DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF THIRD EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, 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.)), and 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 adoption, on an emergency basis, of an amendment to Section 1934, entitled "Supported Living Services," 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 standards governing reimbursement of supported living 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 and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, for a five-year period beginning November 20, 2012. Supported living services are provided to persons with an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and the social and adaptive skills necessary to enable persons enrolled in the Waiver to reside and successfully participate in the community. The current Notice of Final Rulemaking for 29 DCMR § 993 (Supported Living Services) was published in the *D.C. Register* on March 28, 2014, at 61 DCR 002621. A Notice of Emergency and Proposed rulemaking was published in the *D.C. Register* on October 31, 2014 at 61 DCR 011500. That rulemaking amended the previously published final rules by increasing the rates, using the approved rate methodology, to reflect the increase in the D.C. Living Wage to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)). DHCF received and considered comments in response to the first emergency and proposed rules and promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on March 6, 2015, at 62 DCR 002786. The second emergency and proposed rules amended the previous emergency and proposed rulemaking by increasing the rates for periodic services, using the approved rate methodology, to reflect the increase in the D.C. Living Wage for 2015 to comply with the Living Wage Act. DHCF did not receive comments to the second emergency and proposed rulemaking but is promulgating this Notice of Third Emergency and Proposed Rulemaking to continue the changes reflected in the first two notices of emergency and proposed rulemaking described above.

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 living services. The ID/DD Waiver serves some of the District's most vulnerable residents. The cumulative changes include rate increase that are necessary to ensure a stable workforce and provider base. In order to ensure

that the residents' health, safety, and welfare are not threatened, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on May 8, 2015 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until September 5, 2015 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 1934, SUPPORTED LIVING SERVICES, is amended to read as follows:

1934 SUPPORTED LIVING SERVICES

1934.1 The purpose of this section is to establish standards governing Medicaid eligibility for supported living services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of supported living services for Medicaid reimbursement.

1934.2 Supported living services are provided to persons enrolled in the Waiver who have limited informal supports and have an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and who require assistance with the development of social and adaptive skills that are necessary to enable the person to reside in the community and successfully participate in community activities.

1934.3 To be eligible for all Medicaid reimbursable supported living services, each person shall:

(a) Have a documented need for assistance with acquisition, retention or improvement in skills related to activities of daily living:

(b) Require assistance with the development of social and adaptive skills necessary to enable the person to reside in the community and successfully participate in community activities; and

(c) Have an Individual Support Plan (ISP) and Plan of Care that identifies the need for supported living services.

1934.4 To be eligible for Medicaid reimbursement, twenty-four (24) hour one-to-one

supported living services in a single occupancy supported living residence (SLR), each person shall:

(a) Have a history of challenging behaviors that may put others at risk;

(b) Require intensive supports as determined by a psychological assessment which is updated annually or pursuant to a court order; and

(c) Have a behavior support plan (BSP) that identifies the challenging behaviors and the need for one-to-one supervision that was approved by the Department on Disability Services (DDS).

1934.5 Persons eligible for Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing must have a circulatory, respiratory, gastro-intestinal, or neurological condition or any other serious medical condition that requires frequent monitoring or at least hourly care.

1934.6 To be eligible for Medicaid reimbursable twenty-four (24) hour supported living with skilled nursing services, the following documents shall be required:

(a) A physician's order or an advanced practice registered nurse's (APRN) order documenting the scope, frequency, and duration of skilled nursing services; and

(b) A concise statement which sets forth the presenting problem that requires supported living with skilled nursing services and includes the responsibilities of the nurse.

1934.7 In order to be eligible for Medicaid reimbursable supported living periodic services in an SLR, each person shall:

(a) Demonstrate a need for the acquisition, and improvement of skills related to activities of daily living and the social and adaptive skills necessary for community residence, as indicated in the ISP; and

(b) Be willing to be supported in their own home or SLR's without twenty-four (24) hour supports and supervision.

1934.8 Medicaid reimbursable supported living services shall be provided in one of the following types of residences:

(a) An SLR owned or leased by a Waiver provider; or

(b) A home owned or leased by the person receiving supported living services.

1934.9 In order to be eligible for Medicaid reimbursement, each provider, including an out-of-state provider of supported living services, shall be a Waiver provider agency and meet the following requirements:

(a) Comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR;

(b) Provide verification of passing the DDS Provider Certification Review; and

(c) Have at least three (3) years of experience providing in-home supports services or respite services, unless waived by DDS, when applicable.

