DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Section 1922, entitled "Employment Readiness Services" of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities), Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of employment readiness 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 Medicaid and Medicare Services, for a five-year period beginning November 20th, 2012. The notice of second emergency and proposed rules amends the previously published standards governing providers of employment readiness services for participants enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities. These rules amend the previously published final rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that a person receiving employment readiness services may pursue employment opportunities at any time to enter the general work force; and (3) clarifying that providers shall perform assessment activities, at least annually or more often if needed.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 18, 2013 at 60 DCR 14844, and a Notice of Second Emergency and Proposed rulemaking was published January 31, 2014 at 61 DCR 000870. No comments were received and no changes have been made. The Director adopted these rules as final on March 7, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 920 (Prevocational Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1922 (Employment Readiness Services) is added to Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1922 EMPLOYMENT READINESS SERVICES

1922.1 This section establishes standards governing Medicaid eligibility for employment readiness services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and establishes conditions of participation for providers of employment readiness services.

1922.2 Employment readiness services occur over a defined period of time with specific outcomes to be achieved, and provide learning and work experiences, including volunteer work, where a person enrolled in the Waiver can develop general, non-job-task-specific strengths and skills that contribute to employability in paid employment in an integrated community setting. A person receiving employment readiness services may pursue employment opportunities at any time to enter the general work force.

1922.3 To be eligible for Medicaid reimbursable employment readiness services, the services shall be identified in the ISP, Plan of Care, and Summary of Supports for each person enrolled in Waiver, and each person shall:

(a) Demonstrate a need for employment readiness services; and

(b) Have employment related goals included in the ISP.

1922.4 To be eligible for Medicaid reimbursement, employment readiness services shall consist of the following:

(a) Providing opportunities for persons enrolled in the Waiver to develop general, non-job, task-specific strengths and skills that contribute to employability and are consistent with the person's goals;

(b) Assessment activities that occur annually or more frequently based upon the needs of the person, including customized employment assessment and conducting a person-centered vocational and situational assessment and employment readiness assessments provided at community businesses and other community settings;

(c) Social and soft skills training, including, but not limited to the following:

(1) Following and interpreting instructions;

(2) Interpersonal skills;

(3) Communication skills for communicating with supervisors, co-workers, and customers;

(4) Travel skills;

(5) Respecting the rights of others and understanding personal rights and responsibilities; and

(6) Decision-making skills and strategies.

(d) Developing work skills which shall include, at a minimum, teaching the person the following:

(1) Appropriate workplace attire, attitude, and conduct;

(2) Work ethics;

(3) Attendance and punctuality;

(4) Task completion;

(5) Job safety;

(6) Attending to personal needs, such as personal hygiene or medication management; and

(7) Interviewing skills.

(e) Coordinating transportation to community activities utilizing the Medicaid Non-Emergency Transportation Broker; and

(f) Coordinating volunteer experiences as set forth in § 1922.5

1922.5 Volunteer experiences shall be time limited and must allow the person to develop experience and build skills to further the person's employment goal, as identified in his or her ISP. A person enrolled in the Waiver may volunteer at a not-for-profit organization or an approved government agency, but may not volunteer for the provider agency or another business affiliated with the provider on an on-going basis for any task that the provider would otherwise hire a person to do; if volunteering occurs at a for-profit business, the provider shall meet any requirements released by the U.S. Department of Labor. The guidance can be found at: http://www.dol.gov/whd/regs/compliance/whdfs71.pdf .

1922.6 To be eligible for Medicaid reimbursement, a vocational assessment, completed by a qualified professional, shall be conducted within the first ninety (90) days of participation, and shall include an assessment of the following:

(a) Employment-related goals based on a person's strengths, interests, and areas for improvement;

(b) Available natural or community supports;

(c) Personal concerns and preferences;

(d) Work and career interests based on exploration and/or discovery; and

(e) Accommodations and supports that may be required once the person is employed.

1922.7 To be eligible for Medicaid reimbursement, a vocational assessment shall be conducted at least annually by the provider to evaluate each person enrolled in the Waiver's acquisition of employment-related skills based on the person's career preferences and goals as specified in their ISP and Plan of Care.

