DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), 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 (2012 Repl. & 2013 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.), hereby gives notice of the repeal of Section 929 and adoption, on an emergency basis, of a new Section 1933 of Chapter 19 (Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing the participation requirements for providers who provide supported employment services to participants in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. These rules amend the previously published rules by: (1) deleting Section 929 and codifying the rules in Section 1933; (2) changing the name of the service from supported employment to supported employment (individual and small group) services; (3) establishing guidelines for the delivery of supported employment services in small groups; (4) requiring providers to follow specific service delivery requirements to promote more efficient service utilization management practices; and (5) providing updated definitions for terms and phrases used in this chapter.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of supported employment- individual and small group services. Small group supported employment services are services and training activities provided in regular business, industry, and community settings for groups of two (2) to eight (8) workers with disabilities. By taking emergency action, these rules will clarify the duties and responsibilities of small group supported employment providers and increase their accountability. In addition, these rules will provide the District with the tools needed to increase oversight and to closely monitor the quality and appropriateness of services being delivered to beneficiaries.

The emergency rulemaking was adopted on September 25, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until January 23, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 929 (Supported Employment) of Chapter 9 (Medicaid Program), Title 29, PUBLIC WELFARE of the DCMR is repealed and a new Section 1933, Chapter 19 (Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities), Title 29, is added to read as follows:

1933 SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES

1933.1 This section shall establish standards governing Medicaid eligibility for supported employment services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and shall establish conditions of participation for providers of supported employment services.

1933.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks.

1933.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group.

1933.4 Medicaid reimbursable small group supported employment services are services and training activities that may be provided in a business, industry, or community setting for groups of two (2) to eight (8) workers with disabilities.

1933.5 In order to receive Medicaid reimbursement for supported employment services, the person receiving services shall:

(a) Be interested in obtaining full-time or part-time employment in an integrated work setting; and

(b) Demonstrate that a previous application for the District of Columbia Rehabilitation Services Administration (RSA) funded supported employment services was made, by the submission of a letter documenting either ineligibility for RSA services or the completion of RSA services with the recommendation for long-term employment support.

1933.6 Medicaid reimbursable supported employment services shall:

(a) Provide opportunities for persons with disabilities to achieve successful integrated employment consistent with the person's goals;

(b) Be recommended by the person's Support Team; and

(c) Be identified in the person's Individual Support Plan (ISP), Plan of Care, and Summary of Supports.

1933.7 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

(a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;

(b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to eight (8) workers with disabilities to place persons in an integrated community based work setting; and

(c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

1933.8 Medicaid reimbursable supported employment services for the entrepreneurial model shall include the following activities:

(a) Assisting the person to identify potential business opportunities;

(b) Assisting the person in the development of a business and launching a business;

(c) Identification of the supports that are necessary in order for the person to operate the business; and

(d) Ongoing assistance, counseling and guidance once the business has been launched.

1933.9 Medicaid reimbursable supported employment services shall consist of the following activities:

(a) Intake and assessment;

(b) Job placement and development;

(c) Job training and support; and

(d) Long-term follow-along services.

1933.10 Intake and assessment services determine the interests, strengths, preferences, and skills of the person in order to ultimately obtain competitive employment and to further identify the necessary conditions for the person's successful participation

in employment. The purpose of the intake and assessment is to facilitate and ensure a person's success in integrated competitive employment.

1933.11 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:

(a) Conducting a person-centered vocational and situational assessment;

(b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a positive personnel profile;

(c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;

(d) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations, such as the Senior Core of Retired Executives, that provide information specific to owning and operating a business; and

(e) Providing individual or group employment counseling.

