

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. 744; D.C. Official Code § 1-307.02 (2014 Repl.)) 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, on an emergency basis, of amendments to Section 1922, entitled “Employment Readiness Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities), Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

These emergency rules establish standards governing reimbursement of employment readiness 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 (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)).

The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

The Notice of Final Rulemaking for 29 DCMR § 1920 (Employment Readiness Services) was published in the *D.C. Register* on March 14, 2014, at 61 DCR 002112. These rules amend the previously published final rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) adding a requirement for an annual Positive Personal Profile and Job Search and Community Participation Plan, with the initial documents due within thirty (30) days of services; (3) adding self-determination, self-advocacy, money management and budgeting, and development and maintenance of relationships to the list of social and soft skills training examples; (4) requiring that employment readiness services include employment exploration and/or preparation for those skills needed to be successful as integrated members of the community; (5) eliminating the ability for a person to volunteer for his or her provider, or any other business affiliated with the provider as part of employment readiness services; (6) requiring the development, with the person, of an individualized daily schedule of activities that reflects the persons interests and goals; (7) modifying the requirements for the individualized service delivery plan; (8) requiring that quarterly reporting includes a description of the person’s employment exploration and/or preparation of skills developed in the community; (9) clarifying that employment readiness may only be provided in a facility if that

setting includes opportunities for community engagement, integration and inclusion; (10) removing the requirement that the person submits documentation to the provider demonstrating that employment readiness services are not available through the Rehabilitation Act; (11) modifying rates to reflect increased costs to provide services; (12) barring the payment of stipends to attendees of Employment Readiness services by the provider; and (13) barring the Employment Readiness provider from concurrently being the person's employer and provider of Employment Readiness 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 ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on September 14, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for one hundred and twenty (120) days from the effective date or until January 12, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking.

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*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 1922, EMPLOYMENT READINESS SERVICES, is deleted in its entirety and amended to read as follows:

1922 EMPLOYMENT READINESS SERVICES

1922.1 This section establishes standards governing Medicaid eligibility for employment readiness services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and establishes conditions of participation for providers of employment readiness services.

1922.2 Employment readiness services occur over a defined period of time with specific outcomes to be achieved, and provide learning and work experiences, including volunteer work, where a person enrolled in the Waiver can develop general, non-job-task-specific strengths and new employment related skills that contribute to

employability in paid employment in an integrated community setting. A person receiving employment readiness services may pursue employment opportunities at any time to enter the general work force.

1922.3 To be eligible for Medicaid reimbursable employment readiness services, the services shall be identified in the ISP, Plan of Care, and Summary of Supports for each person enrolled in Waiver, and each person shall:

- (a) Demonstrate a need for employment readiness services; and
- (b) Have employment related goals included in the ISP.

1922.4 To be eligible for Medicaid reimbursement, employment readiness services shall support a person on his/her pathway to competitive, integrated employment and shall consist of the following:

- (a) Providing opportunities for persons enrolled in the Waiver to develop general, non-job, task-specific strengths and skills that contribute to employability and are consistent with the person's goals;
- (b) Assessment activities that occur annually or more frequently based upon the needs of the person, which require, at a minimum, a Positive Personal Profile and Job Search and Community Participation Plan, and may also include a customized employment assessment, and/or conducting a person-centered vocational and situational assessment and employment readiness assessments provided at community businesses and other community settings;
- (c) Social and soft skills training, including, but not limited to the following:
 - (1) Following and interpreting instructions;
 - (2) Interpersonal skills, including building and maintaining relationships;
 - (3) Communication skills for communicating with supervisors, co-workers, and customers;
 - (4) Travel skills;
 - (5) Respecting the rights of others and understanding personal rights and responsibilities;
 - (6) Decision-making skills and strategies;
 - (7) Support for self-determination and self-advocacy; and