1922.8 Each provider of Medicaid reimbursable employment readiness services shall develop an individualized service delivery plan described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR reflecting the person enrolled in the Waiver's interests, career preferences, choices, goals and prioritized needs. The plan shall:

(a) Define the specific outcomes to be achieved over a specified period of time;

(b) Describe the activities in the plan which shall be functional and chosen by the person;

(c) Describe how the plan shall support a person in the development of employment related skills, including social skills such as interviewing skills, professionalism; and attending to one's personal needs; and

(d) Describe a pattern of life experiences common to other persons of the same age and the community at large.

1922.9 Each provider of Medicaid reimbursable employment readiness services shall submit reports to Department on Disability Services (DDS) service coordinator on a quarterly basis, consistent with the record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR. These reports shall also include the following information:

(a) Volunteer activities provided; and

(b) Employment readiness service activities provided.

1922.10 Each provider of Medicaid reimbursable employment readiness services shall maintain the following documents for monitoring and review, in addition to the

record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR:

(a) A copy of the comprehensive vocational assessment; and

(b) A written schedule identifying the utilization of employment readiness services.

1922.11 To receive Medicaid reimbursement, employment readiness services shall be provided in the community or a facility-based setting.

1922.12 To receive Medicaid reimbursement, each provider of employment readiness services shall be a Home and Community-Based Services (HCBS) Provider agency and shall meet the following requirements:

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

(b) Demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide employment readiness services for persons with intellectual and developmental disabilities with varying habilitation needs; and

(c) Have at least one staff member with a bachelor's degree in vocational rehabilitation or a similar discipline, and one (1) year of combined supervisory and "job coaching" experience or experience providing employment services to person with disabilities.

1922.13 When employment readiness services are provided in a facility, each facility shall comply with all applicable federal, District, or state and local laws and regulations in order to receive Medicaid reimbursement.

1922.14 If an entity other than the Waiver provider is responsible for compensating the person for employment related training services, payment shall be in accordance with the United States Fair Labor Standards Act of 1985.

1922.15 The employment readiness Medicaid reimbursement rate shall include coverage for any personal care services provided by an employment readiness services provider.

1922.16 To be eligible for Medicaid reimbursement, each Direct Support Professional providing personal care services, under the criteria described under Subsection 1922.15, shall meet the following requirements:

(a) Comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR; and

(b) Have at least one (1) year of experience working with people with intellectual and developmental disabilities, or one year of comparable experience.

1922.17 Services shall be authorized for Medicaid reimbursement if:

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

(b) The provider conducts an initial vocational assessment and then an annual assessment thereafter and develops an employment readiness plan with training goals and techniques that will assist the person to achieve employment readiness goals and outcomes. The initial vocational assessment shall be completed within the first ninety (90) days of service delivery;

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

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

(e) Services shall not conflict with the service limitations described under Subsection 1922.18 (Service Limitations).

1922.18 In order to receive Medicaid reimbursement, services shall only be furnished to a person enrolled in the Waiver for up to eight (8) hours per day, not to exceed forty (40) hours per week.

1922.19 Medicaid reimbursable employment readiness services shall not be provided, or billed for, during the same hours and on the same day as the following services:

(a) Day Habiliation;

(b) Supported Employment;

(c) In-Home Supports; and

(d) Individualized Day Supports.

1922.20 If the person is employed by the Waiver provider, the Medicaid reimbursement rate shall not be used towards the person's compensation, wages, or stipend.

1922.21 Employment readiness services are ineligible for Medicaid reimbursement if the services are available to the person through programs funded under Title I of the

Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*), or the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*) (hereinafter the "Acts"). Each person receiving employment readiness services under the Waiver shall submit documentation to the provider, demonstrating that employment readiness services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her r record, ISP, and Plan of Care.

1922.22 Medicaid reimbursable employment readiness services shall be provided for a maximum of eight (8) hours a day, and shall not include time spent in transportation to and from the program.

1922.23 The billable unit of service for Medicaid reimbursable employment readiness services shall be fifteen (15) minutes. The reimbursement rate for employment readiness services shall be fifteen dollars and twenty cents ($15.20) per hour or three dollars and eighty cents ($3.80) per billable unit. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to be able to bill a unit of service.

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

Non-job, task-specific skills – General skills designed to support employment goals, such as resume writing, interviewing skills, and the ability to communicate effectively.

Stipend – Nominal fee paid to a person for participation in activities designed to achieve his or her employment goal, as identified in the person's ISP.

Travel Training- Training the waiver participant to use public transportation to travel safely to their job or training work site.