

**DEPARTMENT OF HEALTH****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Interim 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, on an emergency basis, of an amendment to section 920 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Prevocational Services, a habilitative service provided 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 on December 21, 2007 (54 DCR 12347). Comments were received and considered. The December 21<sup>st</sup> rulemaking changed the rules previously published at 54 DCR 2343 (March 16, 2007) to increase the daily limit to eight (8) hours, to establish a minimum staffing ratio, and to require the development of a service plan with measurable outcomes that will more clearly define the service being provided. This rulemaking further changes the December 21<sup>st</sup> rulemaking to define the component of the required vocational assessment, to remove the requirement that the vocational assessment must find that the person is not expected to join the general work force or participate in a sheltered workshop for one year, to delete the definition of situational or functional assessment, to replace the requirement for an annual functional assessment with a requirement to assess progress annually based on vocational preferences and goals as specified in the person's individual support plan, and to expand the requirement that a person on the executive staff have specific academic credentials so that the requirement encompasses all staff.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of prevocational services. These emergency rules are needed so that, on the expiration date of the previous notice of emergency and proposed rulemaking for prevocational services, there will be rules in place consistent with the provisions of the Waiver as modified.

The emergency rulemaking was adopted on March 20, 2008, and became effective on that date. The emergency rules will remain in effect for 120 days or until July 17, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

Section 920 (Prevocational Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**920           PREVOCATIONAL SERVICES**

920.1           Prevocational 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.

920.2           To be eligible for prevocational services under the Waiver, a vocational assessment must be submitted or provided within the first ninety (90) days of participation that includes the following:

- (a)    Employment-related strengths and weaknesses (*e.g.*, task focus);
- (b)    Available natural/community supports;
- (c)    Personal concerns and preferences; and
- (d)    Accommodations and supports that may be required on the job.

920.3           Prevocational services are designed to prepare a person for paid or unpaid employment, but not to develop a specific job skill.

920.4           Prevocational services eligible for reimbursement shall be as follows:

- (a)    Prevocational assessment activities, including assessments provided at community businesses and other community resources;
- (b)    Social skills training, including but not limited to the following:
  - (1)    Learning to interpret instructions;
  - (2)    Interpersonal relations;
  - (3)    Communication;
  - (4)    Respecting the rights of others; and
  - (5)    Problem solving;

- (c) The development of work skills, which shall include, at a minimum, teaching the person the following concepts:
  - (1) Compliance with employer instructions;
  - (2) Attendance;
  - (3) Task completion; and
  - (4) On-the-job safety;
- (d) Coordination of:
  - (1) Time-limited volunteering and other prevocational skills training indicated in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care; and
  - (2) Transportation to community activities necessary to carry out this service through the Medicaid Non-Emergency Transportation Broker.

- 920.5 An assessment must be conducted at least annually by the provider to evaluate each individual's acquisition of employment-related skills based on the person's vocational preferences and goals as specified in the person's IHP or ISP and Plan of Care.
- 920.6 Each prevocational provider shall develop an individualized plan for each person that is in keeping with their interests, preferences, choices, goals and prioritized needs. The activities in the plan shall be functional, chosen by the person, and provide a pattern of life experiences common to other persons of their age and the community at large. The plan must identify specific measurable outcomes for the development of vocational skills that are consistent with goals of the IHP or ISP and Plan of Care.
- 920.7 Prevocational services may be provided in non-facility-based or facility-based settings.
- 920.8 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or state and local laws and regulations.
- 920.9 Before a provider of prevocational services may pay a person wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.

- 920.10 Prevocational services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*), or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*) (hereinafter the “Acts”). Each person receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and IHP or ISP and Plan of Care.
- 920.11 All prevocational providers shall deliver appropriate services to persons requiring physical assistance to facilitate their participation in prevocational services activities. All prevocational providers shall ensure that each person has access to first aid.
- 920.12 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each person’s IHP or ISP and Plan of Care. All prevocational services shall be reflected on the IHP or ISP and Plan of Care as habilitative rather than explicit employment objectives.
- 920.13 Each prevocational services provider shall:
- (a) Be a non-profit, home health or social service agency or other business entity;
  - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Prevocational Services under the Waiver;
  - (c) Maintain a copy of the IHP or ISP and Plan of Care approved by the Department on Disability Services (DDS);
  - (d) Ensure that all prevocational services staff are qualified and properly supervised;
  - (e) Ensure that the service provided is consistent with the person’s IHP or ISP and Plan of Care
  - (f) Participate in the annual IHP or ISP and Plan of Care meeting or case conferences when indicated;
  - (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine;

- (h) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as set forth in 29 CFR § 1910.1030; and
- (i) Maintain a staff-to-person ratio as indicated in the IHP or ISP and Plan of Care up to a maximum ratio of one to four (1:4) that ensures that the service meets the person's individual needs and is provided appropriately and safely.