1934.10 In addition to the requirements described under § 1934.9, each out-of-state provider shall comply with the following additional requirements to receive Medicaid reimbursement:

(a) Remain in good standing in the jurisdiction where the program is located, if licensed or certified by the host state;

(b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action, if applicable, to DDS; and

(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.

1934.11 Medicaid reimbursable supported living services may be provided with or without transportation. Each Medicaid provider shall comply with the requirements set forth in Subsection 1904.5 of Title 29 DCMR, if transportation services are provided to enable persons to gain access to Waiver services and other community services and activities in a safe and efficient manner.

1934.12 If transportation services are provided by the Direct Support Professional (DSP), such that the DSP drives the person in the vehicle provided by the provider, the DSP shall meet the requirements governing transportation services set forth in Subsections 1904.5(j) and (k) (Provider Qualifications) of Chapter 19 of Title 29 DCMR.

1934.13 When Medicaid reimbursable supported living services are provided in an SLR, the SLR shall serve one (1) to three (3) related or unrelated persons. With the exception of couples who chose to share a bedroom, the number of persons in the SLR shall not exceed the number of bedrooms in the residence unless written approval from DDS is obtained.

1934.14 In order to receive Medicaid reimbursement, the Waiver provider shall include the

person living in the residence in the lease, when the SLR is owned or leased by the Waiver provider, unless the person does not meet the leasing eligibility criteria.

1934.15 In order to be eligible for Medicaid reimbursement, each SLR located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and must adhere to the terms and conditions set forth in an agreement between the District of Columbia and the host state.

1934.16 Each DSP shall meet all of the requirements set forth in Section 1906 (Requirements for Persons Providing Direct Services) of Chapter 19 of Title 29 DCMR.

1934.17 Each provider of Medicaid reimbursable supported living services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, and other social and adaptive skills necessary to enable the person to become a fully integrated member of their community. To accomplish these goals, the provider shall:

(a) Use observation, conversation, and other interactions guided by a person-centered planning process to develop a functional assessment of the person's capabilities within the person's first month of service;

(b) Develop a support plan with measurable outcomes using the functional assessment that was developed using a person-centered planning process, the ISP and Plan of Care, and other available information;

(c) Develop and submit a quarterly report to the person, guardian, other members of the Support Team, and the DDS Service Coordinator describing the activities and support provided to help the person achieve identified outcomes and include progress to date; and

(d) Develop and implement the Health Management Care Plan, when necessary.

1934.18 Each provider of Medicaid reimbursable supported living services shall ensure that each person receives the level of support he/she needs for habilitation and other supports, when appropriate, which shall include, but not be limited to, support for the following categories:

(a) Eating and food preparation;

(b) Personal hygiene;

(c) Dressing;

(d) Monitoring medication administration and healthcare needs;

(e) Communications;

(f) Interpersonal and social skills;

(g) Household chores;

(h) Mobility;

(i) Financial management;

(j) Motor and perceptual skills;

(k) Problem-solving and decision-making;

(l) Human sexuality;

(m) Opportunity for individual social, recreational, and religious activities utilizing community resources based on the person's interests, beliefs, culture, and preferences; and

(n) Ensuring that adaptive equipment is appropriate, functioning and well maintained.

1934.19 Each provider of Medicaid reimbursable supported living services shall ensure that staff delivering day habilitation, employment readiness, or supported employment services shall receive training about the person's health care needs as identified by the nurse, and are informed about any needs identified in the person's Health Management Care Plan and BSP.

1934.20 Each provider of Medicaid reimbursable supported living services shall ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines:

(a) Medicine;

(b) Dentistry;

(c) Education;

(d) Nutrition;

(e) Nursing;

(f) Occupational therapy;

(g) Physical therapy;

(h) Psychology;

(i) Social work; and

(j) Speech, hearing, and language therapy.

1934.21 Each provider of Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing shall:

(a) Provide skilled nursing services and supports to the person living in the SLR;

(b) Complete any skilled nursing assessment and document hourly nursing interventions and treatments; and

(c) Provide as appropriate, all of the supported living activities listed in Subsections 1934.18 and 1934.19, and Subsection 1934.20.

