DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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. 774; 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, on an emergency basis, of a new Section 1929, entitled "Residential Habilitation Services", of Chapter 19 (Home and Community-Based Waiver Services for Persons with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This Notice of Second Emergency and Proposed Rulemaking amends the previously published standards governing providers of residential habilitation services for participants enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver). These rules amend the previously published rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that the quarterly reports shall be submitted to the Department on Disability Services (DDS) Service Coordinator within seven (7) business days after the end of each quarter, instead of thirty (30) business days; (3) establishing that providers are only required to maintain and not submit daily progress notes to the DDS Service Coordinator; (4) mandating that residential habilitation providers shall submit verification of passing the DDS Provider Certification Review (PCR) for In-Home Supports or Respite for the past three (3) most recent years and requiring providers with less than three (3) years of PCR certification, to provide verification of a minimum of one (1) year of experience providing residential or respite services to the ID/DD Waiver population and evidence of PCR certification for each year that the provider was enrolled as an Waiver provider in the District of Columbia; (5) deleting the requirement that providers are required to maintain a daily log of a person's scheduled community activities for monitoring and audit reviews; and (6) updating definitions for terms and phrases used in this chapter.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of residential habilitation services. The Waiver serves some of the District's most vulnerable residents. Residential habilitation services provide essential supports whereby groups of individuals share a home managed by a provider agency. The addition of new professional requirements on the owners and operators of residential habilitation services will enable the provider agency to oversee residential habilitation supports more efficiently, and subsequently improve the overall quality of the services received by the person. In order to ensure that the residents' health, safety, and welfare are not threatened by the lapse in access to these approved services under the waiver, it is necessary that that these rules be published on an emergency basis.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 20, 2013 at 60 DCR 13216. Numerous comments were received. Substantive changes have been made as described above. The emergency rulemaking was adopted on January 14, 2014 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until May 13, 2014 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 946 (Residential Habilitation) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1929 (Residential Habilitation) is added to Chapter 19 (Home and Community-Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1929 RESIDENTIAL HABILITATION SERVICES

1929.1 The purpose of this section is to establish standards governing Medicaid eligibility for residential habilitation services under the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of residential habilitation services.

1929.2 Residential habilitation services are supports provided in a home shared by at least four (4), but no more than six (6) persons, to assist each person in acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community.

1929.3 In order to be eligible for Medicaid reimbursement, residential habilitation services shall be:

(a) Provided to a person with a demonstrated need for continuous training, assistance, and supervision; and

(b) Authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care.

1929.4 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:

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

(b) Participate in the development of the ISP and Plan of Care to ensure that the ISP goals are clearly defined;

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

(d) Develop a support plan with measurable outcomes using the functional analysis, the ISP, Plan of Care, and other information as appropriate, to enable the person to safely reside in the community and maintain their health;

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

(f) 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 within seven (7) business days of the end of each quarter; and

(g) Keep daily progress notes as described under Section 1929.15(h).

1929.5 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following categories of support:

(a) Eating and food preparation;

(b) Personal hygiene;

(c) Dressing;

(d) Monitoring health and physical conditions;

(e) Assistance with the administration of medication;

(f) Communications;

(g) Interpersonal and social skills;

(h) Household chores;

(i) Mobility;

(j) Financial management;

(k) Motor and perceptual skills;

(l) Problem-solving and decision-making;

(m) Human sexuality;

(n) Opportunities for social, recreational, and religious activities utilizing community resources; and

(o) Appropriate and functioning adaptive equipment.

1929.6 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person 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;

(j) Speech, hearing and language therapy; and

(k) Recreation.

1929.7 In order to be eligible for Medicaid reimbursement, each Waiver provider shall ensure that transportation services are provided in accordance with Section 1904 (Provider Qualifications) of Chapter 19 of Title 29 DCMR.

1929.8 In order to be eligible for Medicaid reimbursement, each Waiver provider of residential habilitation services shall:

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

(b) Provide verification of passing the Department on Disability Services (DDS), Provider Certification Review (PCR) for In-Home Supports or Respite for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of one (1) year of experience providing residential or respite services to the ID/DD population and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia;

(c) Ensure that each residence is accessible to public transportation and emergency vehicles;

(d) Have an executed, signed, current Human Care Agreement with DDS, if required by DDS; and

(e) Be licensed as a Group Home for a Person with an Intellectual Disability (Group Home for Mentally Retarded Persons [GHMRP]) in the District of

(f) Columbia or a similarly licensed group home in other states.

1929.9 In order to be eligible for Medicaid reimbursement, the Waiver provider shall demonstrate that a satisfactory rating was received pursuant to the DDS PCR process described under § 1929.8, unless waived by the Director or Deputy Director of DDS.

1929.10 In order to be eligible for Medicaid reimbursement, each GHMRP located in the District of Columbia shall provide services to at least four (4), but no more than six (6) persons and shall meet the following requirements:

(a) Be licensed 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.*), no later than sixty (60) days after approval as a Medicaid provider; and

(b) Comply with the requirements set forth in Chapter 35 of Title 22B of the District of Columbia Municipal Regulations (DCMR).