920.14 Each provider of prevocational services shall demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide prevocational services for individuals with mental retardation with varying habilitation needs. The staff must have at least one (1) individual with a Master's degree in Vocational Rehabilitation or a similar discipline and four (4) years of combined supervisory, administrative, and "job coaching" or experience providing employment services to persons with disabilities.

920.15 Each person providing prevocational services for a provider under section 920.13 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the person to whom services are provided;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
- (d) Have a high school diploma or general educational development (GED) certificate;
- (e) Have at least one (1) year of experience working with persons with mental retardation;
- (f) Agree to carry out the responsibilities to provide services consistent with the person's IHP or ISP;
- (g) Complete pre-service and in-service training approved by DDS;
- (h) Have the ability to communicate with the person to whom services are provided;
- (i) Be able to read, write, and speak the English language; and

- (j) 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.*).

920.16 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2) years of combined supervisory and "job coaching" or experience providing employment services to persons with disabilities.

920.17 Prevocational services shall not be provided at the same time as day treatment, supported employment, or day habilitation services.

920.18 The reimbursement rate for prevocational services shall be fifteen dollars and eighty cents (\$15.80) per hour. Services shall be provided for a maximum of eight (8) hours a day, not including travel time. The billable unit of service for prevocational services shall be fifteen (15) minutes. The reimbursement rate for prevocational services shall be three dollars and ninety-five cents (\$3.95) per billable unit. 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.

920.19 Prevocational providers shall submit to the DDS a completed Prevocational Individualized Services Person Quarterly Report, no later than the 15<sup>th</sup> day of January, April, July, and October, for the preceding three (3) month period. The report shall include the following information for each participant served:

- (a) Name of the person;
- (b) Community inclusion opportunities;
- (c) Volunteer activities;
- (d) Prevocational facility and non-facility-based activities; and
- (e) Progress to achieving outcomes from individualized plan developed in accordance with section 920.6.

920.20 No payment shall be made for routine care and supervision, which is the responsibility of the family or group home provider.

**920.99 DEFINITIONS**

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

**Communicable Disease** – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

**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*.

**Person** – 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.

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

**Waiver** – 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.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

**DEPARTMENT OF HEALTH****NOTICE OF EMERGENCY AND PROPOSED 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, on an emergency basis, of an amendment to section 946 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for residential habilitation services 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 were approved by 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 on December 28, 2007 (54 DCR 12670). No comments were received. The December 28<sup>th</sup> rulemaking changed the previously published rules at 54 DCR 4394 (May 11, 2007). This rulemaking further changes the December 28<sup>th</sup> rulemaking to use a fifteen (15) minute billing unit, to adjust rates to prevent duplicate billings for services for individuals whose participation in day/vocational activities exceeds the five (5) hour per day five (5) day per week schedule used in the rate methodology for residential habilitation services, and to require the provider to give ninety (90) days written notice to the government and thirty (30) days written notice to the participants of the intent to terminate residential habilitation services. The new residential habilitation services rules provide a blend of the previously-available services under the former Waiver (*i.e.*, Homemaker Services, Chore Services, Adult Companion Services, and Personal Care Services). This service delivery approach will address the problems encountered, such as different provider qualifications and restrictions for each service when multiple provider agencies and support staff are needed to deliver supports to Waiver participants. The rule is intended to resolve staffing issues which have made it difficult to effectively support individuals in group homes. Residential habilitation service is a twenty-four (24) hour service limited to licensed homes which are owned, leased or otherwise operated by the provider. The reimbursement rates have been modified based on the new rate setting methodology and the collapsing of services into daily rates based on acuity. The acuity system is based on the intensity of staffing required for each group home.

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. These emergency rules are needed so that, on the expiration date of the previous notice of emergency and proposed rulemaking for residential habilitation services, there will be rules in place consistent with the provisions of the Waiver as modified to provide residential

habilitation services in licensed or certified group homes based on daily rates that are, in turn, based on the acuity level of the persons being served.

