DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF THIRD 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 (2014 Repl. & 2015 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. & 2015 Supp.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Sections 1901-1902, 1904-1909, 1911-1912, 1937, and 1999, and new Section 1938, of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These third emergency and proposed rules establish general standards for the services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The Notice of Final Rulemaking for amendments to 29 DCMR §§ 1901-1902, 1904-1909, 1911-1912, and 1937, was published in the *D.C. Register* on May 2, 2014, at 61 DCR 004406. A Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on September 25, 2015, at 62 DCR 012777, was adopted on September 12, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remained in effect until January 8, 2016. The first emergency and proposed rules amended the previously published final rules by making comprehensive changes to 29 DCMR §§ 1901-1902, 1904-1909, 1911-1912, 1937, and 1999, and creating a new 29 DCMR § 1938. Specifically, the first emergency and proposed rules amended these provisions by: (1) changing the name of Art Therapies to Creative Arts Therapies; (2) adding Companion to the list of covered services; (3) deleting Shared Living from the list of covered services; (4) clarifying the eligibility requirements related to intellectual disability; (5) allowing a waiver of the requirement that the owner/operator have a specific degree and years of experience; (6) requiring that providers of residential and day/ vocational services show evidence of fiscal and organization accountability; (7) modifying training requirements for a provider staff person who works exclusively as a driver; (8) requiring providers to participate and cooperate with the reporting requirements pursuant to, the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act

of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.01 *et seq.* (2012 Repl.)); (9) modifying requirements for Cardio Pulmonary Resuscitation and First Aid certification; (10) clarifying the educational requirements for Direct Support Professionals who were educated outside of the United States; (11) requiring that a Direct Support Professional be acceptable to the person for whom they are providing services; (12) requiring that providers report all reportable incidents to the Department on Disability Services; (13) adding support plan to the list of required records; (14) clarifying the requirements for daily progress notes; (15) amending Section 1937 on cost reports and audits; (16) adding a new Section 1938 entitled Home and Community-Based Setting (HCBS) Requirements; (17) amending Subsection 1909.1 to clarify that DHCF and or its designees shall have access to all waiver provider locations, including access to the people receiving supports and all records in any form, and clarifying the meaning of "records" for purposes of this section; (18) adding certain definitions including definitions for Group Home for a Person with an Intellectual Disability, Living Wage, and SMARTER Goals; and (19) clarifying the requirements for Intellectual Disability and Qualified Development Disabilities Professional.

DHCF did not receive any comments to the first emergency and proposed rules. A Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on February 5, 2016, at 63 DCR 001364, was adopted on January 28, 2016, became effective immediately, and will remain in effect until May 27, 2016, or publication of a superseding final or emergency and proposed rulemaking in the *D.C. Register*, whichever occurs first. The second emergency and proposed rules continued the changes reflected in the first emergency and proposed rules described above and further amended the rules by (1) requiring participation and cooperation with the National Core Indicators surveys or its successors; (2) indicating a timeframe where terminated or withdrawn providers may not re-enroll in the Waiver program; (3) requiring service coordinators to upload all documents pertaining to the service rule to the Department of Disability Service, Developmental Disabilities Administration's MCIS database system or its successor; (4) requiring certain choices for a person receiving supports in some HCBS settings; and (5) requiring Provider Human Rights Committees to address certain questions before deviations from HCBS Requirements are made to a person's supports.

DHCF received four comments to the second emergency and proposed rules related to 29 DCMR § 1904.5 (encouraging use of public transportation), § 1907.10 (annual commitment hearings conflict with individual rights), § 1909.2(m)(4) (use of electronic signatures), and § 1938.2(d)(3) (access to personal funds). These comments did not prompt DHCF to make any substantive changes to the second emergency and proposed amendments related to 29 DCMR §§ 1902, 1905-1908, 1911-1912, 1937, and 1999.

