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 933 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Skilled Nursing Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for skilled nursing services provided by a practical nurse, registered nurse or trained unlicensed personnel to participants in the Home Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for skilled nursing services.

This rulemaking will amend the previously published rules by: amending the reimbursement rate for residential services skilled nursing services consistent with the reimbursement rate for extended skilled nursing services; changing the billing unit for residential services skilled nursing services to ensure compliance with Health Insurance Portability and Accountability Act billing code requirements; and require residential services skilled nursing services providers to submit a nursing plan to the Medicaid program for approval to ensure that adequate protocols are in place prior to rendering skilled nursing services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on June 22, 2007 (54 DCR 6101). Comments were received on the proposed rules. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 933 (Skilled Nursing Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

SECTION 933 SKILLED NURSING SERVICES

933.1 Skilled nursing services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

933.2 To be eligible for reimbursement, skilled nursing services shall be:

(a) Ordered by a physician;
(b) Provided by a registered nurse, or by a practical nurse under the supervision of a registered nurse or unlicensed trained personnel in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 of the District of Columbia Municipal Regulations (DCMR); and
(c) Reasonable and necessary to the treatment of the consumer's illness or injury.

933.3 Skilled nursing services shall be authorized and provided in accordance with each consumer's individual habilitation plan (IHP) or individual service plan (ISP).

933.4 Each person providing skilled nursing services shall:

(a) Be employed by a home health agency, nurse staffing agency or provider of independent habilitation services or residential habilitation services that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services;
(b) Be at least eighteen (18) years of age;
(c) Be acceptable to the consumer;
(d) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
(e) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
(f) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual purified protein of tuberculin (PPD) skin test or documentation from a physician;
(g) Have the ability to read and write the English language;
(h) Have the ability to communicate with the consumer;
(i) Be able to recognize an emergency and execute emergency procedures;
(j) Complete pre-service and in-service training approved by the Department on Disabilities Services (DDS);

933.5 Each home health agency or nurse staffing agency shall be certified or licensed by the District of Columbia prior to providing services and meet all standards set forth in the applicable licensure statute and implementing rules.

933.6 Each residential services skilled nursing services provider shall develop a nursing policy which shall be reviewed and approved by the Department of Health, Medical Assistance Administration (MAA). The nursing policy shall at a minimum address the following issues:
(a) Supervision of all persons providing skilled nursing services;

(b) Medication administration;
(c) Record keeping and maintenance for the clinical records;
(d) Wound Care;
(e) Tube Feeding; and
(f) Job descriptions of all persons providing skilled nursing services.

933.7 Each residential services skilled nursing services provider shall submit to MAA, copies of all contractual agreements for the provision of skilled nursing services, if services are contracted.

933.8 All nurses shall wear a pictured identification badge with lettering clearly visible to a client bearing the name of the nurse and the nurse's title "Registered Nurse" or "RN" or "Practical Nurse" or "PN".

933.9 The duties of a registered nurse shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 DCMR. They may include, at a minimum, but not be limited to the following duties:

(a) Preparing an initial assessment and evaluation;
(b) Coordinating the consumer's care and referrals;
(c) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia; and
(d) The administration of nursing services.

933.10 The duties of a practical nurse shall be consistent with the scope of practice standards for a practical nurse set forth in Chapter 55 of Title 17 (DCMR). They may include, at minimum, but not be limited to the following duties:

(a) Recording progress notes on each visit and summary notes at least quarterly;
(b) Reporting, immediately, any changes in the consumer's condition to the supervising registered nurse;
(c) Providing wound care, tube feeding, diabetic care and other treatment regimens prescribed by the physician; and
(d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia.

933.11 Nursing interventions may be delegated to trained unlicensed personnel in accordance with the requirements set forth in Chapters 54 and 55 of Title 17 of the District of Columbia Municipal Regulations.

933.12 The registered nurse shall monitor and supervise the provision of services provided by the practical nurse including a site visit at least once every sixty-two (62) days or as specified in the consumer's ISP.

933.13 The registered nurse shall be responsible for documenting in the consumer's clinical record, notes that are clearly written and contain a statement of the consumer's progress or lack of progress, medical conditions, functional losses and treatment goals which demonstrate that the consumer's services are and continue to be reasonable and necessary.

933.14 Each provider shall maintain a copy of the IHP or ISP approved by DDS for at least six (6) years after the consumer's date of discharge.

