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 a new Section 1936, entitled "Wellness Services", of Chapter 19 (Home and Community-Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR). These emergency and proposed rules establish standards governing reimbursement of wellness 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. Wellness services are designed to promote and maintain good health and assist in increasing the person's independence, participation, emotional well-being, and productivity in their home, work, and community. Wellness services consist of five types of services. Fitness training, massage therapy, and sexuality education were previously included under Section 1918 entitled, "Professional Services" and are now included under wellness services. In addition, wellness services include nutrition evaluation /consultation and bereavement counseling as two new and distinct types of services under the approved ID/DD Waiver. These rules will: (1) establish requirements for the delivery of two new services (bereavement counseling, and nutrition evaluation/consultation) as part of wellness services; (2) establish and update requirements for the delivery of fitness training, massage therapy and sexuality education; (3) require providers to follow specific service delivery requirements to promote more efficient service utilization management practices; and (4) provide updated definitions for terms and phrases used in this chapter.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of Wellness Services. The ID/DD Waiver serves some of the District's most vulnerable residents. Many of these residents suffer from chronic diseases and mental problems including obesity, diabetes, depression, and other mental illnesses. The welfare of these residents depends on the availability of services including nutrition evaluation/consultation and bereavement counseling as a means to address, and prevent these persistent health problems. Therefore, in order to ensure that the residents' health, safety, and welfare are not threatened by the lapse in access to nutritional evaluation/counseling and bereavement counseling under the waiver, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on July 17, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until November 13, 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*.

A new Section 1936 (Wellness Services) is added to read as follows:

1936 WELLNESS SERVICES

1936.1 The purpose of this section is to establish standards governing Medicaid eligibility for wellness 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 wellness services.

1936.2 Wellness services are designed to promote and maintain good health. These services shall assist in increasing the person's independence, participation, emotional well-being, and productivity in their home, work, and community.

1936.3 The wellness services eligible for reimbursement are:

(a) Bereavement Counseling;

(b) Fitness Training;

(c) Massage Therapy;

(d) Nutrition Evaluation/Consultation; and

(e) Sexuality Education.

1936.4 To qualify for bereavement counseling and sexuality education, the services shall be:

(a) Recommended by a Support Team; and

(b) Identified as a need in the person's Individual Support Plan (ISP) and Plan of Care.

1936.5 To qualify for fitness training and massage therapy, the services shall be:

(a) Ordered by a physician; and

(b) Identified as a need in the individual's Individual Support Plan (ISP) and Plan of Care.

1936.6 To qualify for nutritional evaluation/consultation services, each person shall have a history of the following medical conditions:

(a) A history of being significantly above or below body weight;

(b) A history of gastrointestinal disorders;

(c) A diagnosis of diabetes;

(d) A swallowing disorder; or

(e) A medical condition that can be a threat to health if nutrition is poorly managed.

1936.7 In addition to the requirements set forth in Section 1936.6, nutritional evaluation/consultative services shall be:

(a) Ordered by a physician;

(b) Identified as a need in the individual's ISP and Plan of Care; and

(c) Recommended by a Support Team.

1936.8 The specific wellness 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 the person's individual needs and documented in the person's ISP and Plan of Care

1936.9 Each professional providing wellness services shall:

(a) Conduct an intake assessment within the first two (2) hours of delivering the service with long term and short term goals;

(b) Develop and implement a person-centered plan consistent with the person's choices, goals, and prioritized needs. The plan shall include treatment strategies including direct therapy, caregiver training, monitoring requirements and instructions, and specific outcomes;

(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 wellness professional's area of expertise;

(e) Provide necessary information to the person, family, guardian or caregivers and assist in planning and implementing the approved ISP and Plan of Care;

(f) Record progress notes on each visit and quarterly reports; and

(g) Conduct periodic examinations and modify treatments for the individual receiving services to ensure that the wellness professional's recommendations are incorporated into the ISP, as necessary.