This third emergency and proposed rulemaking retains changes from the first and second emergency and proposed rules for 29 DCMR §§ 1901, 1904 and 1909, and new 29 DCMR § 1938, and makes additional changes as follows: (1) 29 DCMR § 1901 (Covered Services and Rates) was further amended to include the specific title for the implementing rule for each covered service, to reference the applicable DCMR section for each covered service, and to permit rates for each of the covered services to be published in a Medicaid fee schedule which will published online and a notice published in the *D.C. Register*; (2) 29 DCMR § 1904 (Provider Qualifications) was further amended to reflect that Board members should be

representative of the community, to require certain providers to conduct and report on annual customer satisfaction surveys, and to encourage the use of community-based transportation options per the public comment; (3) 29 DCMR § 1909 (Records and Confidentiality of Information) was further amended to acknowledge the use of electronic signatures per the public comment, to include reference to recommended tools, and to further define teaching strategies in a new subsection 1909.11; and (4) new 29 DCMR § 1938 (Home and Community-Based Setting Requirements) was further amended to clarify the use of community services, to ensure access to personal funds and bank accounts (though not responsive to the public comment), and to clarify privacy rights. The entire texts of 29 DCMR §§ 1901, 1904, 1909 and 1938, which comprise all of the changes, are included in this third emergency and proposed rulemaking.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments implement new requirements and clarify certain existing requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on April 29, 2016, and became effective immediately. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until August 27, 2016, 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*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 1901, COVERED SERVICES AND RATES, is deleted in its entirety and amended to read as follows:

1901 COVERED SERVICES AND RATES

1901.1 Services available under the Waiver shall include the following:

(a) Creative Arts Therapies Services, 29 DCMR § 1918;
(b) Behavioral Support Services, 29 DCMR § 1919;
(c) Companion Services, 29 DCMR § 1939;
(d) Day Habilitation Services, 29 DCMR § 1920;
(e) Dental Services, 29 DCMR § 1921
(f) Employment Readiness Services, 29 DCMR § 1922;
(g) Environmental Accessibility Adaptation Services, 29 DCMR § 926;
(h) Family Training Services, 29 DCMR § 1924;
(i) Host Home without Transportation Services, 29 DCMR § 1915;
(j) Individualized Day Supports Services, 29 DCMR § 1925;
(k) In-Home Supports Services, 29 DCMR § 1916;

(l) Occupational Therapy Services, 29 DCMR § 1926;
(m) One-Time Transitional Services, 29 DCMR § 1913;
(n) Personal Care Services, 29 DCMR § 1910;
(o) Personal Emergency Response System (PERS) Services, 29 DCMR § 1927;
(p) Physical Therapy Services, 29 DCMR § 1928;
(q) Residential Habilitation Services, 29 DCMR § 1929;
(r) Respite Services, 29 DCMR § 1930;
(s) Skilled Nursing Services, 29 DCMR § 1931;
(t) Speech, Hearing and Language Services, 29 DCMR § 1932;
(u) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933;
(v) Supported Living Services, 29 DCMR § 1934;
(w) Vehicle Modification Services, 29 DCMR § 1914; and
(x) Wellness Services, 29 DCMR § 1936.

1901.2 For dates of services beginning November 20, 2016, which aligns with Waiver Year 5, the Medicaid provider reimbursement rate(s) to be paid for the Waiver services identified in Subsection 1901.1 shall be posted on the District of Columbia Medicaid fee schedule at www.dc-medicaid.com. DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s) for Waiver services.