The emergency rulemaking was adopted on March 20, 2008, and became effective on that date. The emergency rules will remain in effect for 120 days or until July 17, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

Section 946 (Residential Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**946 RESIDENTIAL HABILITATION SERVICES**

946.1 Residential habilitation 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.

946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a Group Home for Mentally Retarded Persons (GHMRP) or similarly licensed group home in other states. Each GHMRP located in the District of Columbia shall 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 comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations DCMR), except as set forth in these rules. In order to qualify for reimbursement under this section, residential habilitation services shall be delivered in a GHMRP or group home licensed or certified in other states that can serve four (4) to six (6) persons.

946.3 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and be 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 plan, if applicable, to the Department on Disability Services (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.

946.4 Residential habilitation services shall only be available to a person with a demonstrated need for continuous 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.

946.5 Each provider of residential habilitation services shall assist persons 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 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 first month of the person's residency;
- (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 their health and safety; and
- (c) Report quarterly to the person, family, guardian, and DDS Case Manager the outcomes of the programming and support provided to help the person to achieve the identified outcomes.

946.6 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 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) Communications;
- (h) Interpersonal and social skills;
- (i) Home management;
- (j) Mobility;

- (k) Time management;
- (l) Financial management;
- (m) Academic and pre-academic skills;
- (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.

946.7 Each provider of residential habilitation services shall ensure that each resident receives the professional services required to meet his or her goals as identified in the person's IHP or ISP and Plan of Care. Professional 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.

946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable persons to gain access to Waiver and other community services and activities. The provider shall comply with the requirements governing transportation services set forth in section 1903 of Title 29 DCMR if providing transportation services.

946.9 The minimum daily ratio of on-duty direct care staff to persons present in each GHMRP that serves persons who are not determined by DDS to have higher acuity 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.

946.10 Each provider of residential habilitation services shall be a social services agency as described in section 1903.1 of Title 29 DCMR. In addition, the provider shall:

- (a) Be a member of the resident's interdisciplinary team;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation 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 residential habilitation services staff are qualified and properly supervised to include having a plan to provide staff interpreters for non-English speaking persons;
- (f) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
- (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (h) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC);
- (i) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds;
- (j) Ensure that each residence is accessible to public transportation and emergency vehicles;
- (k) Ensure that each group home is barrier-free if needed by the person;
- (l) Maintain a written staffing plan;
- (m) Provide a written staffing schedule for each site 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; D.C. Official Code § 44-551 *et seq.*);
- (o) Ensure that each staff member has been screened for communicable disease, in accordance with the guidelines issued by the CDC;
- (p) Meet the DDS Basic Assurances set forth in the Human Care Agreement;
- (q) Provide DDS and the Medical Assistance Administration, Department of Health, with at least ninety (90) days advance written notice of intent to terminate residential habilitation services; and
- (r) Provide persons receiving residential habilitation 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.

- 946.11 Each person providing residential habilitation services for a provider under section 946.10 shall meet all of the requirements in Chapter 19 to Title 29 DCMR, section 1911.
- 946.12 Each provider shall cooperate with DDS case management in providing access and information as requested for case management visits and reviews.
- 946.13 Each provider of residential habilitation 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.
- 946.14 Each provider of residential habilitation services shall maintain progress notes on a weekly basis, or more frequently if indicated, which include: progress in meeting each goal in the ISP; any unusual health or behavioral events or change in status; a recording of visitors and the person's participation in the visit; a listing of all community activities attended by the person and the response to those activities; and any matter requiring follow-up on the part of the service provider or DDS. Each provider shall also maintain participant attendance rosters on a daily basis and current financial records of expenditures of public and private funds for each person.
- 946.15 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the person's date of discharge.
- 946.16 Residential habilitation services shall not be reimbursed when provided by a member of the person's family.
- 946.17 Reimbursement for residential habilitation services shall not include:
- (a) Cost of room and board;
  - (b) Cost of facility maintenance, upkeep and improvement; and
  - (c) Activities for which payment is made by a source other than Medicaid.
- 946.18 The reimbursement rate for residential habilitation services is calculated based on the staff being awake while on duty and shall include:
- (a) All supervision of 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 to day programs, employment, professional appointments, community outings and events;
  - (d) Programmatic supplies; and
  - (e) General and administrative fees for Waiver services.

The billable unit of service for residential habilitation 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.

