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 945 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Day Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Day Habilitation Services, a habilitative service provided by qualified professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the rules previously published at 54 DCR 2356 (March 16, 2007) by reducing the billing rate based on the new rate methodology. The rules have also been modified to increase the daily limit of service provision to eight (8) hours, to establish a minimum staffing ratio, and to require the development of a service plan with identified outcomes that will more clearly define the service being provided.

The District of Columbia Medicaid Program is also 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 with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on November 9, 2007 (54 DCR 010860). 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 945 (Day Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

945 DAY HABILITATION SERVICES

945.1 Day habilitation services shall be reimbursed by the Medicaid Program for each participant with mental retardation and developmental disabilities 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.

945.2 To be eligible for day habilitation services under the Waiver, an individual must have demonstrated personal and/or social adjustment needs which

can be acquired or maintained through participation in an individualized habilitation program.

945.3 Day habilitation services are intended to be different and separate from residential services. Day habilitation services shall be designed to support the person, whenever possible, outside the home through training and skills development, which enable the person to experience greater participation in community integrated activities and to move to the most integrated vocational setting appropriate to his or her needs.

945.4 If services are provided in the person's home, the day habilitation provider must provide documented evidence to the Department on Disability Services (DDS) that providing day habilitation services in the person's home is necessitated by the person's medical or safety needs and is consistent with the Health Care Management Plan (HCMP) and Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care. When persons are provided services in their homes, out-of-home activities should be provided in keeping with health and safety needs. In addition, there should be a written plan included in the IHP or ISP for activities in the home, and that plan should address the goals of transitioning the person to receive day services outside the home to the maximum extent possible and as health and safety permit.

945.5 Day habilitation services eligible for reimbursement shall be as follows:

(a) Training and skills development that increases participation in community activities and fosters independence;
(b) Activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences;
(c) Activities that provide opportunities for socialization and leisure activities in the community;
(d) Training in the safe and effective use of one or more modes of accessible public transportation; and
(e) Coordination of transportation to participate in community activities necessary to carry out this service.

945.6 Each day habilitation provider shall develop an IHP for each person that is in keeping with the person's interests, choices, goals and prioritized needs. The activities should be functional, chosen by the person, and provide a pattern of life experiences common to other persons of similar age and the community at large. To develop the plan, the provider shall:

(a) Use observation, conversation, and other interactions as necessary to develop a functional analysis of the person's capabilities within the first month of participation and annually thereafter;

(b) Use the functional analysis, the IHP or ISP and Plan of Care, and other information available to develop a plan with measurable outcomes that develops to the extent possible the skills necessary to enable the person to reside and work in the community while maintaining the person's health and safety; and

(c) On a quarterly basis, report to the person, family, guardian, and DDS Case Manager on the programming and support provided to help the person achieve the outcomes identified in the plan.

945.7 Day habilitation services shall be provided in the most integrated setting appropriate to the needs of each individual and be least restrictive of the person's liberty.

945.8 Day habilitation services may be provided in non-facility- based or facility-based settings as determined by the needs of the person in accordance with the IHP or ISP and Plan of Care. When services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or state and local laws and regulations.

945.9 Day habilitation services shall be pre-authorized and provided in accordance with the IHP or ISP and Plan of Care. The IHP or ISP and Plan of Care shall indicate if the staffing plan requires the participation of a licensed professional and identify the type of professional to provide the service in accordance with the person's needs.

945.10 Each professional providing day habilitation services shall be licensed to practice his or her respective profession 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 § 3-1202 *et seq.*) or be licensed to practice his or her profession in the jurisdiction where services are provided.

945.11 A copy of the person's IHP or ISP and Plan of Care shall be maintained by the day habilitation provider.

945.12 Each provider shall:

(a) Be a public or private agency licensed to do business in the District of Columbia, Maryland or Virginia, if required;

(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Day Habilitation Services;

(c) Ensure that all staff are qualified and properly supervised;

(d) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care, and that services are coordinated with all other providers;

(e) Develop a quality assurance system to evaluate the effectiveness of services provided;
(f) Maintain the required staff-to-person ratio, indicated on the person's IHP or ISP and Plan of Care, to a maximum staffing ratio of 1:4;
(g) Participate in the annual IHP or ISP and Plan of Care meeting or case conferences when indicated;
(h) Ensure that services are provided appropriately and safely;
(i) Develop a staffing plan which includes licensed professionals, where applicable and appropriate;
(j) Maintain records which document staff training and licensure, for a period of not less than ten (10) years;
(k) Offer the Hepatitis B vaccination to each person providing services, pursuant to these rules;
(l) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor, as set forth in 29 C.F.R. § 1910.1030; and
(m) Provide interpreters for non-English speaking persons and those with hearing impairments that are enrolled in the program.