- (8) Budgeting and money management;
- (d) Developing work skills which shall include, at a minimum, teaching the person the following:
 - (1) Appropriate workplace attire, attitude, and conduct;
 - (2) Work ethics;
 - (3) Attendance and punctuality;
 - (4) Task completion;
 - (5) Job safety;
 - (6) Attending to personal needs, such as personal hygiene or medication management; and
 - (7) Interviewing skills;
- (e) Coordinating transportation to community activities utilizing the Medicaid Non-Emergency Transportation Broker;
- (f) Employment exploration and/ or employment preparation in the community; and
- (g) Coordinating community-based, integrated, volunteer experiences as set forth in § 1922.5.

1922.5 Volunteer experiences shall be time limited and must allow the person to develop experience and build skills to further the person's employment goal, as identified in his or her ISP. A person enrolled in the Waiver may volunteer at a not-for-profit organization or an approved government agency, but may not volunteer for the provider agency or another business affiliated with the provider; if volunteering occurs at a for-profit business and the provider shall meet any requirements released by the U.S. Department of Labor. The guidance for those requirements can be found at:
<http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

1922.6 To be eligible for Medicaid reimbursement, a Positive Personal Profile and Job Search and Community Participation Plan shall be developed within thirty (30) days of the date when the person began receiving services. An additional vocational assessment, completed by a qualified professional, shall be conducted within the first ninety (90) days of participation, and shall include an assessment of the following:

- (a) Employment-related goals based on a person's strengths, interests, and areas for improvement;
- (b) Available natural or community supports;
- (c) Personal concerns and preferences, based upon what is important to and for the person;
- (d) Work and career interests based on exploration and/or discovery; and
- (e) Accommodations and supports, including an assessment of assistive technology, which may be required once the person is employed.

1922.7 To be eligible for Medicaid reimbursement, a Positive Personal Profile, Job Search and Community Participation Plan, and additional vocational assessment shall be conducted at least annually by the provider to evaluate each person enrolled in the Waiver's acquisition of employment-related skills based on the person's career preferences and goals as specified in their ISP and Plan of Care.

1922.8 Each provider of Medicaid reimbursable employment readiness services shall develop an individualized service delivery plan described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR reflecting the person enrolled in the Waiver's interests, career preferences, choices, goals and prioritized needs. The plan shall:

- (a) Define the specific outcomes to be achieved over a specified period of time;
- (b) Describe the activities in the plan that are developed with the person and support the person on his or her pathway to competitive, integrated employment;
- (c) Describe how the plan shall support a person in the development of employment related skills, including social skills such as interviewing skills, professionalism, building and maintaining relationships, self-determination and self-advocacy, and attending to the person's needs; and
- (d) Describe community-based employment preparation experiences that are related to the person's employment goals.

1922.9 Each provider of Medicaid reimbursable employment readiness services shall submit reports to Department on Disability Services (DDS) service coordinator on a quarterly basis, consistent with the record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR. These reports shall also include the following information:

- (a) Volunteer activities provided;
- (b) Employment exploration and/or preparation in the community; and
- (b) Other employment readiness service activities provided.

1922.10 Each provider of Medicaid reimbursable employment readiness services shall develop, with the person, an individualized schedule of daily activities based upon the person's goals and activities as identified in his or her ISP, and consistent with what is in his or her Person-Centered Thinking and Discovery tools, of meaningful adult activities that support the person on his or her pathway to integrated, competitive employment.

1922.11 Each provider of Medicaid reimbursable employment readiness services shall maintain the following documents for monitoring and review, in addition to the record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR:

- (a) A copy of the Positive Personal Profile, Job Search and Community Participation Plan, and additional comprehensive vocational assessment; and
- (b) A written daily schedule identifying the utilization of employment readiness services.

1922.12 To receive Medicaid reimbursement, employment readiness services shall be provided in the community or in a facility-based setting that provides opportunities for community engagement, inclusion and integration.