946.19

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

- (a) The Basic Support Level 1 daily rate shall be two hundred seventeen dollars (\$217.00) for a direct care staff support ratio of 1:4 for all awake and overnight hours billable in quarter hour units of two dollars and twenty-six cents (\$2.26) per unit;
- (b) The Moderate Support Level 2 daily rate shall be three hundred forty-four dollars (\$344.00) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and fifty-eight cents (\$3.58) per unit;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred eighty-four dollars (\$484.00) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and four cents (\$5.04) per unit;
- (d) The Intensive Support daily rate shall be five hundred sixty-one dollars (\$561.00) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and eighty-five cents (\$5.84) per unit; and
- (e) 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.

946.20

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

- (a) The Basic Support Level 1 daily rate shall be two hundred seventy-two dollars (\$272.00) for a direct care staff support ratio of 1:5/6 staff awake overnight and 2:5/6 during all awake hours when individuals

- are in the home billable in quarter hour units of two dollars and eighty-three cents (\$2.83) per unit;
- (b) The Moderate Support Level 2 daily rate shall be three hundred sixty-seven dollars (\$367.00) for a direct care staff support ratio of 2:5/6 staff awake overnight and 2:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and eighty-two cents (\$3.82) per unit;
  - (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred forty-four dollars (\$444.00) for a staff support ratio of 2:5/6 staff awake overnight and 3:5/6 during all awake hours when individuals 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;
  - (d) The Intensive Support daily rate shall be five hundred fifty-five dollars (\$551.00) for increased direct care staff support for sleep hours to 2:5/6 for staff awake overnight support and 4:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and seventy-four cents (\$5.74) per unit; and
  - (e) 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.

946.21 Acuity evaluation to set support levels shall be determined 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 increased supports. Individuals may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.

946.22 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) Live-in caregiver;
- (g) In-home supports;
- (h) Personal Emergency Response System; or
- (i) Transportation.

- 946.23 Residential habilitation 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 GHMRP. 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 residential habilitation services reimbursement. Reimbursement shall be calculated based on the time the person is scheduled to be in his or her 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.
- 946.24 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 his or her home on a daily basis.

**946.99 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 residential habilitation 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 a.m. to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

**Communicable Disease** – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

**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 946.13 should identify community and social events appropriate for the person.

**Direct Care Staff** – Individuals employed to work in the GHMRP who render the day-to-day, personal assistance that persons require 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.

**Group Home for Mentally Retarded Persons (GHMRP)** – A community residence facility, other than an intermediate care facility for persons with mental retardation, 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.

**Health Management Care Plan**- A written document designed to evaluate an individual'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, individuals responsible for carrying out interventions, and individuals responsible for providing evaluation of outcomes and timeframes.

**Individual** – individual participant enrolled in the Waiver receiving services.

**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 evaluation of the person 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 determining the reimbursement rates for residential habilitation services, the overnight period shall be approximately from 10:00 p.m. to 6:00 a.m.

**Person/ Participant**– An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the 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.

**Waiver** – 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.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF EMERGENCY RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*) (2007 Repl.), as amended on an temporary basis by the Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2007," effective February 2, 2008 (D.C. Law 17-101, published at 54 DCR 12199, December 21, 2007), and any similar succeeding legislation (jointly referred to as the "Act"), hereby gives notice of the adoption of the following emergency rules. The Act continues the authorization for the pay differential to District government employees called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom; and requires that rules be issued to implement its provisions. Because the emergency rules on the pay differential effective November 29, 2007 and published in the *D.C. Register* at 54 DCR 12096 (December 14, 2007) have expired; to ensure the welfare of the public; and communicate the provisions of the Act to the public and affected employees, action was taken on March 13, 2008 to adopt the following rules on an emergency basis effective March 13, 2008, to add a new section 1155 to Chapter 11, Classification and Compensation, of Title 6 of the District of Columbia Municipal Regulations, implementing the provisions of the Act. These rules will remain in effect for up to one hundred twenty (120) days from March 13, 2008, unless earlier superseded by another rulemaking notice.

**CHAPTER 11****CLASSIFICATION AND COMPENSATION**

*A new section 1155 is added to read as follows:*

**1155 OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM PAY DIFFERENTIAL**

- 1155.1 (a) Any full-time permanent employee, term employee, or an employee on a Temporary Appointment Pending Establishment of a Register (TAPER) who serves in a reserve component of the armed forces and who has been ordered to active duty, or was retained for duty as a result of Operation Enduring Freedom, or in preparation for a potential conflict with Iraq, or as a result of Operation Iraqi Freedom, shall be entitled to apply for and receive, or continue to receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.

