DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Acting 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 920 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Prevocational Services, a habilitative service provided 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 21, 2007 (54 DCR 12347). Comments were received and considered. The December 21st rulemaking changed the rules previously published at 54 DCR 2343 (March 16, 2007) to increase the daily limit to eight (8) hours, to establish a minimum staffing ratio, and to require the development of a service plan with measurable outcomes that will more clearly define the service being provided. This rulemaking further changes the December 21st rulemaking to define the component of the required vocational assessment, to remove the requirement that the vocational assessment must find that the person is not expected to join the general work force or participate in a sheltered workshop for one year, to delete the definition of situational or functional assessment, to replace the requirement for an annual functional assessment with a requirement to assess progress annually based on vocational preferences and goals as specified in the person's individual support plan, and to expand the requirement that a person on the executive staff have specific academic credentials so that the requirement encompasses all staff.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 18, 2008 (53 DCR 004392). 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 920 (Prevocational Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

920 PREVOCATIONAL SERVICES

920.1 Prevocational services shall be reimbursed by the District of Columbia Medicaid Program for each participant 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.

920.2 To be eligible for prevocational services under the Waiver, a vocational assessment must be submitted or provided within the first ninety (90) days of participation that includes the following:

(a) Employment-related strengths and weaknesses (*e.g.*, task focus);

(b) Available natural/community supports;

(c) Personal concerns and preferences; and

(d) Accommodations and supports that may be required on the job.

920.3 Prevocational services are designed to prepare a person for paid or unpaid employment, but not to develop a specific job skill.

920.4 Prevocational services eligible for reimbursement shall be as follows:

(a) Prevocational assessment activities, including assessments provided at community businesses and other community resources;

(b) Social skills training, including but not limited to the following:

(1) Learning to interpret instructions;

(2) Interpersonal relations;

(3) Communication;

(4) Respecting the rights of others; and

(5) Problem solving;

(c) The development of work skills, which shall include, at a minimum, teaching the person the following concepts:

(1) Compliance with employer instructions;

(2) Attendance;

(3) Task completion; and

(4) On-the-job safety;

(d) Coordination of:

(1) Time-limited volunteering and other prevocational skills training indicated in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care; and

(2) Transportation to community activities necessary to carry out this service through the Medicaid Non-Emergency Transportation Broker.

920.5 An assessment must be conducted at least annually by the provider to evaluate each individual's acquisition of employment-related skills based on the person's vocational preferences and goals as specified in the person's IHP or ISP and Plan of Care.

920.6 Each prevocational provider shall develop an individualized plan for each person that is in keeping with their interests, preferences, choices, goals and prioritized needs. The activities in the plan shall be functional, chosen by the person, and provide a pattern of life experiences common to other persons of their age and the community at large. The plan must identify specific measurable outcomes for the development of vocational skills that are consistent with goals of the IHP or ISP and Plan of Care.

920.7 Prevocational services may be provided in non-facility-based or facility-based settings.

920.8 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or state and local laws and regulations.

920.9 Before a provider of prevocational services may pay a person wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.

920.10 Prevocational services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.)*, or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.)* (hereinafter the "Acts"). Each person receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and IHP or ISP and Plan of Care.

920.11 All prevocational providers shall deliver appropriate services to persons requiring physical assistance to facilitate their participation in prevocational

services activities. All prevocational providers shall ensure that each person has access to first aid.

920.12 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each person's IHP or ISP and Plan of Care. All prevocational services shall be reflected on the IHP or ISP and Plan of Care as habilitative rather than explicit employment objectives.

920.13 Each prevocational services provider shall:

(a) Be a non-profit, home health or social service agency or other business entity;

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

(c) Maintain a copy of the IHP or ISP and Plan of Care approved by the Department on Disability Services (DDS);

(d) Ensure that all prevocational services staff are qualified and properly supervised;

(e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care

(f) Participate in the annual IHP or ISP and Plan of Care meeting or case conferences when indicated;

(g) 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;

(h) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as set forth in 29 CFR § 1910.1030; and

(i) Maintain a staff-to-person ratio as indicated in the IHP or ISP and Plan of Care up to a maximum ratio of one to four (1:4) that ensures that the service meets the person's individual needs and is provided appropriately and safely.

920.14 Each provider of prevocational services shall demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide prevocational services for individuals with mental

retardation with varying habilitation needs. The staff must have at least one (1) individual with a Master's degree in Vocational Rehabilitation or a similar discipline and four (4) years of combined supervisory, administrative, and "job coaching" or experience providing employment services to persons with disabilities.

920.15 Each person providing prevocational services for a provider under section 920.13 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;

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

(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.*).

920.16 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2) years of combined supervisory and "job coaching" or experience providing employment services to persons with disabilities.

920.17 Prevocational services shall not be provided at the same time as day treatment, supported employment, or day habilitation services.

920.18 The reimbursement rate for prevocational services shall be fifteen dollars and eighty cents ($15.80) per hour. Services shall be provided for a maximum of eight (8) hours a day, not including travel time. The billable unit of service for prevocational services shall be fifteen (15) minutes. The reimbursement rate for prevocational services shall be three dollars and ninety-five cents ($3.95) per billable unit. 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.

920.19 Prevocational providers shall submit to the DDS a completed Prevocational Individualized Services Person Quarterly Report, no later than the 15th day of January, April, July, and October, for the preceding three (3) month period. The report shall include the following information for each participant served:

(a) Name of the person;

(b) Community inclusion opportunities;

(c) Volunteer activities;

(d) Prevocational facility and non-facility-based activities; and

(e) Progress to achieving outcomes from individualized plan developed in accordance with section 920.6.

920.20 No payment shall be made for routine care and supervision, which is the responsibility of the family or group home provider.

920.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings 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 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 – 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.