Subsections 1902.1 and 1902.4, of Section 1902, ELIGIBILITY REQUIREMENTS, are amended to read as follows:

1902.1 Any person eligible to receive Waiver services shall be a person who currently receives services from DDS/DDA and meets all of the following requirements:

(a) Has a special income level up to three hundred percent (300%) of the SSI federal benefit or be aged and disabled with income up to one hundred percent (100%) of the federal poverty level or be medically needy as set forth in 42 C.F.R. §§ 435.320, 435.322, 435.324 and 435.330;

(b) Has an intellectual disability as defined in D.C. Official Code § 7-1301.03(15A), which, when establishing qualifying intelligence quotient (IQ), includes consideration of the standard error of measurement associated with the particular IQ test, and requires adaptive deficits across at least two of the following three domains: conceptual, practical, and social;

(c) Is eighteen (18) years of age or older;

(d) Is a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22);

(e) Has a Level of Care (LOC) determination that the person requires services furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or be a person with related conditions pursuant to the criteria set forth in § 1902.4; and

(f) Meets all other eligibility criteria applicable to Medicaid recipients including citizenship and alienage requirements.

...

1902.4 A person shall meet the LOC determination set forth in § 1902.1(e) if one of the following criteria has been met, taking into consideration the standard error of measurement for the IQ test:

(a) The person's primary disability is an intellectual disability with an intelligence quotient (IQ) of fifty-nine (59) or less;

(b) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has at least one (1) of the following additional conditions:

(1) Mobility deficits;
(2) Sensory deficits;
(3) Chronic health problems;
(4) Behavior problems;
(5) Autism;
(6) Cerebral Palsy;
(7) Epilepsy; or
(8) Spina Bifida.

(c) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has severe functional limitations in at least three (3) of the following major life activities:

(1) Self-care;
(2) Understanding and use of language;
(3) Functional academics;
(4) Social skills;
(5) Mobility;
(6) Self-direction;
(7) Capacity for independent living; or
(8) Health and safety.

(d) The person has an intellectual disability, has severe functional limitations in at least three (3) of the major life activities as set forth in § 1902.4(c)(1) through § 1902.4(c)(8), and has one (1) of the following diagnoses:

(1) Autism;
(2) Cerebral Palsy;
(3) Prader Willi; or
(4) Spina Bifida.

Section 1904, PROVIDER QUALIFICATIONS, is deleted in its entirety and amended to read as follows:

1904 PROVIDER QUALIFICATIONS

1904.1 HCBS Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:

(a) A resume and three (3) letters of reference demonstrating that the owner(s)/operators(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waiver by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;

(b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;

(c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);

(d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;

(e) A list of Board members representing a diverse spectrum of the respective community and their affiliations;

(f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;

(g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);

(h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;

(i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;

(j) A copy of the certificate of good standing from the DCRA;

(k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at: http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1;

(l) A continuous quality assurance and improvement plan that includes community integration and person-centered thinking principles and values as intentional outcomes for persons supported;

(m) A copy of professional/business liability insurance of at least one million dollars ($1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;

(n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;

(o) For providers of Supported Living, Supported Living with Transportation, Host Homes, and Residential Habilitation, a Continuity of Operations Plan;

(p) For providers, of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, evidence fiscal and organizational accountability; and

(q) Any other documentation deemed necessary to support the approval as a provider.

1904.2 Professional service provider applicants who are in private practice as an independent clinician and are not employed by an enrolled HCBS Waiver provider agency of residential or day/vocational services or a Home Health

Agency, shall complete and submit to DDS the Medicaid provider enrollment application and the following:

(a) Documentation to prove ownership or leasing of a private office, even if services are always furnished in the home of the person receiving services;

(b) A copy of a professional license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided; and

(c) A copy of the insurance policy verifying at least one million dollars ($1,000,000) in liability insurance.

1904.3 Home Health Agencies shall complete and submit to DDS the Medicaid provider enrollment application and the following documents:

(a) A copy of the Home Health Agency license pursuant to 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; and

(b) If skilled nursing is utilized, a copy of the registered nurse or licensed practical nurse license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided.