933.15 Each provider shall ensure that the practical nurse or the trained unlicensed personnel are properly supervised and that the service provided is consistent with the consumer's IHP or ISP.

933.16 Each provider shall review and evaluate skilled nursing services provided to each consumer, at least quarterly.

933.17 Medicaid reimbursement governing the provision of skilled nursing services shall be developed using the following three (3) rate structure:

(a) Skilled nursing services rate:
(b) Extended skilled nursing services rate; and
(c) Residential services skilled nursing services rate.

933.18 All skilled nursing services provided in accordance with the requirements set forth in this section shall be prior authorized by the consumer's case manager as a condition of reimbursement by the Medicaid program.

933.19 The reimbursement rate for skilled nursing services shall be sixty-five dollars ($65.00) per day for services provided by a registered nurse or practical nurse four (4) hours or less in duration. The reimbursement rate shall be thirty-two dollars and sixty cents ($32.60) per day for services provided by delegated trained unlicensed personnel in accordance with section 933.11, four (4) hours or less in duration. Providers shall obtain prior authorization for skilled nursing services in excess of four (4) hours per day. Services that extend beyond four (4) hours shall be billed at the extended skilled nursing services rate.

933.20 The reimbursement rate for extended skilled nursing services shall be seven dollars ($7.00) per billable unit for services provided by a registered nurse, five dollars ($5.00) per unit for services provided by a practical nurse and four dollars and eight cents ($4.08) per billable unit for services

provided by trained unlicensed personnel in accordance with section 933.11.

933.21 The billable unit of service for the extended skilled nursing services shall be 15 minutes. A provider shall provide at least eight (8) minutes of service in a span of 15 continuous minutes to be able to bill a unit of service.

933.22 The reimbursement rate for residential services skilled nursing services rate shall be seven dollars ($7.00) per billable unit for services provided by a registered nurse, with a limit of eight (8) units per day, five dollars ($5.00) per unit for services provided by a practical nurse with a limit of eight (8) units per day, and four dollars and eight cents ($4.08) per billable unit for services provided by trained unlicensed personnel in accordance with section 933.11 with a limit of eight (8) units per day.

933.23 The billable unit of service for the residential services skilled nursing services shall be 15 minutes. A provider shall provide at least eight (8) minutes of service in a span of 15 continuous minutes to be able to bill a unit of service.

933.24 The residential skilled nursing services rate set forth in section 933.22 shall not be billed concurrently for consumers who are receiving skilled nursing services pursuant to section 933.18 or extended nursing services pursuant to section 933.19.

933.25 If the services provided by the skilled nurse is to provide respite on a short-term basis because of the absence or need for relief of the primary caregiver who is responsible for providing some skilled aspect of care, the reimbursement rate for the skilled nursing services shall be seven dollars ($7.00) per billable unit for services provided by a registered nurse and five dollars ($5.00) per billable unit for services provided by a practical nurse consistent with the requirements set forth in § 994 of Title 29 DCMR. Respite services shall be limited to seven hundred and twenty (720) hours or thirty (30) days per year.

933.99 DEFINITIONS

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

Consumer- an individual who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Clinical Record- A comprehensive compilation of medical and other data that identifies the consumer, justifies and describes the diagnosis and treatment of the consumer.

Home health agency- Shall have the same meaning as "home care agency" as set forth in 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.*), and implementing rules.

Individual Habilitation Plan (IHP) - The same meaning 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 2-13 ; D.C. Official Code § 7-1304.03)

Individual Service Plan (ISP) - The successor to the individual habilitation plan(IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Nurse Staffing Agency – The same meaning as set forth in the Nurse Staffing Agency Act of 2003, effective November 25, 2003 (D.C. Law 15-74; D.C. Official Code §§ 44-1051.01 *et seq.*) and implementing rules.

Physician- A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupation 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.

Practical Nurse- A person who is license or authorized to practice practical nursing 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 practical nurse in the jurisdiction where services are provided.

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

Registered Nurse- A person who is licensed or authorized to practice registered nursing 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 registered nurse in the jurisdiction where services are provided. .

Residential Services Skilled Nursing Services- Skilled nursing services delivered in a setting where the provider of the skilled nursing service is also the provider of the independent habilitation service or the residential habilitation service.

Skilled Nursing Service- Health care services that are delivered by a registered or practical nurse acting within the scope of their practice as defined in 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.*) and implementing rules.