1933.12 After intake and completion of the assessments, each provider of Medicaid reimbursable supported employment services shall complete and deliver a comprehensive vocational assessment report to the Department on Disability Services (DDS) Service Coordinator that includes the following information:

(a) Employment-related strengths and weaknesses of the person;

(b) Availability of family and community supports for the person;

(c) The assessor's concerns about the health, safety, and wellbeing of the person;

(d) Accommodations and supports that may be required for the person on the job; and

(e) If a specific job or entrepreneurial effort has been targeted:

(1) Individualized training needed by the person to acquire and maintain skills that are commensurate with the skills of other employees;

(2) Anticipated level of interventions that will be required for the person by the job coach;

(3) Type of integrated work environment in which the person can potentially succeed; and

(4) Activities and supports that are needed to improve the person's potential for employment.

1933.13 Medicaid reimbursable job placement and development includes activities to facilitate the person's ability to work in a setting that is consistent with their strengths, abilities, priorities, and interests, as well as the identification of potential employment options.

1933.14 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

(a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;

(b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;

(c) Assisting the person with the completion of job applications;

(d) Assisting the person with job exploration and placement, including assessing opportunities for the person's advancement and growth;

(e) Visiting employment sites and attending employment networking events;

(f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, utilizing the internet, magazines, newspapers, and other publications as prospective employment leads;

(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;

(h) Negotiating employment terms with or on behalf of the person;

(i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business; and

(j) Working with the person and employer to develop group placements.

1933.15 Job training and support activities are those activities designed to assist and support the person after he or she has obtained employment. The expectation is that the person's reliance upon job training and support activities will decline as a

result of job skills training and support from supervisors and co-workers in the existing work setting to maintain employment.

1933.16 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

(a) On-the-job training in work and work-related skills required to perform the job;

(b) Work site support that is intervention-oriented and designed to enhance work performance and modify inappropriate behaviors;

(c) Supervision and monitoring of the person in the workplace;

(d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs;

(e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;

(f) Ongoing benefits counseling;

(g) Consulting with other professionals and the person's family, as necessary; and

(h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary.

1933.17 Medicaid reimbursable long-term follow-along activities are stabilization services needed to support and maintain a person in an integrated competitive employment site or in their own business.

1933.18 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

(a) Periodic monitoring of job stability;

(b) Intervening to address issues that threaten job stability;

(c) Providing re-training, cross-training, and additional supports as needed, when job duties change;

(d) Facilitating integration and natural supports at the job site;

(e) Benefits counseling prior to and after the person reaches Substantial Gainful Activity (SGA) to ensure a person maintains eligibility for benefits and that earnings are being properly reported; and

(f) Facilitating job advancement, professional growth, and job mobility.

1933.19 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability after they become employed. Once the person is stable on the job, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.

1933.20 Medicaid reimbursable small group supported employment intake and assessment, and job placement services shall be billed for each person in the group on an individual basis. Small group supported employment services shall enable the person enrolled into the workforce to become part of an integrated work setting. Services eligible for Medicaid reimbursement shall include the following:

(a) Job training and support in an integrated setting; and

(b) Long-term follow-along services.

1933.21 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with DDS and the employer to provide functional adaptive modifications for each person to accomplish basic work related tasks at the work site.

1933.22 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with the employer to ensure that each person has an emergency back-up plan for job training and support.

1933.23 Each provider of Medicaid reimbursable supported employment services shall be a Waiver provider agency and shall comply with the following requirements:

(a) Be a member of the person's Support team;

(b) Be certified by the U.S. Department of Labor, if applicable; and

(c) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.

1933.24 Each professional or paraprofessional providing Medicaid reimbursable supported employment services for a Waiver provider shall meet the requirements in Section

1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR).

1933.25 Professionals authorized to provide Medicaid reimubursable supported employment activities without supervision shall include the following:

(a) A Vocational Rehabilitation Counselor;

(b) An individual with a Master's degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities in supported employment;

(c) An individual with a bachelor's degree and two years of experience working with persons with intellectual and developmental disabilities in supported employment; or

(d) A Rehabilitation Specialist.

1933.26 Paraprofessionals shall be authorized to perform Medicaid reimbursable supported employment activities under the supervision of a professional. Supervision is not intended to mean that the paraprofessional performs supported employment activities in the presence of the professional, but rather that the paraprofessional has a supervisor who meets the qualifications of a professional as set forth in Section 1933.25.

