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. 744; 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 935 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Occupational Therapy Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for occupational therapy services provided by a licensed occupational therapist to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 7, 2007 (54 DCR 11747). No comments were received. The December 7th rulemaking changed the previously published rules at 53 DCR 102 (January 6, 2006), by adding more effective planning and follow-up reporting and setting the reimbursement rate at sixty-five dollars ($65) per hour. This rulemaking further changes the December 7th rulemaking by modifying the definition of private practice so that qualified social services agencies employing licensed occupational therapists can provide occupational therapy services.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 4, 2008 (55 DCR 003520). No comments on the proposed rules were received. No substantive changes have been made. These rules shall be come effective on the date of publication of this notice in the *DC Register*.

Section 935 (Occupational Therapy Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

935 OCCUPATIONAL THERAPY SERVICES

935.1 Occupational therapy services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities subject to the requirements set forth in this section.

935.2 To be eligible for reimbursement, occupational therapy services shall be:

(a) Ordered by a physician;

(b) Reasonable and necessary to the treatment of the person's illness, injury, or long term disability or to the restoration or maintenance of function affected by the injury, illness or long term disability; and

(c) Included in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

935.3 Each person providing occupational therapy services shall be an employee of a home health agency or an occupational therapist in private practice with a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for occupational therapy services under the Waiver.

935.4 In addition to the other requirements of this section, the occupational therapist in private practice shall meet all of the following conditions:

(a) Maintain a private office, even if services are always furnished in the person's home;

(b) Meet all state and local licensure laws and rules;

(c) Maintain a minimum of one (1) million dollars in liability insurance;

(d) Ensure that occupational therapy services are provided consistent with the person's IHP or ISP and Plan of Care;

(e) If services are provided in a private practice office space, the space shall be owned, leased or rented by the private practice and be used exclusively for the purpose of operating the private practice; and

(f) An occupational therapy assistant, licensed in the District of Columbia (D.C. Laws 16-220 and 16-221) or in the state where services are provided, shall be personally supervised by the occupational therapist. Occupational therapy assistants shall also be employed by the occupational therapist or the partnership group to which the occupational therapist belongs or the same private practice that employs the occupational therapist. Personal supervision requires the occupational therapist to be in the room during the performance of the service.

935.5 Each person providing occupational therapy services shall:

(a) Be a licensed occupational therapist or be an occupational therapy assistant working under the direct supervision of a licensed occupational therapist;

(b) Have a minimum of two (2) years of experience as an occupational therapist or occupational therapy assistant;

(c) Be acceptable to the person to whom services are provided;

(d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;

(e) Have at least one (1) year of experience working with persons with mental retardation and developmental disabilities;

(f) Agree to carry out the responsibilities to provide services consistent with the person's IHP or ISP and Plan of Care;

(g) Complete pre-service and in-service training approved by DDS;

(h) Have the ability to communicate with the person to whom services are provided;

(i) Be able to read, write, and speak the English language; and

(j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

935.6 Each occupational therapist shall provide the Department on Disability Services (DDS) and the Medical Assistance Administration with a brochure listing their academic background, licensure information, experience and the nature of their practice to assist those who may receive services in making their provider selection.

935.7 An occupational therapist, 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 shall 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 availability events shall request a case conference with the DDS Case Manager so that the person receiving services can select a new practitioner.

935.8 The duties of each person providing occupational therapy services shall include, at a minimum, the following:

(a) Preparing a report that summarizes the physician's order, measures the person's strength, range of motion, balance and coordination, posture,

muscle performance, respiration, and motor functions and developing and describing treatment plans that describe treatment strategies including direct therapy, training caregivers, monitoring requirements, monitoring instruments, monitoring instructions, and anticipated outcomes;

(b) Maintaining ongoing involvement and consultation with other service providers and caretakers;

(c) Ensuring that the person's needs are met in accordance with the physician's order;

(d) Providing consultation and instruction to the person, family, or other caregivers;

(e) Recording progress notes on each visit; and

(f) Conducting periodic examinations and modifying treatments for the person receiving services, when necessary.

935.9 The occupational therapist shall be responsible for providing written documentation in the form of reports, assessments for occupational therapy services, physician's orders, visit notes, progress notes, and other pertinent documentation of the person's progress or lack of progress, medical conditions, functional 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 as authorized for occupational therapy services in the physician's order. The agency or occupational therapist in private practice shall maintain a copy of the documentation for at least six (6) years after the person's date of service.

935.10 The reimbursement rate for occupational therapy services shall be sixty-five dollars ($65.00) per hour for a full assessment of the individual, preparation of summary documentation, and delivery of that documentation. The billable unit of service for occupational therapy 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. The tasks shall include updating medical records and verification that the documentation was delivered to the primary care physician, DDS Case Manager and the place of residence of the person receiving services.

935.11 The reimbursement rate for ongoing occupational therapy services shall be sixty-five dollars ($65.00) per hour for the period specified in the occupational therapy report and approved by the physician. The billable unit of service for occupational therapy 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.

935.12 Each provider shall offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine.

935.99 DEFINITIONS

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

Clinical Record – A comprehensive compilation of medical and other data that identifies the person and justifies and describes the diagnosis and treatment of the person.

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*.

Occupational Therapist – A person who is licensed or authorized to practice occupational therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as an occupational therapist in the jurisdiction where services are provided.

Occupational Therapy Assistant – A person who is authorized to practice as an occupational therapy assistant under the direct supervision of a licensed occupational therapist pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25; 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed or authorized to practice as an occupational therapy assistant in the jurisdiction where services are provided.

Physician – A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as a physician in the jurisdiction where services are provided.

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.

Private Practice – An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. For the purposes of this rule, an individual who is licensed to practice occupational therapy and is employed by a social services agency providing occupational therapy service under this rule shall be considered in private practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Progress Note – A dated, written notation by a member of the health care team that summarizes facts about a person's care and response to treatment during a given period of time.

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.