945.13 Each provider of day habilitation services shall provide appropriate supervision of all day habilitation staff. The supervisor shall be an employee of the day habilitation services provider and make site visits to assess the level of services provided. Periodic site visits shall be conducted and documented at least four (4) times per year and more frequently, if warranted.

945.14 Each person providing day habilitation services for a provider under section 945.12 shall meet all of the following requirements:

(a) Be at least eighteen (18) years of age;
(b) Be acceptable to the person to whom services are provided;
(c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
(d) Have a high school diploma or general educational development (GED) certificate;
(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.*).

945.15 Day habilitation services shall not be provided concurrently with day treatment, supported employment, or prevocational services.

945.16 The reimbursement rate for day habilitation services shall be fifteen dollars and eighty cents ($15.80) per hour. Services shall be provided for a maximum of eight (8) hours per day, and shall not include travel time. The billable unit of service for day habilitation 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 be able to bill a unit of service. The reimbursement rate for day habilitation services shall be three dollars and ninety-five cents ($3.95) per billable unit. Provisions shall be made by the provider for participants who arrive early and depart late.

945.17 No payment shall be made for routine care and supervision, which is the responsibility of the family, residential provider, or employer.

945.99 DEFINITIONS

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

Communicable Disease – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family – Any person who is related to the person receiving services by blood, marriage, or adoption.

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*.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based 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 Chapter 19 of Title 29 DCMR, is signed by the person receiving services, and is used to pre-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 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.

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 945 (Day Habilitation Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for day habilitation services, a habilitative service provided by qualified professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), with an effective date of November 20, 2007.

This rulemaking amends the rules previously published at 54 DCR 2356 (March 16, 2007), as further amended recently by the notice of emergency and proposed rulemaking published at 54 DCR 10860 (November 9, 2007), to include language to pre-authorize and reimburse day habilitation services providers for professional one-to-one services. The recently published rulemaking reduces the billing rates based on the new rate methodology, increases the daily limit of service provision to eight (8) hours, establishes a minimum staffing ratio, and requires the development of a service plan with identified outcomes that will more clearly define the service being provided. The emergency rulemaking for day habilitation services published on November 9, 2007 at 54 DCR 10860 was effective on November 20, 2007, which was also the effective date of the CMS-approved Waiver.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 21, 2007 (54 DCR 012364). No comments on the proposed rules were received. No substantive changes have been made. These rules will become effective on the date of publication of this notice in the *DC Register*.

Section 945 of Chapter 9 of Title 29 DCMR is amended to include a new subsection 945.18 to read as follows:

945.18 To the extent pre-authorized by DDS, provided in accordance with the person's IHP or ISP and Plan of Care and DDS's restrictive controls policies and procedures, and otherwise consistent with the requirements of sections 945.7, 945.9 and 945.10, one-to-one services shall be available as a day habilitation service. The reimbursement rate for one-to-one services shall be thirty-one dollars and sixty cents ($31.60). Day habilitation one-to-one services shall be provided for a maximum of eight (8) hours a day, and shall not include travel time. The billable unit of service for day habilitation one-

to-one 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 be able to bill a unit of service. The reimbursement rate for day habilitation one-to-one services shall be seven dollars and ninety cents ($7.90) per billable unit. To be eligible for reimbursement for day habilitation one-to-one services, the person shall be required to have a behavior support plan and meet at least one of the characteristics set out in section 979.12 for paraprofessional one-to-one services and at least one of the characteristics set out in section 979.13 for professional one-to-one services. For purpose of this subsection, in addition to the requirements for paraprofessional one-to-one services and professional one-to-one services as defined in section 979.99, day habilitation one-to-one services means services provided to one person exclusively by a day habilitation services provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time.