DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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 (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 of amendments to Section 1918, entitled "Art Therapies," to be renamed "Creative Arts Therapies," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

These final rules establish standards governing reimbursement of creative arts therapies 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 Medicare and Medicaid 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)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Creative arts therapies 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 creative arts therapies is to assess and treat a variety of mental health problems including anxiety, depression and substance abuse disorders. The most recent Notice of Final Rulemaking for 29 DCMR § 1918 (Art Therapies) was published in the *D.C. Register* on December 13, 2013, at 60 DCR 016830. These rules amend the previously published final rules by: (1) adding a group 1:4 rate; (2) requiring that the plan for Creative Arts Therapies contain measurable, functional outcomes, based upon what is important to and for the person; (3) changing the name to Creative Arts Therapies; (4) changing the requirements for progress notes; (5) changing the requirements for quarterly reports; (6) changing the requirements for periodic examinations; (7) describing the role of the therapist as a member of the person's support team; (8) increasing rates; and (9) clarifying that this service cannot be concurrently billed with day or vocational services.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 2, 2015, at 62 DCR 013070. The emergency and proposed rulemaking was adopted on September 14, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until January 12, 2016, or the publication of these

final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking. The Director of DHCF adopted these rules as final on November 24, 2015, and they shall become effective on 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 1918, ART THERAPIES, is amended to read as follows:

1918 CREATIVE ARTS THERAPIES

1918.1 The purpose of this section is to establish standards governing Medicaid eligibility for Creative Arts 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 Creative Arts 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. Creative Arts Therapies shall be based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her Individual Support Plan (ISP).

1918.3 Creative Arts Therapies services are available both as a one-to-one service for a person, and in small-group settings, not to exceed 1:4.

1918.4 To be eligible for reimbursement, the services shall be:

(a) Ordered by a physician or a practitioner listed in Subsection 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) Recommended by a person's support team, and included in the person's Individual Support Plan (ISP) and Plan of Care.

1918.5 The types of services eligible for reimbursement shall be:

(a) Art therapy;

(b) Dance therapy;

(c) Drama therapy; and

(d) Music therapy.

1918.6 Each person providing Creative Arts 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 anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP.

(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, when invited by the person, to provide consultative services and recommendations specific to the expert content with the focus on how the person is doing in achieving the functional goals that are important to him or her;

(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) Record progress notes on each visit.

(g) Submit quarterly reports in accordance with the requirements in Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR;

(h) Conduct periodic examinations and modify treatments for the person receiving services as necessary; and

(i) Meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1918.7 Services shall be provided by a certified practitioner in an independent practice or a practitioner employed by a Waiver provider.

1918.8 Creative Arts 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 DCMR (Business, Occupations, and Professionals);

(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.

1918.9 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 DCMR.

1918.10 Creative Arts Therapies 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.

1918.11 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.

1918.12 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 a Creative Arts 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 Subsection 1918.15.

1918.13 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 DCMR.

1918.14 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 Creative Arts Therapies services shall be limited to a maximum of two thousand two hundred and fifty dollars ($2,250.00) per person, per calendar year, and delivered in accordance with the person's ISP and Plan of Care.

1918.16 The reimbursement rate for Creative Arts Therapies services shall be:

(a) Twenty-four dollars and ninety-nine cents ($24.99) per person for a total of no more than ninety-nine dollars and ninety-six cents ($99.96) per forty-five (45) minutes for art, dance, drama or music therapy in a group not to exceed four (4); and

(b) Seventy-five dollars ($75) per forty-five (45) minutes for art, dance, drama or music therapy as an individual service.

1918.17 The billable unit of service for Creative Arts 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. Creative Arts Therapies may be billed on the same day, but cannot be billed concurrently with day vocational services, including but not limited to Day Habilitation and Employment Readiness services.