DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 993 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for independent habilitation services, which is renamed Supported Living Services, and is provided by qualified professionals 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 in the *DC Register* on April 4, 2008 (55 DCR 003528). Comments were received and considered. This rulemaking amends the April 4th rules by requiring each supported living provider to be certified by the Department on Disability Services and establishing requirements for the notice that is issued when services are terminated by a provider.

A notice of emergency and proposed rulemaking was published in the *DC Register* on July 25, 2008 (55 DCR 008165). No comments were received. No substantive changes have been made. These rules shall become effective upon publication of this notice in the *DC Register.*

Section 993 (Independent Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

993 SUPPORTED LIVING SERVICES

993.1 Supported living 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.

993.2 In order to qualify for reimbursement under this section, supported living services shall be delivered in a Supported Living Residence (SLR) that can serve one (1) to three (3) persons and the number of persons in the home shall not exceed the number of bedrooms in that home. The SLR must be owned, leased or otherwise operated by the Supported Living Provider. The SLR shall meet the certification standards developed by the Department on Disability Services (DDS) as set forth in the Human Care Agreement between DDS and

the SLR or be licensed or similarly certified in other states.

993.3 Each home located out-of-state shall be licensed and/or certified in accordance with the host state's laws and regulations and/or consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state provider shall comply with the following additional requirements:

(a) Remain in good standing in the jurisdiction where the program is located;
(b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action, if applicable, to DDS;
(c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and
(d) Be certified by DDS as a qualified provider of supported living services.

993.4 Supported living services shall be available only to a person with a demonstrated need for training, assistance and supervision, and shall be authorized and provided in accordance with the person's current Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care.

993.5 Each provider of supported living services shall assist participants in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social and adaptive skills necessary to enable the person to reside in the community. To accomplish these goals, the provider shall:

(a) Use observation, conversation, and other interactions as necessary to develop a functional analysis of the person's capabilities within the person's first month of service;
(b) Prepare a support plan with measurable outcomes using the functional analysis, the IHP or ISP and Plan of Care, and other information available to develop and maintain as appropriate the skills necessary to enable the person to reside in the community while maintaining the person's health and safety; and
(c) Prepare a data-based quarterly report for distribution to the person, family, guardian, and DDS Case Manager on the activities and support provided to help the person to achieve his/her identified outcomes and his/her progress to date.

993.6 Each provider of supported living services shall ensure that participants receive hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following areas:

(a) Eating and drinking;
(b) Toileting;
(c) Personal hygiene;
(d) Dressing;
(e) Grooming;
(f) Monitoring health and physical condition and assistance with medication or other medical needs;
(g) Communication;
(h) Interpersonal and social skills;
(i) Home management;
(j) Mobility;
(k) Time management;
(l) Financial management;
(m) Academic and pre-academic skills, other than those prescribed by the Individuals with Disabilities in Education Act;
(n) Motor and perceptual skills;
(o) Problem-solving and decision-making;
(p) Human sexuality;
(q) Aesthetic appreciation; and
(r) Opportunity for social, recreational, and religious activities utilizing community resources.

993.7 Each provider of supported living services shall ensure that each participant receives the professional/medical services required to meet his or her goals as identified in the person's IHP or ISP and Plan of Care, through the support of the SLR provider to coordinate and ensure receipt of the professional/medical services. Professional/medical services may include, but are not limited to, the following disciplines or services:

(a) Medicine;
(b) Dentistry;
(c) Education;
(d) Nutrition;
(e) Nursing;
(f) Occupational therapy;
(g) Physical therapy;
(h) Psychology;
(i) Social work;
(j) Speech, hearing and language therapy; and
(k) Recreation.

993.8 Each provider of supported living services shall provide or ensure the provision of transportation services to enable the persons to gain access to Waiver and other community services and activities. If transportation services are provided by the SLR, the provider shall meet the requirements governing transportation services set forth in section 1903 of Title 29 DCMR.

993.9 Each provider of supported living services shall be a social services agency as described in Chapter 9 of Title.29 of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider shall:

(a) Be a member of the person's interdisciplinary team;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Supported Living Services under the Waiver;
(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
(d) Have a current Human Care Agreement with DDS for the provision of residential services;
(e) Ensure that all supported living services staff are qualified and properly supervised pursuant to all applicable rules;
(f) Ensure that all providers have a plan to provide staff interpreters for non-English speaking persons;
(g) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
(h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
(i) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention;
(j) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds;
(k) Ensure that each SLR, to the extent necessary, is accessible to public transportation and emergency vehicles;
(l) Ensure that each SLR, to the extent necessary, is handicapped accessible and barrier-free;
(m) Provide a written staffing schedule for each location where services are provided;
(n) 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.*).
(o) Provide DDS and the Department of Health's Medical Assistance Administration with at least ninety (90) days advance written notice of intent to terminate supported living services; and
(p) Provide persons receiving supported living services with at least thirty (30) days advance written notice prior to the effective date of the termination of services in the form prescribed by DDS and be responsible for notifying DDS of those persons who are undergoing treatment of an acute condition. The written notice shall be provided to

(1) The name of the person for whom supported living services are being terminated;

(2) The address of the person for whom supported living services are being terminated;
(3) The proposed last date of service to be provided;
(4) Contact information for the provider employee from whom additional information can be obtained with respect to the person's transition to new residential services;
(5) Information regarding the transition process; and
(6) Information regarding the person's rights as it relates to the discontinuation of services.