1934.22 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse delivering twenty-four (24) hour supported living services with skilled nursing shall be consistent with the scope of practice standards for registered nurses set forth in Section 5414 of Title 17 DCMR. At a minimum, they shall include the following duties:

(a) Prepare an initial routine physical assessment, including an individualized service nursing plan and evaluation;

(b) Assist in the development of the Health Management Care Plan;

(c) Coordinate the person's care and referrals;

(d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia, or consistent with the requirements of the appropriate jurisdiction;

(e) Provide oversight of non-licensed medication administration personnel;

(f) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician, as needed;

(g) Provide oversight and supervision to a licensed practical nurse, when delegating and assigning nursing interventions;

(h) Record progress notes during each visit and complete quarterly reports; and

(i) Provide training to the day habilitation, employment readiness, and supported employment staff on the person's healthcare needs by the nurse, including needs identified in the Health Management Care Plan, if applicable.

1934.23 In order to be eligible for Medicaid reimbursement, the duties of a licensed practical nurse delivering twenty-four (24) hour supported living services with skilled nursing, shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 DCMR. At a minimum, they shall include the following duties:

(a) Record progress notes during each visit and on quarterly reports;

(b) Report immediately, any changes in the person's condition, to the supervising registered nurse;

(c) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and

(d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements of the jurisdiction in which the healthcare professional is licensed.

1934.24 Medicaid reimbursable supported living one-to-one services in a single occupancy means services provided to one person exclusively by a supported living service 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.

1934.25 Medicaid reimbursable supported living one-to-one services in a single-occupancy SLR shall only be permitted with prior annual approval by the DDS Human Rights Committee and Restrictive Control Review Committee, or a medical treatment plan signed by the person's physician. Providers delivering one-to-one services shall require the person to have a BSP that reflects the need for one-to-one supervision.

1934.26 The BSP shall be developed according to the requirements set forth in the DDA/DDS Behavioral Supports Policy and Procedure available at: http://dds.dc.gov/page/policies-and-procedures-dda.

1934.27 If providers of Medicaid reimbursable supported living services are delivering one-to-one supported living services pursuant to a BSP, the assessment shall be updated on an annual basis to determine if the services are necessary.

1934.28 If one-to-one supported living services are delivered pursuant to a court order, the order shall be verified on an annual basis, to determine if the services are necessary.

1934.29 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirement procedures:

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

(b) The service name and Waiver provider delivering services must be identified in the ISP and Plan of Care;

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

(d) The services to be provided shall not conflict with the service limitations described under Subsection 1934.33.

1934.30 Each provider of Medicaid reimbursable supported living services shall maintain the records as prescribed under Section 1909 of Chapter 19 of Title 29 DCMR for monitoring and audit purposes for each person receiving services and shall also maintain the following documents:

(a) If providing twenty-four (24) hour supported living services in a single occupancy or one-to-one supports, a copy of the annual BSP or court order;

(b) A daily log of scheduled activities to include those activities participated in by the person and a schedule of when the person is in his or her home;

(c) The records of any nursing care, procedures, and other supports related to the development and management of the Health Management Care Plan;

(d) A record of monitoring and maintenance of adaptive equipment, if applicable;

(e) A copy of the physician's order or an APRN's order specifying the type, frequency, scope, and duration of the skilled nursing services, if applicable;

(f) A copy of the job description detailing the duties of the nurse delivering the service, if applicable; and

(g) A copy of each assessment that the nurse has conducted and documentation of the hourly nursing interventions and treatments, if applicable.

1934.31 Each provider of Medicaid reimbursable supported living services shall meet the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1934.32 Each provider of Medicaid reimbursable supported living services shall comply with the following requirements:

(a) Provide access and information as requested for service coordination visits and reviews;

(b) Review the person's ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary and submit the results of these reviews to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter;

(c) Submit a quarterly report to the person, guardian, other members of the Support Team, and the DDS Service Coordinator describing the activities and support provided to help the person achieve his/her identified outcomes and his/her progress to date;

(d) Propose modifications to the ISP and Plan of Care, as appropriate;

(e) Participate in ISP and Plan of Care development;

(f) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are amended to the current ISP; and

(g) Coordinate the delivery of necessary behavioral support services, skilled nursing services, and other services, such as occupational therapy, physical therapy, from approved Waiver providers of those services based on the requirements of the ISP and Plan of Care.