1933.27 Paraprofessionals authorized to perform Medicaid reimbursable supported employment activities are as follows:

(a) A Job Coach; or

(b) An Employment Specialist.

1933.28 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:

(a) DDS provides a written service authorization before the commencement of services;

(b) The provider conducts a comprehensive vocational assessment and develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;

(c) The service name and provider delivering services are identified in the ISP and Plan of Care;

(d) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received;

(e) Services shall not conflict with the service limitations described under Sections 1933.29-1933.38; and

(f) If extended services are required, the provider shall submit a supported employment extension request. The request is a written justification that must be submitted to the Service Coordinator at least fifteen (15) calendar days before the exhaustion of Supported Employment hours.

1933.29 Supported employment services shall not qualify for Medicaid reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973, enacted September 26, 1973, Section 110 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, enacted October 30, 1990, 20 U.S. C. 1401 (16) and (71) (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*), hereinafter referred to as the "Acts".

1933.30 Court-ordered vocational assessments authorizing intake and assessment services qualify for Medicaid reimbursement under the Waiver if services provided through programs funded under the Acts referenced in Section 1933.29 cannot be provided in the timeframe set forth in the Court's Order.

1933.31 Medicaid reimbursable supported employment services may be provided either exclusively as a vocational service or in combination with individualized day supports, employment readiness or day habilitation services. Medicaid reimbursement is not available if supported employment services are provided concurrently with in-home supports, individualized day supports, employment readiness, or day habilitation.

1933.32 Medicaid reimbursement is not available if supported employment services are provided in specialized facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.

1933.33 Medicaid reimbursable supported employment services shall not include payment for supervision, training, support, adaptations, or equipment typically available to other workers without disabilities in similar positions.

1933.34 Medicaid reimbursable supported employment services shall be provided for a maximum of eight (8) hours per day, five (5) days per week. The provider shall submit a supportive employment extension request to the Service Coordinator at least fifteen (15) calendar days before the exhaustion of supported employment hours. Failure to submit the request within the allotted time period may result in a denial of the request for services. Any denial of the request for services shall be accompanied by a written notice which meets the requirements set forth in 42 CFR § 431.210 and D.C. Official Code § 4-205.55. A copy of the notice shall be maintained in the person's records.

1933.35 Medicaid reimbursement is not available for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;

(b) Payments that are processed and paid to users of supported employment service programs;

(c) Payment for vocational training that is not directly related to the person's success in the supported employment services program; and

(d) Payments to persons employed by the Waiver provider.

1933.36 In accordance with the provisions described under Section 1933.35(d), if a person receiving supported employment services secures employment with the Waiver provider, the employment shall not substitute for that person's full-time or part-time supported employment service in an integrated work setting.

1933.37 Medicaid reimbursement is not available for time spent in transportation to and from the employment program and shall not be included in the total amount of services provided per day. Time spent in transportation to and from the program for the purpose of training the person on the use of transportation services is Medicaid reimbursable and may be included in the number of hours of services provided per day for a period of time specified in the person's ISP and Plan of Care.

1933.38 Medicaid reimbursement shall only be available for adaptations, supervision and training for supported employment services provided at the work site in which persons without disabilities are employed. Medicaid reimbursement shall not be available for supervisory activities, which are rendered as a normal part of the business setting.

1933.39 Medicaid reimbursable intake and assessment activities shall be billed at the unit rate. This service shall not exceed three-hundred and twenty (320) units or eighty (80) hours annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate shall be forty-two dollars and sixty-eight cents ($42.68) per hour if performed by a professional listed in Section 1933.25 of this rule. The Medicaid reimbursement rate shall be twenty-five dollars and thirty-two cents ($25.32) per hour if performed by a paraprofessional listed in Section 1933.26 under the supervision of a professional.