1904.4 In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:

(a) Maintain a copy of the approval letter issued by DHCF;

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

(c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;

(d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;

(e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;

(f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;

(g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;

(h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: http://dds.dc.gov/publication/language-access-policy;

(i) Offer the Hepatitis B vaccine to all employees with potential exposure;

(j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 C.F.R. § 1910.1030;

(k) Ensure compliance with the provider agency's policies and procedures and DDS policies such as, reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at: http://dds.dc.gov/page/policies-and-procedures-dda;

(l) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS;

(m) Provide a written staffing schedule for each site where services are provided, if applicable;

(n) Maintain a written staffing plan, if applicable;

(o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;

(p) Ensure that a certificate of occupancy is obtained, if applicable;

(q) Ensure that a certificate of need is obtained, if applicable;

(r) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;

(s) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;

(t) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;

(u) Complete the DDA abbreviated readiness process, if applicable;

(v) Participate, and support willing waiver recipients to participate, in the National Core Indicators surveys, or successors surveys, as requested by DDS and/ or its assigned contractors; and

(w) Adhere to the specific provider qualifications in each service rule.

1904.5 Each service provider under the Waiver for which transportation is included or otherwise provided shall:

(a) Ensure that each vehicle used to transport a person has valid license plates;

(b) Ensure that each vehicle used to transport a person has at least the minimum level of motor vehicle insurance required by law;

(c) Present each vehicle used to transport a person for inspection by a certified inspection station every six (6) months, or as required in the jurisdiction where the vehicle is registered, and provide proof that the vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request, except in circumstances where transportation is not included in the Waiver service;

(d) Ensure that each vehicle used to transport a person is maintained in safe, working order;

(e) Ensure that each vehicle used to transport a person meets the needs of the person;

(f) Ensure that each vehicle used to transport a person has seats fastened to the body of the vehicle;

(g) Ensure that each vehicle used to transport a person has operational seat belts;

(h) Ensure that each vehicle used to transport a person can maintain a temperature conducive to comfort;

(i) Ensure that each vehicle used to transport a person is certified by the Washington Metropolitan Area Transit Commission, except in circumstances where transportation is not included in the Waiver service;

(j) Ensure that each person is properly seated when the vehicle is in operation;

(k) Ensure that each person is transported to and from each appointment in a timely manner;

(l) Ensure that each person is provided with an escort on the vehicle, when needed;

(m) Ensure that each vehicle used to transport a person with mobility needs is adapted to provide safe access and use;

(n) Ensure that each staff/employee/contractor providing services meets the requirements set forth in § 1906 of these rules, except that a staff/employee/ contractor who works exclusively as a driver is exempt from § 1906.1(h), but must be trained on use of the vehicle safety restraints and any specific safety needs of the person being transported; and

(o) Ensure that each staff/employee/contractor providing services be certified in Cardiopulmonary Resuscitation (CPR) and First Aid.

(p) Encourage the use of community-based transportation, as appropriate and described in the ISP.

Subsection 1905.10 of Section 1905, PROVIDER ENROLLMENT PROCESS, is amended to read as follows:

1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program; and to participation and

cooperation in the reporting requirements pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia.

1905.11 Each provider who has been terminated or has voluntarily withdrawn from the Waiver program may not reapply to the Waiver program for a period of no less than one (1) year.

Section 1906, REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS, is deleted in its entirety and amended to read as follows:

1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS

1906.1 The basic requirements for all employees and volunteers providing direct services are as follows:

(a) Be at least eighteen (18) years of age;

(b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;

(c) Possess a high school diploma, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;

(d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;

(e) Complete pre-service and in-service training as described in DDS policy;

(f) Have the ability to communicate with the person to whom services are provided;

(g) Be able to read, write, and speak the English language;

(h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and

(i) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); 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.*) for the following employees or contract workers:

(1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;

(2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and

(3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.

(j) Be acceptable to the person for whom they are providing supports.

1906.2 Volunteers who work under the direct supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 1906.1(i).

Section 1907, INDIVIDUAL SUPPORT PLAN (ISP), is deleted in its entirety and amended to read as follows:

1907 INDIVIDUAL SUPPORT PLAN (ISP)

1907.1 The ISP is the plan that identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met, based on what is important to and for the person, specifically including identifying the person's interest in employment, identifying goals for community integration and inclusion, and determining the most integrated setting available to meet the person's needs.