993.10 Each person providing supported living services for a person shall meet all of the requirements in Chapter 19 to Title 29 DCMR, section 1911 in addition to the requirements set forth below:

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

993.11 Each provider shall cooperate with the DDS service coordination in providing access and information as requested for case management visits and reviews.

993.12 Each provider of supported living services shall review the person's IHP or ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary. The provider shall propose modifications to the IHP or ISP and Plan of Care, as appropriate. The results of these reviews shall be submitted to the case manager within thirty (30) days of the end of each quarter. Each provider shall participate in IHP or ISP and Plan of Care development so that community integration goals are clearly defined. Each provider shall also assist in the coordination of all services that a person may receive.

993.13 Each provider of supported living services shall maintain progress notes on a weekly basis, or more frequently if indicated, on the IHP or ISP and Plan of Care, participant attendance rosters on a daily basis, and maintain current financial records of expenditures of public and private funds for each person. The progress notes shall include at a minimum documentation that demonstrates:

(a) Progress in meeting each goal in the ISP assigned to the supported living services provider;
(b) A list of all community activities the person participates in and the person's response to each activity;
(c) Any unusual health events, side effects to medication, change in health status, behavioral event, use of a restrictive procedure or unusual incident; and
(d) Each visitor the person receives, special events, and any situation or event requiring follow-up.

993.14 Each provider of supported living services shall maintain all records and reports for at least six (6) years after the person's date of discharge.

993.15 Supported living services shall not be reimbursed when provided by a member of the person's family.

993.16 Reimbursement for supported living services under the Waiver shall not include:

(a) Cost of room and board;
(b) Cost of facility maintenance, upkeep and improvement, modifications or adaptations to a home to meet the requirements of the applicable life safety code; or
(c) Activities for which payment is made by a source other than Medicaid.

993.17 The reimbursement rate for supported living services shall include:

(a) All direct support staff and supervision of support staff;
(b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of Health Management Care Plan;
(c) Programmatic supplies and indirect expenses; and,
(d) General and administrative fees for waiver services.

The billable unit of service for supported living services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

993.18 The reimbursement rate for supported living services shall be as follows:

(a) The Basic Support Level 1 staff asleep overnight daily rate for a SLR with three (3) residents the rate shall be one hundred and ninety-five dollars ($195.00) for a direct care staff support ratio of 1:3 during all hours when residents are in the home billable in quarter hour units of two dollars and three cents ($2.03) per unit;

(b) The Basic Support Level 2 staff awake overnight daily rate for a SLR with three (3) residents shall be two hundred forty dollars ($240.00) for a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when residents are in the home billable in quarter hour units of two dollars and fifty cents ($2.50) per unit;

(c) The Moderate Support Level 1 staff asleep overnight daily rate for a SLR with three (3) residents shall be two hundred eighty-six dollars ($286.00) for a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage when residents are in the home billable in quarter hour units of two dollars and ninety-eight cents ($2.98) per unit;

(d) The Moderate Support Level 2 staff awake overnight daily rate for a SLR with three (3) residents shall be three hundred thirty dollars ($330.00) for a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage when residents are in the home billable in quarter hour units of three dollars and forty-four cents ($3.44) per unit;

(e) The Intensive Support Level 1 daily rate for a SLR with three (3) residents shall be three hundred fifty-nine dollars ($359.00) for a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and seventy-four cents ($3.74) per unit;

(f) The Intensive Support Level 2 daily rate for a SLR with three (3) residents shall be four hundred fifty dollars ($450.00) for a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of four dollars and sixty-nine cents ($4.69) per unit;

(g) The Basic Support Level 1 staff asleep overnight daily rate for a SLR with two (2) residents shall be two hundred sixty-two dollars ($262.00) for a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage during all hours when residents are in the home billable in quarter hour units of two dollars and seventy-three cents ($2.73) per unit;

(h) The Basic Support Level 2 staff awake overnight daily rate for a SLR with two (2) residents shall be three hundred twenty-two dollars ($322.00) for a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when residents are in the home billable in quarter hour units of three dollars and thirty five cents ($3.35) per unit;

(i) The Moderate Support Level 1staff awake overnight daily rate for a SLR with two (2) residents shall be three hundred eighty-three dollars ($383.00) for a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage

when residents are in the home billable in quarter hour units of three dollars and ninety-nine cents ($3.99) per unit;

(j) The Moderate Support Level 2 daily rate in a SLR with two (2) residents shall be four hundred forty-four dollars ($444.00) for a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of four dollars and sixty-three cents ($4.63) per unit;

(k) The Intensive Support Level 3 daily rate in a SLR with two (2) residents shall be four hundred eighty-two dollars ($482.00) for a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and two cents ($5.02) per unit;

(l) The hourly rate for periodic supported living services shall be twenty-two dollars ($22.00) per hour billable in quarter hour units of five dollars and fifty cents ($5.50) per unit; and

(m) There shall be a specialized service rate determined through a negotiated request for proposals process when determined necessary by DDS to serve individuals with extraordinary medical and/or behavioral health needs.

