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 a new section 1917 of Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Live-In Caregiver Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for live-in caregiver services provided by or supervised by direct care staff to participants with mental retardation in the Home and Community-based Services Waiver for Persons with 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.

This is a new rule that authorizes support to persons in the Waiver who own or lease their own home. Live-in caregiver services are provided in the participant's home by a caregiver who lives as a roommate in exchange for room and board. The live-in caregiver also provides needed In-Home Supports Services as detailed in the Plan of Care.

A notice of emergency and proposed rules was published in the *DC Register* on December 21, 2007 (54 DCR 012376). Comments to the proposed rulemaking were received and considered. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

New section 1917 (Live-In Caregiver Services) of Chapter 19 of Title 29 DCMR is added to read as follows:

1917 LIVE-IN CAREGIVER SERVICES

1917.1 Live-in caregiver services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

1917.2 A person shall only be eligible for live-in caregiver services when the person is living in his or her own home. Caregiver services shall not be provided by an individual related to the person.

1917.3 Live-in caregiver services provide support to enable persons to live independently and participate in community activities to the fullest extent possible.

1917.4 Live-in caregiver services are provided in the person's home by a caregiver who lives as a roommate in exchange for room and board..

1917.5 The live-in caregiver shall assist in implementing the needed supports as identified in the Plan of Care which enable the person to retain or improve skills related to health, activities of daily living, money management, community resources, community safety and other adaptive skills needed to live in the community.

1917.6 Live-in caregiver services shall be authorized by the person's interdisciplinary team and provided in accordance with each person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

1917.7 Live-in caregiver services shall require a Live-In Caregiver Services Agreement (Agreement) prior to the initiation of services. A copy of the Agreement shall be maintained where services are delivered, at the provider's main office, and with the Department on Disability Services (DDS) Case Manager. Revisions to this Agreement shall be done by the Plan of Care Team and may occur at any time at the request of the participant, the Caregiver or the provider.

1917.8 Each provider of live-in caregiver services shall be a provider of residential habilitation services or supported living services. In addition, the provider agrees to:

(a) Be a member of the resident's interdisciplinary team;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Live-In Caregiver Services under the Waiver;
(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS/DDA for each person;
(d) Ensure that all live-in caregiver services staff are prepared to facilitate interpreters for non-English speaking persons;
(e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
(f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
(g) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention;
(h) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds; and
(i) 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.*).

1917.9 Live-In Caregiver services shall be arranged by the provider organization. The caregiver may be subject to additional standards identified by the provider. The provider has twenty-four (24) hour responsibility for arranging and overseeing the delivery of services, providing emergency services as needed, and arranging for two (2) weeks of relief for the live-in caregiver per year as needed. The participant's home shall receive an initial inspection by the provider as well as periodic inspections with a frequency determined by the provider. The provider shall contact the caregiver at least once per month .

1917.10 Each person providing live-in caregiver services to a participant in the Waiver shall meet all of the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911 in addition to the requirements set forth below:

(a) Complete competency based training in emergency procedures; and
(b) Be certified annually in cardiopulmonary resuscitation (CPR) and First Aid.

1917.11 The reimbursement rate shall be predetermined for each participant based on a signed lease agreement and standardized food and utility reimbursement per diem. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person in the person's place of residence.

1917.12 Live-in caregiver services shall not be billed on the same day as Residential Habilitation, Supported Living, Respite or Host Home Services.

1917.99 DEFINITIONS

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

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.

Live-In Caregiver Services Agreement – A written agreement required by these rules prior to the initiation of services and developed as part of the participant's Plan of Care, which shall define at a minimum all shared responsibilities between the Caregiver and the participant , including provisions for overnight stays of a t least eight (8) hours in duration and no more than four (4) hours per day of support by the caregiver, activities provided by the caregiver, a typical weekly schedule and payment for both parties personal needs, utilities and food.

Person or Participant– 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.