1907.2 The ISP shall include all Waiver and non-Waiver supports and services the person is receiving or shall receive consistent with his or her needs.

1907.3 The ISP shall be developed by the person and his or her support team using Person-Centered Thinking and Discovery tools and skills.

1907.4 At a minimum, the composition of the support team shall include the person being served, his or her substitute decision maker, if applicable, the DDS Service Coordinator and other individuals chosen by the person.

1907.5 The ISP shall be reviewed and updated annually by the support team. The ISP shall be updated more frequently if there is a significant change in the person's status or any other significant event in the person's life which affects the type or amount of services and supports needed by the person or if requested by the person.

1907.6 The Plan of Care shall be derived from the ISP and shall describe the frequency and types of services to be provided to the person, and the providers of those services.

1907.7 The provider shall:

(a) Ensure that the service provided is consistent with the person's ISP and Plan of Care;

(b) Participate in the annual ISP and Plan of Care meeting or Support Team meetings when indicated; and

(c) Develop the documents described under § 1909.2(i), including goals and objectives, within thirty (30) days of the initiation of services, which shall address how the service will be delivered to each person, after notification by DDS that a service has been authorized.

1907.8 DHCF shall not reimburse a provider for services that are not authorized in the ISP, not included in the Plan of Care, furnished prior to the development of the ISP, furnished prior to receiving a service authorization from DDS, or furnished pursuant to an expired ISP.

1907.9 Each provider shall submit to the person's DDS Service Coordinator a quarterly report which summarizes the person's progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.

1907.10 Each provider shall submit to the DDS Court Liaison and to the person's DDS Service Coordinator an annual court status report not less than fifteen (15) business days prior to the annual review hearing for the person, pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia. Each provider shall provide the annual court status report to the person's court appointed attorney not less than ten (10) business days prior to the annual review hearing of the person. Each provider shall cooperate with DDS to ensure that any necessary corrections to the annual court status report are made and submitted promptly and prior to the annual review hearing for the person.

Section 1908, REPORTING REQUIREMEMTS, is deleted in its entirety and amended to read as follows:

1908 REPORTING REQUIREMENTS

1908.1 Each Waiver provider shall submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1908.2 For purposes of reporting, the first quarter shall begin on the effective date of a person's ISP.

1908.3 Each Waiver provider shall submit assessments, quarterly reports as set forth in § 1909.2(n), documents as described in § 1909.2(i), and physician orders, if applicable, to the DDS Medicaid Waiver unit for the authorization of services.

1908.4 Each Waiver provider shall complete all documents required for the service(s) as set forth in each service rule and upload the documents into DDS' MCIS system, ninety (90) days prior to the person's ISP meeting.

1908.5 Failure to submit all required documents may result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant. The date of the authorization of services shall be the date of receipt of the required documents by the Medicaid Waiver Unit, if the documents are submitted after the effective date of the ISP.

1908.6 Each Waiver provider shall report on a quarterly basis to the person served, his or her family, as applicable, guardian and/or surrogate decision maker and the DDS Service Coordinator about the programming and support provided to fulfill the objectives and outcomes identified in the ISP and Plan of Care, and any recommended revisions to the ISP and Plan of Care, when necessary, to promote continued skill acquisition, no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1908.7 Each Waiver provider shall report all reportable incidents and all serious reportable incidents to DDS pursuant to the timelines established under DDA's Incident Management and Enforcement Policy and Procedures, available at: http://dds.dc.gov/page/policies-and-procedures-dda.

Subsections 1909.1, 1909.2 and 1909.5 of Section 1909, RECORDS AND CONFIDENTIALITY OF INFORMATION, are amended, and new Subsections 1909.10 and 1909.11 are added, to read as follows:

1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term 'records' includes, but is not limited to, all information relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by D.C. Law 2-137; and any information required by the regulations implementing the HCBD waiver program.

