed to practice dietetics or nutrition 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 to practice dietetics or nutrition in the jurisdiction where services are provided;
- (b) Have a minimum of one (1) year of experience working with persons with mental

retardation and developmental disabilities;

- (c) Have the ability to develop and implement a nutrition plan based on an assessment of the person's nutritional condition and needs;
- (d) Be acceptable to the consumer and be able to communicate with the consumer;
- (e) 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; and
- (f) Have a current District of Columbia Medicaid Provider Agreement or be employed by a home health agency or social services agency that has a current District of Columbia Medicaid Provider Agreement that authorizes the service provider to bill for Nutrition Evaluation and Consultation Services under the Waiver.

930.8 The reimbursement rate for nutritional assessments shall be fifty-five dollars (\$55.00) an hour for a full nutritional assessment of the individual, preparation of summary documentation and delivery of that documentation. The tasks shall include updating medical records and verification that the documentation was delivered to the primary care physician (as necessary), DDS Case Manager and the place of residence of the person receiving services. The billable unit of service for nutrition evaluation and consultation 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.

930.9 The reimbursement rate for ongoing nutrition evaluation and consultation services shall be fifty-five dollars (\$55.00) per hour for the period specified in the nutritional assessment.

930.10 Nutrition evaluation and consultation services shall be limited to one hundred twenty (120) hours per year unless approved for additional hours by a physician.

930.99 DEFINITIONS

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

Communicable Disease – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

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*.

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

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – Shall mean 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.