1934.33 Reimbursement for Medicaid reimbursable supported living services shall not include:

(a) Cost of room and board;

(b) Cost of facility maintenance, upkeep and improvement, modifications or adaptations to an SLR or home to meet the requirements of the applicable life safety code;

(c) Safety monitoring as a stand-alone task;

(d) Activities for which payment is made by a source other than Medicaid;

(e) Time when the person is in school or employed; and

(f) Time when the person is hospitalized, on vacation independently, or any other time in which the person is not receiving direct care staff support from a provider.

1934.34 Medicaid reimbursable supported living services shall not include services delivered by the person's relative.

1934.35 Medicaid reimbursable supported living skilled nursing services shall not include custodial care.

1934.36 Medicaid reimbursable supported living services shall not be authorized concurrently with the following Waiver services:

(a) Residential Habilitation;

(b) Respite;

(c) Host Home;

(d) Shared Living;

(e) In-Home Supports; and

(f) Transportation, when the provider chooses to provide supported living services with transportation services.

1934.37 The reimbursement rate for Medicaid reimbursable supported living services shall be calculated based on the staff on duty and shall include:

(a) All supervision of the DSP;

(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 a Health Management Care Plan;

(c) All transportation, if applicable;

(d) Programmatic supplies and fees;

(e) Functioning adaptive equipment as ordered by a clinician;

(f) Quality assurance costs, such as incident management systems and staff development; and

(g) General administrative fees for Waiver services.

1934.38 Supported living services shall be Medicaid reimbursable for emergency situations when the person is not physically residing at the SLR or home, but is temporarily residing in a hotel or other facility and continues to receive support from the provider.

1934.39 An acuity evaluation to set levels of support shall be determined by the Support Team and approved by the DDS Waiver Unit through review of 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 increased supports. A person may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.

1934.40 Skilled nursing that is incorporated into the supported living Medicaid reimbursement rate is for routine physical assessment, the development of the Health Management Care Plan, nursing assessment, oversight of adaptive equipment, assistance with medication administration by non-licensed personnel, or actual administration of medication.

1934.41 The Medicaid reimbursement rate for supported living services without transportation shall be as follows:

(a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours when individuals are awake and receiving services. The reimbursement rate shall be two hundred fifty-six dollars and three cents ($256.03) per day;

(b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when the residents are receiving services. The reimbursement rate shall be two hundred seventy-four dollars and eighteen cents ($274.18) per day;

(c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and 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. The reimbursement rate shall be three hundred twenty dollars and ninety one cents ($320.91) per day;

(d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and 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 overnight. The reimbursement rate shall be three hundred thirty-nine dollars and six cents ($339.06) per day;

(e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred seventy-eight dollars and seventy-four cents ($378.74) per day;

(f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred thirty-eight dollars and ninety-five cents ($438.95) per day;

(g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 during all hours when individuals are awake and receiving services. The reimbursement rate shall be three hundred and nineteen dollars and nine cents ($319.09) per day;

(h) Basic Support Level 2: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the residents are receiving services. The reimbursement rate shall be three hundred and forty-six dollars and four cents ($346.04) per day;

(i) Moderate Support Level 1: Provides awake overnight support for a home with two (2) residents and 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 over night. The reimbursement rate shall be four hundred and ten dollars and forty-one cents ($410.41) per day;

(j) Moderate Support Level 2: Provides support in a SLR with two (2) residents and 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. The rate shall be four hundred and ninety-five dollars and seventy-one cents ($495.71) per day;

(k) Intensive Support Level 1: Provides support in a home with two (2) residents and 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. The rate shall be five hundred and thirty-four dollars ($534.00) per day;

(l) Supported living periodic services, as described under Subsection 1934.6, shall be authorized up to sixteen (16) hours per day without transportation. The hourly rate shall be twenty-three dollars and eighty-eight cents ($23.88) billable in quarter hour units (fifteen minutes) of five dollars and ninety-seven cents ($5.97) per billable unit;

(m) There shall be a specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5. The rate shall be six hundred and two dollars and fifty-four cents ($602.54) per day without transportation, when there are at least three (3) people living in the SLR or residing in a home that require skilled nursing services and demonstrate extraordinary medical needs; and

(n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4. The rate shall be five hundred sixty-three dollars and twenty cents ($563.20) for asleep overnight staff and six hundred and twenty-four dollars ($624.29) for one-to-one awake overnight staff.