1922.13 To receive Medicaid reimbursement, each provider of employment readiness services shall be a Home and Community-Based Services (HCBS) Provider agency and shall meet the following requirements:

- (a) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR;
- (b) Demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide employment readiness services for persons with intellectual and developmental disabilities with varying habilitation needs; and
- (c) Have at least one staff member with a bachelor's degree in vocational rehabilitation or a similar discipline, and one (1) year of combined

supervisory and “job coaching” experience or experience providing employment services to person with disabilities.

- 1922.14 Each provider of Medicaid reimbursable employment readiness services shall comply with the requirements under Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR.
- 1922.15 When employment readiness services are provided in a facility, each facility shall comply with all applicable federal, District, or state and local laws and regulations in order to receive Medicaid reimbursement.
- 1922.16 All payment for employment related training services shall be in accordance with the United States Fair Labor Standards Act of 1985.
- 1922.17 The employment readiness Medicaid reimbursement rate shall include coverage for any personal care services provided by an employment readiness services provider.
- 1922.18 To be eligible for Medicaid reimbursement, each Direct Support Professional shall meet the following requirements:
- (a) Comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR; and
 - (b) Have at least one (1) year of experience working with people with intellectual and developmental disabilities, or one year of comparable experience.
- 1922.19 Services shall be authorized for Medicaid reimbursement if:
- (a) DDS provided a written service authorization before the commencement of services;
 - (b) The provider develops a Positive Personal Profile and Job Search and Community Participation Plan, conducts an additional initial vocational assessment and then an annual Positive Personal Profile and Job Search and Community Participation Plan and additional vocational assessment thereafter; and develops an employment readiness plan with training goals and techniques that will assist the person to achieve employment readiness goals and outcomes based upon the person’s interests and preferences. The initial Positive Personal Profile and Job Search and Community Participation Plan shall be completed within the first thirty (30) days of service delivery and the additional vocational assessment shall be completed within the first ninety (90) days of service delivery;
 - (c) The service name and provider delivering services are identified in the ISP and Plan of Care;

- (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under § 1922.20 (Service Limitations).

1922.20 In order to receive Medicaid reimbursement, services shall only be furnished to a person enrolled in the Waiver for up to eight (8) hours per day, not to exceed forty (40) hours per week.

1922.21 Medicaid reimbursable employment readiness services shall not be provided, or billed for, during the same hours and on the same day as the following services:

- (a) Day Habilitation;
- (b) Supported Employment;
- (c) In-Home Supports;
- (d) Companion;
- (e) Personal Care Services; and
- (f) Individualized Day Supports.

1922.22 Employment readiness providers may not pay a stipend to a person for attendance or participation in activities at the employment readiness program.

1922.23 An employment readiness provider may not concurrently employ a person and be his or her provider of Medicaid employment readiness services.

1922.24 Employment readiness services are not available to people who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 U.S.C. §§ 720 *et seq.*), or Section 602 (16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 U.S.C. §§ 1400 *et seq.*)

1922.25 Medicaid reimbursable employment readiness services shall be provided for a maximum of eight (8) hours a day, and shall not include time spent in transportation to and from the program.

1922.26 The billable unit of service for Medicaid reimbursable employment readiness services shall be fifteen (15) minutes. The reimbursement rate for employment readiness services shall be eighteen dollars and seventy-two cents (\$18.72) per hour or four dollars and sixty-eight cents (\$4.68) per billable unit. A provider

shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to be able to bill a unit of service.

Section 1999, DEFINITIONS, is amended by adding the following:

Non-job, task-specific skills – General skills designed to support employment goals, such as resume writing, interviewing skills, and the ability to communicate effectively.

Stipend – Nominal fee paid to a person for attendance and/ or participation in activities designed to achieve his or her employment goal, as identified in the person’s ISP.

Travel Skills Training- Training the waiver participant to use public transportation to travel safely to their job or training work site.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@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 rules may be obtained from the above address.