1909.2 Each Waiver provider entity shall maintain the following records, if applicable, for each person receiving services for monitoring and audit reviews:

(a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;

(b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;

(c) A record of all service authorization and prior authorizations for services;

(d) A record of all requests for change in services;

(e) The person's medical records;

(f) A discharge summary;

(g) A written staffing plan, if applicable;

(h) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;

(i) Documents which contain the following information:

(1) The results of the provider's functional analysis for service delivery;

(2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the

ISP and the date and time of the activity, The staff as identified in the staffing plan;

(3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy as further described in Subsection 1909.11; and

(4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving their goals;

(j) Any records relating to adjudication of claims;

(k) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;

(l) An annual supervision plan for each staff member who is classified as a Direct Support Professional (DSP), developed and implemented by a provider designated staff member, containing the following information:

(1) The name of the DSP and date of hire;

(2) The DSP's place of employment, including the name of the provider entity or day services provider;

(3) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;

(4) A documentation of performance goals for the DSP;

(5) A description of the DSP's duties and responsibilities;

(6) A comment section for the DSP's feedback;

(7) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;

(8) The signature, date, and title of the DSP; and

(9) The signature, date, and title of the DSP's supervisor.

(m) Progress notes, as set forth in each service rule, containing the following information:

(1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;

(2) The health or behavioral events or change in status that is not typical to the person;

(3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS recommends the use of the Person Centered Thinking Learning Log for recording this information;

(4) The start time and end time of any services received including the DSP's signature (Note that, where progress notes are written using an electronic record system, an electronic signature meets the requirement for signature.); and

(5) The matters requiring follow-up on the part of the Waiver service provider or DDS.

(n) Reports on a quarterly basis, containing the following information (DDS recommends use of the Person Centered Thinking 4+1 Tool for recording this information.):

(1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;

(2) The service interventions provided and the effectiveness of those interventions;

(3) A summary analysis of all habilitative support activities that occurred during the quarter;

(4) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, the quarterly report shall include information on the person's employment, including place of employment, job title, hours of employment, salary/hourly wage, information on fringe benefits, and current checking, savings and burial fund balances, as applicable; and

(5) Any modifications or recommendations that may be required to be made to the documents described under § 1909.2(i), ISP, and Plan of Care from the summary analysis.

1909.5 Each Waiver provider shall ensure the person's privacy including securing service records for each person in a locked room or file cabinet and limiting access only to authorized individuals; and shall not post mealtime protocols, clinical therapy schedules, or any other health information.

1909.10 DHCF shall retain the right to conduct audits at any time. Each Waiver provider shall allow access, during on site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records.

1909.11 For purposes of Subsection 1909.2(i)(3), the teaching strategy used to execute goals in the ISP should include enough information so that any provider staff member or DSP could step in to assist the person in completing the goal. At minimum, the teaching strategy shall contain:

(a) The goal statement;

(b) The purpose of the goal/measureable outcome;

(c) The materials needed to implement the goal;

(d) The preferred learning/teaching style for the person;

(e) The learning steps (*i.e.* individual actions that need to be completed for success); and

(f) The method for measuring success.

Section 1911, INDIVIDUAL RIGHTS, is deleted in its entirety and amended to read as follows:

1911 INDIVIDUAL RIGHTS

1911.1 Each Waiver provider shall develop and adhere to policies which ensure that each person receiving services has the right to the following:

(a) Be treated with courtesy, dignity, and respect;

(b) Direct the person-centered planning of his or her supports and services;

(c) Receive treatment, care, and services consistent with the ISP;

(d) Receive services by competent personnel who can communicate with the person;

(e) Refuse all or part of any treatment, care, or service and be informed of the consequences;

(f) Be free from mental and physical abuse, neglect, and exploitation from staff providing services;

(g) Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;

(h) Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation;

(i) Have access to his or her records; and

(j) Be informed orally and in writing of the following:

(1) Services to be provided, including any limitations;

(2) The amount charged for each service, the amount of payment received/authorized for him or her and the billing procedures, if applicable;

(3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party source;

(4) Acceptance, denial, reduction, or termination of services;

(5) Complaint and referral procedures including how to file an anonymous complaint;

(6) The name, address, and telephone number of the provider;

(7) The telephone number of the DDS customer complaint line;

(8) How to report an allegation of abuse, neglect and exploitation;

(9) For people receiving residential supports, the person's rights as a tenant, and information about how to relocate and request new housing.

