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 994 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Respite Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for respite care services, which is being renamed "Respite Services," to be provided by qualified providers to persons in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules at 50 DCR 4943 (June 20, 2003), to change the name to respite services, to provide for both hourly and daily rates, to allow services to be provided in a person's home or in a provider's residential facility, to permit direct care staff to provide services, and to change the rates. Currently, respite care service is skilled nursing or personal care service that has hourly rates. Respite services is being modified to be provided as either hourly respite or daily respite, with in home respite being an hourly service that can only be delivered in the home of a primary caregiver who is not providing a Waiver residential service or in a community setting and daily respite being provided in a residential facility. In addition, respite has been modified so that both hourly and daily respite services may use direct care staff rather than skilled nursing staff or personal care staff, and skilled nursing services can be used concurrently with respite services. The total hour limits, without regard to which service option is chosen, have not changed, and the prohibition against concurrent payments has been modified to reflect the new Waiver services. Rates have been adjusted to reflect the change from skilled nursing or personal care services to unlicensed staff delivering respite services, and coordinating respite services that address more effective delivery of oversight and emergency procedures.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the corresponding Waiver with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 7, 2007 (54 DCR 011759). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 994 (Respite Care Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

994 RESPITE SERVICES

994.1 Hourly or daily respite services shall be reimbursed by the District of Columbia Medicaid Program for each person in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

994.2 Hourly or daily respite services consist of services provided to a person on a short-term basis because of the absence or need for relief of the primary caregiver.

994.3 Hourly respite services shall be provided in person's private residence or the residence of the family or in a community setting approved by the primary caretaker.

994.4 The following entities or individuals are not eligible to provide hourly respite services:

(a) The person's primary caregiver;
(b) A spouse, parent of a minor child or legal guardian; or
(c) A provider already being compensated for the general care of the participant.

994.5 Individuals providing hourly respite services may be an adult family member, such as a sibling, aunt, uncle or cousin, if employed and trained by the Waiver service provider and subject to the limitations set forth in section 994.4.

994.6 Each provider of hourly or daily respite services shall be a:

(a) Respite Provider Agency, certified by the Department on Disability Services (DDS);
(b) Supportive Living Provider;
(c) Residential Habilitation Provider; or
(d) Home health agency as defined in Chapter 19 of Title 29 DCMR.

994.7 Each support staff person providing hourly or daily respite services shall meet all of the conditions designated in Title 29 DCMR, Chapter 19, Section 1911 in addition to the requirements set forth below:

(a) Complete competency based training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030;
(b) Complete competency based training in emergency procedures;

and

(c) Be certified annually in cardiopulmonary resuscitation and First Aid.

994.8 Each provider of hourly or daily respite services shall:

(a) Have a current Medicaid Provider agreement to provide and bill Respite Services; and

(b) Maintain a copy of the person's most recent individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care and a description of all services the person is using.

994.9 Each provider of hourly or daily respite services shall ensure that each person receives hands-on supports including but not be limited to the following areas as needed:

(a) Eating and drinking;
(b) Toileting;
(c) Personal hygiene;
(d) Dressing;
(e) Grooming;
(f) Monitoring health and physical condition and assistance with medication or other medical needs;
(g) Communications; and
(h) Opportunity for social, recreational, and religious activities utilizing community resources.

994.10 Each provider of hourly or daily respite services shall ensure that each person has access to community activities as delineated in the person's IHP or ISP and Plan of Care. Planning community activities or continuing already planned activities and accompanying the person to those activities, including coordinating transportation, is included in the rate for hourly or daily respite services. These activities include ensuring day program or employment attendance or other activities the person would receive if they were not in respite services.

994.11 Hourly respite services shall be reimbursed at the rate of twenty dollars and forty-four cents ($20.44) per hour and shall be limited to seven hundred twenty (720) hours per calendar year. Any request for hours in excess of 720 hours shall be submitted to DDS for approval and include a justification and supporting documentation. Hourly respite services are provided as an hourly service and can be scheduled for portions of a day. Group respite services offered in or from community based (*e.g.* community centers, schools, non-profit organizations) locations that offer community activities and opportunities for socialization shall be reimbursed at a rate of eleven dollars ($11.00) per hour or three dollars and seventy-five cents ($3.75) per fifteen minute unit assuming a staff to participant ratio of no more than one respite support person to three

participants. A minimum of eight (8) minutes of continuous services must be provided to bill for a fifteen (15) minute unit. Hourly respite services may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker. Hourly respite services may only be extended for the time necessary for arrangements to be made for long term residential supports.

994.12 Day Habilitation, Prevocational Habilitation, or Supported Employment Services shall continue while the person is receiving hourly respite services, but shall not be billed concurrently.

994.13 Hourly respite services shall not be provided for persons receiving Supported Living, Host Home or Residential Habilitation Services, and shall only be provided in the person's current place of residence or in a community location.

994.14 Daily respite services shall be provided in:

(a) A Group Home for Mentally Retarded Persons (GHMRP) licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*) meeting the requirements set forth in Chapter 35 of Title 22 DCMR and certified as an intermediate care facility for persons with mental retardation in accordance with the federal conditions of participation or a Residential Habilitation Services provider. The GHMRP and Residential Habilitation Services provider shall have a Medicaid Provider Agreement for Respite Services;

(b) A Supported Living Residence (SLR) that meets the Department on Disability Services (DDS) Certification Standards and is operated by a provider with a Medicaid Provider Agreement for Respite Services and a Human Care Agreement that stipulates the conditions for accepting respite placements; or

(c) A dedicated respite facility that meets the DDS/DDA Certification Standards and is operated by a provider with a Medicaid Provider Agreement for Respite Services and a Human Care Agreement that stipulates the conditions for accepting respite placements. Respite facilities shall meet the standards of GHMRPs or SLRs.

994.15 Daily respite service shall be reimbursed at the rate of three hundred ten dollars ($310) per day and shall be limited to thirty (30) days per calendar year. Daily respite service may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker. Daily respite services may only be extended for the time necessary for arrangements to be made for long term residential supports. Daily respite service is provided as a daily service and a minimum of fourteen (14) hours of

continuous service must be provided to bill for a day.

994.16 The provider shall maintain documentation of the date and amount of time the service is delivered, and shall record the activities engaged in, the person's response to those activities, and any unusual event or circumstance involving the person's health and welfare while respite services were delivered.

994.99 DEFINITIONS

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

Direct Care Staff – Individuals employed to work in the person's home who render the day-to-day personal assistance that person's require in order to meet the goals of their IHP or ISP and Plan of Care.

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*.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

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.

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.