993.19 Individualized twenty-four (24) hour one-to-one supervision shall only be permitted with prior annual approval of the DDS Human Rights Committee or a medical treatment plan signed by the person's physician. To be eligible for reimbursement for one-to-one supported living services, the person shall be required to have a behavior support plan and meet at least one of the characteristics set out in section 979.12 for paraprofessional one-to-one services or at least one of the characteristics set out in section 979.13 for professional one-to-one services. For purpose of this section 993.19, in addition to the requirements for paraprofessional one-to-one services and professional one-to-one services as set out in section 979.99, supported living one-to-one services means services provided to one person exclusively by a supported living services provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time. One-to-one supported living services shall be reimbursed at the daily rate of four hundred and ninety-five dollars ($495.00) for one-to-one services with awake overnight staff, billable in quarter hour units of five dollars and sixteen cents ($5.16) per unit. One-to-one supported living services with asleep overnight staff or for any additional people in the same house with another person receiving one-to-one services shall be reimbursed at the daily rate of four hundred three dollars ($403.00), billable in quarter hour units of four dollars and twenty cents ($4.20) per unit. The rate

adjustment for multiple people in the same house receiving one-to-one services avoids duplication of administrative and management fees.

993.20 Acuity shall be determined by a review of each person's IHP or ISP or Plan of Care. Participants shall be designated with a support level that is consistent with their current staffing level if other acuity indicators are not yet in place. Any request(s) to increase or decrease staffing ratios shall be reviewed and adjudicated by a committee appointed by the Director of DDS that shall review current staffing levels, available health and behavioral records, and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires modified supports.

993.21 Long-term twenty-four (24) hour paid support single-person placements in a SLR are only permitted for a person having a history of challenging behaviors that may put others at risk and requires intensive supports as determined by a psychological assessment or pursuant to a court order. The psychological assessment shall be updated on an annual basis to determine the continued necessity for this single, twenty-four (24) hour placement.

993.22 Each provider of supported living services shall coordinate the delivery of necessary behavioral support services, and skilled nursing services from approved Waiver providers of those services based on the requirements of the IHP or ISP and Plan of Care.

993.23 Supported living services shall not be billed concurrently with the following Waiver services:

(a) Residential Habilitation;
(b) Respite;
(c) Host Home;
(d) Live-in Caregiver; and
(e) In-Home Supports.

993.24 Supported living services shall not be billed when the person is hospitalized, on vacation, or for any other period in which the person is not residing at the SLR. The reimbursement rates assume a ninety-three (93) percent annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays. Daily activities such as day treatment, day habilitation services, prevocational services, supported employment services, or employment are typically scheduled for five (5) hours per day five (5) days per week, and scheduling day activities in excess of five (5) hours per day five (5) days per week shall result in an hour-for-hour decrease in the supported living services reimbursement. Reimbursement shall be calculated based on the time the person is scheduled to be in their place of residence, except the provider may include the time that

the individual is being transported by the provider to day programs, employment, professional appointments, community outings and events.

993.25 Direct care staff shall be dressed, alert and maintain support logs during the entire shift of awake hours. The provider shall maintain a log of scheduled activities that specifies when the person is scheduled to be in their home on a daily basis.

993.99 DEFINITIONS

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

Awake – For purposes of staffing and determining the reimbursement rates for supported living services, awake hours of the day with absence from day program, weekend, or holiday shall be approximately 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be approximately 6:00 am to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

Community Integration – Participation in events outside of the person's place of residence that may include shopping, dining, attending movies, plays, and other social events. The plan from section 993.12 should identify community and social events appropriate for the person.

Direct Care Staff – Individuals employed to work in a SLR who render the day-to-day, personal assistance that person requires in order to meet the goals of his or her IHP or ISP and Plan of Care.

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*.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Overnight – For purposes of staffing and the reimbursement rates for supported living services, the overnight period shall be approximately from 10:00 p.m. to 6:00 a.m.

Person or Participant – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Progress Notes – Notes that observe (1) progress in meeting each goal in the IHP or ISP and Plan of Care, which is the responsibility of the residence; (2) the list of community activities for the week and the participant's response to each activity; (3) any unusual health events; (4) any visitors the participant received; and (5) anything requiring follow-up or action.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Supported Living Residence (SLR) - A community residence or home, other than an intermediate care facility for persons with mental retardation, which provides a homelike environment for not more than three (3) related or unrelated persons who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

Waiver – Shall mean the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.