Subsections 1912.1 and 1912.6 of Section 1912, INITIATING, CHANGING, OR TERMINATING ANY APPROVED SERVICE, are amended to read as follows:

1912.1 A provider shall hold a support team meeting and provide each person receiving Waiver services at least thirty (30) calendar days advance written notice of intent to initiate, suspend, reduce, or terminate services and shall offer a meeting to explain the notice. A copy of the notice shall also be provided to DDS and DHCF. If DDS intends to suspend, reduce or terminate services, DDS shall also provide written notice which complies with the requirements set forth in this section.

1912.6 In the event of a person's death, a provider shall comply with all written notice requirements and any policies established by DDA in accordance with DDA's Incident Management and Enforcement Policy and Procedures available at: http://dds.dc.gov/page/policies-and-procedures-dda.

Subsection 1937.1 of Section 1937, COST REPORTS AND AUDITS, is amended to read as follows:

1937.1 **Beginning October 1, 2015,** each waiver provider of residential habilitation, host home, supported living, supported living with transportation, day habilitation, in-home supports, individualized day supports, respite, employment readiness and supported employment services shall report costs to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period. DHCF shall provide a cost report template.

A new Section 1938, HOME AND COMMUNITY-BASED SETTING REQUIREMENTS, is added to read as follows:

1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS

1938.1 All Supported Living, Supported Living with Transportation, Host Home, Respite Daily, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:

(a) Be chosen by the person from HCBS settings options including non-disability settings;

(b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint;

(c) Be physically accessible to the person and allow the person access to all common areas;

(d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;

(e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community;

(f) Provide information on individual rights;

(g) Optimize the person's initiative, autonomy and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact;

(h) Facilitate the person's choices regarding services and supports, and who provides them;

(i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP;

(j) Provide opportunities for the person to engage in community life;

(k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS;

(l) Control over his or her personal funds and bank accounts; and

(m) Allow visitors at any time.

1938.2 All Supported Living, Supported Living with Transportation, Host Home, Residential Habilitation, and Respite Daily, settings must:

(a) Be integrated in the community and support access to the greater community;

(b) Allow full access to the greater community;

(c) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to leased and provider owned properties.

(d) Develop and adhere to policies which ensure that each person receiving services has the right to the following:

(1) Privacy in his or her personal space, including entrances that are lockable by the person (with staff having keys as needed);

(2) Freedom to furnish and decorate his or her personal space (with the exception of Respite Daily);

(3) Privacy for telephone calls, texts and/or emails; or any other form of electronic communication, *e.g.* FaceTime or Skype; and

(4) Access to food at any time.

1938.3 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

(a) Privacy for personal care, including when using the bathroom;

(b) Access to snacks at any time;

(c) Privacy for telephone calls, texts and/or emails; or any other form of electronic communication, *e.g.* FaceTime or Skype; and

(d) Meals at the time and place of a person's choosing.

1938.4 Any deviations from the requirements in §§ 1938.1(l) and (m), 1938.2(d) and § 1938.3 must be supported by a specific assessed need, justified in the person's person-centered Individualized Support Plan, and reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review included discussion of the following elements:

(a) What the person's specific individualized assessed need is that results in the restriction;

(b) What prior interventions and supports have been attempted, including less intrusive methods;

(c) Whether the proposed restriction is proportionate to the person's assessed needs;

(d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;

(e) When the HRC or the person's support team will review the restriction again;

(f) Whether the person, or his or her substitute decision-maker, gives informed consent; and

(g) Whether the HRC has assurance that the proposed restriction or intervention will not cause harm.