- (b) For the purposes of this section, the phrase “any full-time permanent employee, term employee, or an employee on a Temporary Appointment Pending Establishment of a Register (TAPER)” in section 1151.1 (a) of this section, shall include at-will employees.
- 1155.2 An employee as described in section 1155.1 of this section shall not be required to be released from active duty before making application for and receiving the pay differential. However, if the employee has not been released from active duty when he or she makes application for the pay differential, the employee shall provide all documentation required in section 1155.9 of this section, except that in lieu of providing a copy of the military orders releasing the employee from active duty, the employee shall provide a letter from his or her commanding officer attesting to the fact that the employee, as of the date of application for the pay differential, is still in an active duty status.
- 1155.3 A pay differential received pursuant to this section shall not be considered basic pay for any purpose.
- 1155.4 Any eligible employee, upon making application for the pay differential and upon approval of the application by his or her department or agency head, shall receive a pay differential that equals the difference between the employee’s District government basic pay reduced by the employee’s basic military pay.
- 1155.5 The estate of any eligible employee who has been killed while in active duty or who is missing in action as a result of active duty shall be eligible to collect any pay differential to which the employee would have been entitled upon making application on behalf of the employee and upon approval of the application by the employee’s department or agency head.
- 1155.6 The period of entitlement to the pay differential shall not exceed:
- (a) The period following the formal inception of Operation Enduring Freedom through the date the employee is released from active duty occasioned by Operation Enduring Freedom; or
- (b) The period following the formal inception of the preparations for a potential conflict with Iraq and the period following the formal inception of Operation Iraqi Freedom through the date the employee is released from active duty occasioned by, the preparation for, or, Operation Iraqi Freedom.
- 1155.7 The pay differential shall not be payable for any period following the employee’s release from active duty and the employee’s return to his or her District government position.
- 1155.8 The pay differential shall not be payable for any days for which the employee received

pay by reason of any annual leave, military leave, compensatory time, or any other form of paid leave taken by the employee.

1155.9 In making application for the pay differential, the employee shall:

- (a) Provide a copy of the military orders activating the employee for full-time active military service for the Operation Enduring Freedom conflict, or, in preparation for, or, as a result of, the Operation Iraqi Freedom conflict;
- (b) Provide a copy of the military orders releasing the employee from full-time active military service for the Operation Enduring Freedom conflict, or, for the preparation for, or, the Operation Iraqi Freedom conflict; and
- (c) Provide all military pay documentation required to calculate the differential amount.

1155.10 A pay differential under this section shall be paid by the agency that last employed the eligible employee before the employee was ordered to active duty as specified in section 1155.1 of this section, out of the agency's funds or appropriations then currently available for salaries and expenses.

#### 1155.99 DEFINITIONS

**Active duty** – full-time duty in the active military service of the United States for the Operation Enduring Freedom conflict, or, in preparation for, or, for the Operation Iraqi Freedom conflict.

**Armed forces** – has the meaning prescribed in 10 U.S.C. § 101 (a)(4).

**Basic military pay** – the basic pay under 37 U.S.C. § 204.

**Basic pay** – the employee's scheduled rate of pay plus any additional pay that is defined as basic pay for annuity computation purposes in the retirement system in which the employee is a participant.

**Employee** – any full-time permanent employee, term employee, or an employee on a TAPER appointment who serves in a reserve component of the United States Armed Forces and who has been called to active duty as a result of the Operation Enduring Freedom conflict, or in preparation for, or as a result of the Operation Iraqi Freedom conflict.

**Operation Enduring Freedom** – the period encompassed within Executive Order 13223 Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, effective September 14, 2001, and amended by Amendment to Executive Order 13223, effective January 16, 2002 and ending on the date the employee is released from active duty occasioned by Operation Enduring Freedom.

**Operation Iraqi Freedom** – the period encompassed within the Joint Resolution entitled Authorization for Use of Military Force Against Iraq Resolution of 2002, approved October 16, 2002 (P.L. 107-243) and ending on the date the employee is released from active duty occasioned by Operation Iraqi Freedom.

**Reserve component** – has the meaning prescribed in 37 U.S.C. § 101 (24).