

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED 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 (2006 Repl. & 2012 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) (2008 Repl.)), hereby gives notice of the adoption, on an emergency basis of an amendment to Section 1918, entitled "Professional 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 Regulations (DCMR). These emergency and proposed rules establish standards governing reimbursement of art therapies services provided to participants in the Home and Community-Based Waiver Services 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 20, 2012.

Art therapies services are designed to provide therapeutic supports to help a person with a disability express and understand emotions through artistic expression and the creative process. The goal of art therapies is to assess and treat a variety of mental health problems including anxiety, depression and substance abuse disorders. These rules amend the previously published rules by: (1) renaming Section 1918 entitled "Professional Services" as "Art Therapies"; (2) deleting massage therapy services, sexuality education and fitness training from Section 1918 and incorporating these services into a new Section 1936, entitled "Wellness Services"; (3) deleting acupuncture services as an approved service; and (4) mandating new professional certification requirements for providers of art therapies services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of Art Therapies services. The ID/DD Waiver serves some of the District's most vulnerable residents. Many of the persons enrolled in the ID/DD Waiver suffer from complex diseases and require a plan of care incorporating multiple services. Requiring providers to be certified to deliver art therapies will ensure that providers will receive focused academic training in their areas of expertise. In addition, the certification of providers ensures that providers are duly trained to provide optimal therapies in conjunction with nationally recognized standards of health delivery. Insufficient training of art therapies professionals may retard a person's overall health improvement and reduce the efficacy of a person's plan of care. Therefore, in order to ensure that the residents' health, safety, and welfare are not threatened by the lapse in access to art therapies services provided by certified professionals, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on July 22, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until November 18, 2013, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 1918 (Professional Services) of Chapter 19 (Home and Community Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR is amended to read as follows:

1918 ART THERAPIES

- 1918.1 The purpose of this section is to establish standards governing Medicaid eligibility for art therapies services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of these services.
- 1918.2 Art therapies services utilize art, dance, drama, and music therapy to provide therapeutic supports to help a person with disabilities express and understand emotions through artistic expression and the creative process.
- 1918.3 To be eligible for reimbursement, the services shall be:
- (a) Ordered by a physician or a practitioner listed in Section 1918.7;
 - (b) Reasonable and necessary for the treatment of social and emotional difficulties related to a number of mental health issues including disability, illness, trauma, loss, and physical and cognitive problems; and
 - (c) Included in the person's Individual Support Plan (ISP) and Plan of Care.
- 1918.4 The types of services eligible for reimbursement shall be:
- (a) Art therapy;
 - (b) Dance therapy;
 - (c) Drama therapy; and
 - (d) Music therapy.
- 1918.5 Each person providing art therapies services shall:

- (a) Conduct an assessment within the first two (2) hours of delivering the service;
- (b) Develop and implement an individualized art, dance, drama, or music plan for the person that is in keeping with their choices, goals and prioritized needs that includes the following:
 - (1) Treatment strategies including direct therapy, caregiver training, monitoring requirements and instructions, and anticipated outcomes; and
 - (2) Identification of specific outcomes for the person.
- (c) Deliver the completed plan to the person, family, guardian or other caregiver, and the Department on Disability Services (DDS) Service Coordinator prior to the Support Team meeting;
- (d) Participate in the ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content;
- (e) Provide necessary information to the individual, family, guardian or caregivers, and/or team, to assist in planning and implementing the approved ISP and Plan of Care;
- (f) Recording progress notes on each visit and quarterly reports;
- (g) Conduct periodic examinations and modify treatments for the person receiving services to ensure that the art therapy practitioner's recommendations are incorporated into the ISP, when necessary; and
- (h) Meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1918.6 Services shall be provided by a certified practitioner in an independent practice or a practitioner employed by a Waiver provider.

1918.7 Art therapies services shall be delivered by the following practitioners:

- (a) Art therapists certified to practice art therapy by the American Art Therapy Association, Inc. and/or credentialing of the Art Therapy Credentialing Board;
- (b) Dance therapists authorized to practice dance therapy pursuant to Chapter 71 (Dance Therapy) of Title 17 (Business, Occupations, and Professions) of the DCMR;

- (c) Drama therapists certified by the National Association for Drama Therapy;
and
 - (d) Music therapists certified by the Certification Board for Music Therapists,
which is managed by the American Music Therapy Association.
- 1918.8 Each Waiver provider or certified practitioner in an independent practice shall meet the requirements as set forth in Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.
- 1918.9 Practitioners, without regard to their employer of record, shall be selected by the person or his/her authorized representative and shall be answerable to the person receiving services.
- 1918.10 Any Waiver provider 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 Service Coordinator to evaluate continuation of services.
- 1918.11 Services shall be authorized for reimbursement in accordance with the following provider requirements:
- (a) DDS shall provide a written service authorization before the commencement of services;
 - (b) The provider shall conduct an assessment and develop an art therapies treatment plan with training goals and techniques that will assist the caregivers, within the first two (2) hours of service delivery;
 - (c) The service name and provider delivering services shall be identified in the ISP and Plan of Care;
 - (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and
 - (e) Services shall not conflict with the service limitations described under Section 1918.15.
- 1918.12 Each certified practitioner or Waiver provider shall maintain records required under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1918.13 Each certified independent practitioner or Waiver provider shall comply with Section 1911 (Individual Rights) under Chapter 19 of Title 29 DCMR.

- 1918.15 Any combination of art therapies services shall be limited to a maximum of two thousand, two hundred and fifty dollars (\$2,250.00) per person, per ISP year and delivered in accordance with the person's ISP and Plan of Care.
- 1918.16 The reimbursement rate for art therapies services shall be:
- (a) Forty-five dollars (\$45.00) per hour for art therapy;
 - (b) Forty-five dollars (\$45.00) per hour for dance therapy;
 - (c) Forty-five dollars (\$45.00) per hour for drama therapy; and
 - (d) Forty-five dollars (\$45.00) per hour for music therapy.
- 1918.17 The billable unit of service for art therapies 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.

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

ISP year- The three hundred and sixty five (365) day period during which a person's ISP is in effect.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 899 North Capitol Street, NE, Suite 6037, Washington, D.C. 20002, via telephone on (202) 442-9115, via email at DHCF_Publiccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.