1936.10 Each professional providing Nutrition Evaluation/Consultation services shall comply with the following additional requirements:

(a) Conduct a comprehensive nutritional assessment;

(b) Conduct a partial nutritional evaluation to include an anthropometric assessment;

(c) Perform a biochemical or clinical dietary appraisal;

(d) Analyze food-drug interaction potential, including allergies;

(e) Perform a health and safety environmental review of food preparation and storage areas;

(f) Assess the need for a therapeutic diet that includes an altered/textured diet due to oral-motor problems;

(g) Conduct a needs assessment for adaptive eating equipment and dysphagia management; and

(h) Conduct a nutrition evaluation and provide consulting services on a variety of subjects to promote improved health and increase the person's ability to manage their own diet in an effective manner. The consulting services shall include menu development, shopping, food preparation, food storage, and food preparation procedures consistent with physician's orders.

1936.11 Each professional providing wellness services shall be employed by a Home and Community-Based Services Waiver provider agency or by professional service provider who is in private practice as an independent clinician as described in Section 1904.2 of Title 29 DCMR.

1936.12 Each provider shall comply with the requirements set forth under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.

1936.13 Each Direct Support Professional (DSP) providing wellness services shall comply with requirements set forth under Section 1906 (Requirements for Individuals Providing Direct Services) of Chapter 19 of Title 29 DCMR.

1936.14 Professionals delivering wellness services shall meet the following licensure and certification requirements:

(a) Bereavement Counseling services shall be performed by a professional counselor licensed 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.* (2007 Repl. & 2012 Supp.)) and certified by the American Academy of Grief Counseling as a grief counselor;

(b) Fitness Trainers shall be certified by the American Fitness Professionals and Associates association;

(c) Dietetic and nutrition counselors shall be licensed 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.* (2007 Repl. & 2012 Supp.)); and

(d) Massage Therapists shall be licensed 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.* (2007 Repl. & 2012 Supp.)) and certified by the National Verification Board for Therapeutic Massage and Bodywork.

1936.15 Sexuality Education shall be delivered by:

(a) A Sexuality Education Specialist who is certified to practice sexuality education by the American Association of Sexuality Educators, Counselors and Therapists Credentialing Board; 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.

1936.16 Each professional, without regard to their employer of record, shall be selected by the person receiving services or his or her authorized representative, and shall be answerable to the person receiving services. Any provider substituting for a selected professional 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 the continuation of services.

1936.17 Services shall be authorized in accordance with the following requirements:

(a) DDS shall provide a written service authorization before the commencement of services;

(b) The provider shall conduct an intake assessment and develop a person-centered plan within the first two (2) hours of service delivery. The plan shall include training goals and techniques that will assist the caregivers;

(c) The service name and provider entity 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 1936.17 and 1936.18.

1936.18 Each Provider shall comply with the requirements described under Section 1908 (Reporting Requirement), Section 1909 (Records and Confidentiality of Information) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1936.19 Wellness services shall be limited to one-hundred (100) hours per calendar year per service. Additional hours, not to exceed fifty (50) hours, may be prior authorized if the person reaches their limitation before the expiration of the ISP and Plan of Care year and the person's health and safety are at risk. Requests for additional hours may be approved when accompanied by a physician's order or if the request passes a clinical review by staff designated by DDS.

1936.20 The person may utilize one (1) or more Wellness services in the same day, but not at the same time.

1936.21 The reimbursement rate for Wellness 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) Seventy-five dollars ($75.00) per hour for Fitness Training;

(d) Fifty-five dollars ($55.00) per hour for Nutrition Counseling; and

(e) Sixty dollars ($60.00) per hour for Bereavement Counseling.

1936.22 The billable unit of service for wellness 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:

Anthropometric assessment- A clinical approach utilizing noninvasive methods to assess the size or body composition of an individual.

Bereavement counseling- A form of psychotherapy that aims to help a person cope with grief and mourning following a major life change or the death of a loved one.

Fitness training- Instruction using exercise and weight training to promote a person's overall health and physical well-being to maintain a healthy weight range.

Massage therapy- The therapeutic practice of manipulating the muscles and limbs to ease tension, reduce pain, enhance function, aid in the healing process, and promote relaxation and well-being.

Nutrition evaluation/consultation- The evaluation and assessment of a person's nutritional status based on their symptoms, health goals, and diet to maximize the person's overall health.

Sexuality education- A comprehensive training about various aspects of sexuality, including information about family planning; reproduction; body image; sexual orientation; sexual pleasure and decision making; communication; sexually transmitted infections; safe sexual practices; birth control methods; and how to reduce the likelihood of sexual victimization.

Comments on the proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., 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 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 proposed rule may be obtained from the above address.