1934.42 The Medicaid reimbursement rate for supported living services with transportation shall be as follows:

(a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours. The reimbursement rate shall be two hundred seventy-six dollars and thirty-seven cents ($276.37) per day;

(b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours. The reimbursement rate shall be two hundred and ninety-four dollars and fifty-two cents ($294.52) per day;

(c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and 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. The reimbursement rate shall be three hundred and forty-one dollars and twenty-five cents ($341.25) per day;

(d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and 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 overnight. The reimbursement rate shall be three hundred and fifty-nine dollars and forty cents ($359.40) per day;

(e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred and ninety-nine dollars and eight cents ($399.08) per day;

(f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred and fifty-nine dollars and twenty-nine cents ($459.29) per day;

(g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage when residents are receiving services. The reimbursement rate shall be three hundred and thirty-nine dollars and forty-three cents ($339.43) per day;

(h) Basic Support Level 2: Provides overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the resident is receiving services. The reimbursement rate shall be three hundred and sixty-six dollars and thirty-eight cents ($366.38) per day;

(i) Moderate Support Level 1: Provides awake overnight daily rate for a home with two (2) residents and 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 overnight shall be four hundred and thirty dollars and seventy-five cents ($430.75) per day;

(j) Moderate Support Level 2: Provides support in a home with two (2) residents and 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 receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be five hundred and sixteen dollars and five cents ($516.05) per day;

(k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be five hundred and fifty-four dollars and thirty-four cents ($554.34) per day;

(l) Supported Living periodic services, described under Subsection 1934.6, shall be authorized up to sixteen (16) hours per day. The hourly rate shall be twenty six dollars and forty-four cents ($26.44) per hour billable in quarter hour units of six dollars and sixty-one cents ($6.61) per fifteen (15) minute unit; and

(m) There shall be a specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5. The reimbursement rate is six hundred and twenty-two dollars and eighty-eight cents ($622.88) per day, when there are at least three (3) people living in the SLR or home who require Skilled Nursing Services and demonstrate extraordinary medical needs.

(n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4. The reimbursement rate is five hundred and eighty-three dollars and fifty-four cents ($583.54) for asleep overnight staff and six hundred and forty-four dollars and sixty-three cents ($644.63) for one-to-one awake overnight staff.

1934.43 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, awake hours of the day with absence from day program, weekend, or holiday shall be the time period between 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be the time period from 6:00 a.m. to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

1934.44 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, the overnight period shall be the time period between 10:00 p.m. to 6:00 a.m.

1934.45 The billable unit of service for Medicaid reimbursable supported living services excluding periodic supported living services, shall be one (1) day (*i.e.* twenty-four (24) hours).

1934.46 The Medicaid reimbursement rate assumes a ninety-three percent (93%) annual occupancy and includes any unanticipated absences due to illness from any day/vocational services.

1934.47 Each provider of Medicaid reimbursable supported living services shall maintain the staffing ratio, described under Subsections 1934.40 and 1934.41, associated with the approved acuity rate for the residence. The DDA Service Coordinator shall generate an incident report if it is discovered that the staffing ratio is not maintained during DDA's quarterly visits to the SLR.

1934.48 The Medicaid provider shall notify the DDS Service Coordinator to schedule a meeting to address the cause of any unanticipated absences that may result in a less than ninety-three percent (93%) occupancy rate or a reduced staffing ratio.

1934.49 Daily activities including participation in day programs such as day habilitation services, individualized day supports services, employment readiness or supported employment services, and are typically scheduled for five (5) hours per day, five (5) days per week. The reimbursement rate for Medicaid reimbursable supported living periodic services shall not include any period of time during which the person is enrolled in a day program.

1934.50 Medicaid reimbursable supported living periodic services are calculated based on the time the person is scheduled to be in their place of residence, except the provider may include the time the person is being transported by the provider to day programs, employment, professional appointments, community activities, and events.

Section 1999, DEFINITIONS, is amended by adding the following:

Couples - A couple refers to those married or unmarried persons in a relationship, including same-sex relationships.

Health Management Care Plan - A written document designed to evaluate a person's health care status and to provide recommendations regarding the treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, persons responsible for carrying out interventions, and persons responsible for providing an evaluation of outcomes and timeframes.

Person – An individual enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities.

Supported Living Residence (SLR) - A residence owned or leased by the provider or a residence owned or leased by the person receiving services.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor, Washington, D.C. 20001, via telephone on (202) 442-8742, 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 the emergency and proposed rule may be obtained from the above address.