1929.11 In order to be eligible for Medicaid reimbursement, each out-of-state group home shall serve at least four (4), but no more than six (6) persons. Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations, 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) Submit to DDS a certificate of registration to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-105.3 *et seq.*;

(b) Remain in good standing in the jurisdiction where the program is located;

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

(d) 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.

1929.12 In order to be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing residential habilitation services as an agent or employee of a provider shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1929.13 An acuity evaluation to set support levels shall be recommended by the Support Team and approved by the DDS Waiver Unit. DDS 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 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.

1929.14 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHMRP that serves persons who are not determined by DDS to require a higher acuity level, shall not be less than the following:

(a) 1:6 during the waking hours of the day, approximately 6:00 a.m. to 2:00 p.m., when persons remain in the GHMRP during the day;

(b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m.; and

(c) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.

1929.15 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall maintain the following documents for monitoring and audit reviews:

(a) A current written staffing plan;

(b) A written explanation of staffing responsibilities when back-up staff is unavailable and the lack of immediate care poses a serious threat to the person's health and welfare;

(c) Daily attendance rosters;

(d) The financial documents required pursuant to the DDS Personal Funds policy available at http://dds.dc.gov.;

(e) The records of any nursing care provided pursuant to physician ordered protocols and procedures, charting, and other supports indicated in the physician's orders relating to development and management of the Health Management Care Plan;

(f) Any documents required to be maintained pursuant to the DDS Health and Wellness Standard Policy available at http:// dds.dc.gov;

(g) The daily progress notes, containing the following information:

(1) A written record of visitors and the person's participation in the visit;

(2) A list of all community activities attended by the person and the response to those activities;

(3) A list of the start and end time of any services received by the person residing in the residential habilitation facility including the DSP's signature; and

(4) A list of any matter requiring follow-up on the part of the service provider or DDS.

(h) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1929.16 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1929.17 Residential habilitation services shall not be billed concurrently with the following Waiver services:

(a) Environmental Accessibility Adaptation;

(b) Vehicle Modifications;

(c) Supported Living;

(d) Respite;

(e) Host Home;

(f) Shared Living;

(c) In-Home Supports;

(h) Personal Emergency Response System; and

(i) Skilled Nursing.

1929.18 Residential habilitation services shall not be reimbursed when provided by a member of the person's family.

1929.19 Reimbursement for residential habilitation services shall not include:

(a) Cost of room and board;

(b) Cost of facility maintenance, upkeep, and improvement;

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

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

(e) Time when the person is hospitalized, on vacation, and not in the care of the residential habilitation provider, or any period when the person is not residing at the GHMRP, and not in the care of the residential habilitation provider, except during an emergency situation when the person is temporarily residing in a hotel or other facility.

1929.20 The reimbursement rate for residential habilitation services shall only include time when staff is awake and on duty and shall include:

(a) All supervision provided by the direct 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) Transportation;

(d) Programmatic supplies and fees;

(e) Quality assurance costs, such as Incident Management Systems and staff development; and

(f) General administrative fees for Waiver services.

1929.21 The reimbursement rate for residential habilitation services shall be a daily rate.

1929.22 The reimbursement rate for residential habilitation services for a GHMRP with four (4) persons shall be as follows:

(a) The Basic Support Level 1 daily rate shall be two hundred and twenty eight dollars ($228.00) for a direct care staff support ratio of 1:4 for all awake and overnight hours;

(b) The Moderate Support Level 2 daily rate shall be three hundred sixty dollars ($360.00) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred and two dollars ($402.00) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(d) The Intensive Support daily rate shall be five hundred and twenty dollars ($520.00) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and

(e) The Intensive Support daily rate shall be five hundred and sixty-nine dollars and forty three cents ($569.43) for twenty-four (24) hour licensed practical nursing services.

1929.23 The reimbursement rate for residential habilitation services for a GHMRP with five (5) to six (6) persons shall be as follows:

(a) The Basic Support Level 1 daily rate shall be two hundred eighty-one dollars ($281.00) for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;

(b) The Moderate Support Level 2 daily rate shall be three hundred twenty-two dollars ($322.00) for a direct care staff support ratio of 2:5 or 2:6 staff

awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(c) The Enhanced Moderate Support Level 3 daily rate shall be three hundred eighty dollars ($380.00) for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(d) The Intensive Support daily rate shall be four hundred eighty-one dollars ($481.00) for increased direct care staff support for sleep hours to 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and

(e) The Intensive Support daily rate shall be five hundred and thirty-one dollars and four cents ($531.04) for twenty-four (24) hour licensed practical nursing services.

1929.24 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.

1929.25 Daily activities may include but are not limited to day habilitation, employment readiness, individualized day supports, supported employment or employment.

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

Group Home for a Person with an Intellectual Disability (GHMRP) - A community residence facility, other than an intermediate care facility for persons with intellectual or developmental disabilities, that provides a homelike environment for at least four (4) but no more than six (6) related or unrelated persons with intellectual disabilities who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900, Washington, D.C. 20001, via telephone on (202) 442-9115, via email at DHCFpubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.