1933.40 Medicaid reimbursable job placement activities shall be billed at the unit rate. This service shall not exceed nine-hundred and sixty (960) units or two-hundred and forty (240) hours annually. A standard unit of service is fifteen (15) minutes

and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. The Medicaid reimbursement rate shall be forty-two dollars and sixty-eight cents ($42.68) per hour when performed by a professional listed in Section 1933.25 of this rule. The Medicaid reimbursement rate shall be twenty-five dollars and thirty-two cents ($25.32) per hour if performed by a paraprofessional listed in Section 1933.26 under the supervision of a professional.

1933.41 Medicaid reimbursable job training and support activities shall not exceed one thousand, two- hundred and eighty (1280) units per ISP year.

1933.42 Medicaid reimbursable follow-along activities shall not exceed one-thousand four hundred and eight (1408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for both professionals and paraprofessionals shall be five dollars and twenty-two cents ($5.22) per unit and twenty dollars and eighty eight cents ($20.88) per hour.

1933.43 If extended job placement services, job training, support activities, and follow-along activities are required, the provider shall submit a written justification in support of the extended services to the DDS Service Coordinator and the DDA waiver office a minimum of fifteen (15) business days before the exhaustion of the approved services. Failure to submit the request within the allotted time period may result in a denial of the approval of services. Any denial of the request for services shall be accompanied by a written notice which meets the requirements set forth in 42 CFR § 431.210 and D.C. Official Code § 4-205.55. A copy of the notice shall be maintained in the person's records. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt.

1933.44 Medicaid reimbursable small group supported employment services related job training and support activities shall not exceed one-thousand, two-hundred and eighty (1280) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate shall be three dollars and eighty one cents ($3.81) per billable unit or fifteen dollars and twenty four cents ($15.24) per hour, when performed by a professional or paraprofessional listed in Sections 1933.25 and 1933.26.

1933.45 Medicaid reimbursable small group supported employment related long–term follow-along activities shall not exceed one-thousand four-hundred and eight (1408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for both professionals and paraprofessionals shall be five dollars and twenty-two cents ($5.22) per unit and twenty dollars and eighty-eight cents ($20.88) per hour. Job coach services may be billed while supporting a group of two (2) to eight (8) people enrolled in the Waiver.

Section 1999 (DEFINITIONS) is amended by adding the following:

Employment Specialist - An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a four-year college degree and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a high school graduate with three (3) years of experience in a supported employment program or equivalent.

Group Supported Employment - An integrated setting in competitive employment in which a group of two to four individuals or four to eight individuals with disabilities are working at a particular work setting. The individuals may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business.

Individual Supported Employment - A supported employment strategy in which a job coach places a person into competitive or customized employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

Integrated Work Setting - A work setting that provides a person enrolled in the Waiver with daily contact with other employees without disabilities and/or the general public.

Job Coach – An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or an individual with a high school degree and three (3) years of experience in a supported employment program, or equivalent.

Long-term follow along activities - Ongoing support services considered necessary to assure job retention.

Person centered –An approach that focuses on what is important to the individual based on his or her needs, goals, and abilities rather than using a general standard applicable to all people.

Rehabilitation Specialist - An individual with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and

a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Situational Assessment - A type of assessment that provides the person an opportunity to explore job tasks in work environments in the community to identify the type of employment that may be beneficial to the person and the support required by each person to succeed in his/her work environment. This assessment shall include observation of the person at the work site, identification of work site characteristics, training procedures, identification of supports needed for the person, and recommendations and plans for future services, including the appropriateness of continuing supported employment.

Substantial Gainful Activity (SGA) - Activities that the person is engaged in that result in a sum earnings greater than a fixed monthly amount, set by federal standards and determined by the nature of one's disability and the national wage index.

Vocational Assessment - An assessment designed to assist a person, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment should address the person's life, relationships, challenges, and perceptions as they relate to potential sources of community support and mentorship.

Vocational Rehabilitation Counselor - An individual with a Master's degree in Vocational Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Comments on these proposed rules shall be submitted, in writing, to Linda Elam, Ph.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 899 North Capitol Street, NE, Suite 6037, Washington, D.C. 20002, via telephone at (202) 442-9115, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained from the above address.