Section 1999, DEFINITIONS, is deleted in its entirety and amended to read as follows:

1999 DEFINITIONS

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

Abbreviated Readiness Process - A process that assures that existing providers that have been approved as HCBS Waiver providers possess and demonstrate the capability to effectively serve people with disabilities and their families by providing the framework for identifying qualified providers ready to begin serving people in the Waiver and assisting those providers already in the DDS/DDA system who may need to improve provider performance.

Archive – Maintenance and storage of records.

Group Home for a Person with an Intellectual Disability - Shall have the same meaning as Group Home for Mentally Retarded Persons and shall meet the definitions and licensure requirements as set forth in 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.

HCBS Settings Rule – The Centers for Medicare & Medicaid Services (CMS) issued a final rule effective March 17, 2014, that contains a new, outcome-oriented definition of home and community-based services (HCBS) settings. The purpose of the federal regulation, in part, is to ensure that people receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as people who do not receive HCBS. The HCBS Settings Rule is available at 79 Fed. Reg. 2947 (January 16, 2014).

Home Health Agency - Shall have the same meaning as "home care agency" and shall meet the definitions and licensure requirements 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 Support Plan (ISP) - Identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

Intellectual Disability - Means a substantial limitation in capacity that manifests before eighteen (18) years of age and is characterized by significantly below-average intellectual functioning, existing concurrently with two (2) or more significant limitations in adaptive functioning as defined in D.C. Official Code § 7-1301.03(15A). The determination of intellectual functioning includes consideration of the standard error of measurement associated with the particular intelligence quotient (IQ) test. The adaptive functioning deficits must cross at least two of the following three domains: conceptual, practical, and social.

Intermediate Care Facility for Individuals with Intellectual Disabilities - Shall have the same meaning as an "Intermediate Care Facility for Individuals with Mental Retardation" as set forth in Section 1905(d) of the Social Security Act.

Living Wage - Living Wage refers to minimum hourly page requirements as set forth in Title I of the Living Wage Act of 2006, effective June 9, 2006 (D.C. Law 16-18; D.C. Official Code §§ 2-220.01 to .11). The law provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the amount of one hundred thousand dollars ($100,000) or more shall pay affiliated employees wages no less than the current living wage rate.

Qualified Intellectual Disabilities Professional (QIDP) - Also known as Qualified Developmental Disabilities Professional or QDDP, is someone who oversees the initial habilitative assessment of a person; develops, monitors, and review ISPs; and integrates and coordinates Waiver services.

Plan of Care - A written service plan that meets the requirements set forth in Subsection 1907.6 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider - Any entity that meets the Waiver service requirements, has signed a Medicaid Provider Agreement with DHCF to provide those services, and is enrolled by DHCF to provide Waiver services.

Registered Nurse - An individual who is licensed or authorized to practice registered nursing 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 §§ 3-1201 *et seq.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

Service Coordinator – The DDS staff responsible for coordinating a person's services pursuant to their ISP and Plan of Care.

Serious Reportable Incident - Events that due to severity require immediate response, notification to, and investigation by DDS in addition to the internal review and investigation by the provider agency. Serious reportable incidents include death, allegations of abuse, neglect or exploitation, serious physical injury, inappropriate use of restraints, suicide attempts, serious medication errors, missing persons, and emergency hospitalization.

Skilled Nursing - Health care services that are delivered by a registered or practical nurse acting within the scope of their practice and shall meet the definitions and licensure requirements as set forth 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.*), as amended, and implementing rules.

SMARTER Goals – Means goals that are: Specific, Measureable, Attainable, Relevant and Time-Bound, Evaluated and Revisable.

Waiver - Shall mean the HCBS Waiver for Individuals with Intellectual and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and CMS, as may be further amended and approved by the Council and CMS.

Comments on these third emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by 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 third emergency and proposed rules may be obtained from the above address.