

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409) (2001)), and Mayor's Order 87-259, dated November 13, 1987, hereby gives notice of the adoption, on an emergency basis, of a revision of Chapter 31A, Section 3107A (Signs) of Title 12A of the District of Columbia Municipal Regulations (DCMR), the Construction Codes Supplement of 2003.

This emergency rulemaking is necessary to continue in effect a clarification, first adopted on an emergency basis on May 30, 2006, of the applicability of the sign regulations to signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property. The current building code regulations are ambiguous and could create uncertainty concerning the legal requirements for posting these signs. The adoption of this emergency rulemaking allows the public to receive continuing guidance on the manner in which they may use signs on private property to express themselves on non-commercial personal and political matters. This emergency rulemaking was adopted on December 14, 2006 and became effective on that date. This emergency rulemaking will expire on April 13, 2007, unless superseded by another rulemaking notice.

The Director also gives notice of intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The public is advised that this rulemaking is designed to clarify that section 3107A is intended to protect speech protected by the First Amendment, and to serve as notice that District residents do not need a permit to post signs on their residential property which contain non-commercial speech protected by the First Amendment. Review of section 3107A has demonstrated that a more comprehensive revision of the sign regulation is needed to update the sign rules, further resolve ambiguities and inconsistencies, and ensure that the public interests underlying the regulations, such as sign safety, aesthetics, and traffic safety, are optimally balanced against the protection of individual interests in personal and commercial expression. These issues will be further addressed in a subsequent rulemaking, which will be developed in consultation with the District of Columbia Building Code Advisory Committee and released for public comment on or before January 2008. Public comments received in connection with this proposed rulemaking will also be considered in the development of the subsequent proposed rules.

Chapter 31A, Section 3107A of Title 12A of the District of Columbia Municipal Regulations (DCMR), the Construction Codes Supplement of 2003, is amended as follows:

Section 3107.1 (General) is amended by adding the following sentence at the end:

“Except as otherwise specifically provided, Section 3107 shall not apply to signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property.”

Section 3107.3 (Permits) is amended by striking the word “exceeding” and inserting the phrase “subject to the provisions of Section 3107 that exceeds” in its place.

Section 3107.3.5.6 ((Show cards) is repealed.

Section 3107.4 (Commission of Fine Arts submission) is amended by inserting the phrase “for review of signs subject to the provisions of section 3107” after the word “applications”.

Section 3107.6 (Character of Advertising) is amended by striking the words “of any character” and inserting the phrase “subject to provisions of Section 3107” in its place.

Section 3107.6.2 (Removal of signs) is amended by inserting the phrase “subject to the provisions of Section 3107 that was” after the phrase “Any sign” and inserting the word “and” after the word “maintained”.

Section 3107.6.3 (Miscellaneous signs) is repealed.

Section 3107.6.6 (Directional signs) is amended by striking the phrase “under Section 3107.3.5.6 for show cards,”.

Section 3107.6.7 (Special permits) is amended by striking the phrase “will aid in the promotion of an activity of an exclusively civic nature or” after the phrase “approval of the permit”.

Section 3107.7 (Types of signs) is amended by inserting the phrase “subject to provisions of Section 3107.” after the phrase “for all signs”.

Section 3107.7.7.9 (Transported signs and banners) is amended by inserting the phrase “, or to any other signs bearing non-commercial statements of fact, belief, or personal or political opinion.” after the word “dispute”.

Section 3107.9 (Residential or Special Purpose District limitations) is amended by inserting the phrase “subject to provisions of Section 3107” after the word “signs”.

Section 3107.9.1 (General Residential District limitations) is amended by inserting the phrase “except signs bearing non-commercial statements of fact, belief, or personal or political opinion,” after the word “Regulations”.

Section 3107.9.3 (Location restrictions) is amended by inserting the phrase “subject to the provisions of Section 3107” after the phrase “district signs”.

Section 3107.9.5 (Authorized signs) is amended to read as follows:

3107.9.5 Authorized signs. The code official is authorized to issue a permit for signs complying with any of Sections 3107.9.5.1 through 3107.9.5.8.

Section 3107.9.5.1 (Public Information) is repealed.

Section 3107.9.6 (Signs in special purpose districts) is amended by inserting the phrase "subject to the provisions of Section 3107" after the phrase "total area of signs".

Section 3107.10 (Maximum size of signs) is amended by inserting the phrase "subject to provisions of Section 3107 and" after the word "signs".

Section 3107.10.7 (Exemptions) is amended by inserting the phrase "and signs not subject to the provisions of section 3107" after the phrase "through 3107.3.5.8".

Section 3107.11 (Structural and materials requirements) is amended by inserting the phrase "subject to the provisions of Section 3107," after the phrase "All signs".

Section 3107.13 (Dangerous signs) is amended by inserting the phrase ", including signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property," after the phrase "When any sign".

Section 3107.14 (Obstructive signs) is amended by inserting the phrase ", including signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property," after the phrase "No sign".

All persons desiring to comment on these proposed regulations should submit comments in writing to Paul Waters, Legislative Liaison, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, NE, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested.

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia (CPO), pursuant to authority granted by sections 202 and 204 of the District of Columbia Procurement Practices Act of 1985, as amended, ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§2-302.02 and 2-302.04), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of intent to adopt the following amendment to Chapter 20 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The proposed rules are intended to amend a section of Chapter 20 of Title 27 *D.C. Municipal Regulations*, which concern special contracting methods to allow the total term of a contract, including base plus option periods, to exceed five (5) years only upon approval of the CPO or designee.

The rules were approved as emergency and proposed rules on July 20, 2006 and published in the *D.C. Register* on August 11, 2006, at 53 DCR 6592. The current emergency rules expired on November 17, 2006. No changes have been made to the rules as published. The final rules to amend Chapter 20 have been submitted to the Council of the District of Columbia for its review pursuant to section 205(b) of the PPA (D.C. Official Code §2-302.05(b)), and may not become effective until the expiration of the 60-day period for Council review or upon approval by Council resolution, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

Emergency rulemaking action is necessary to provide continuing authority to extend the term of a contract beyond five (5) years. To ensure that amended chapter 20 will continue in effect, action was taken on November 20, 2006 to adopt the following rules on an emergency basis effective on that date. These rules will remain in effect for up to one hundred twenty (120) days from the date of adoption, unless superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

CHAPTER 20

SPECIAL CONTRACTING METHODS

Section 2005.6 is amended to read as follows:

2005 USE OF OPTIONS

2005.6 The base period in a contract for services or supplies shall not exceed one (1) year, unless the contract is funded from an appropriation that is available for more than one (1) year or is a multiyear contract for which funds would otherwise be available for obligation only within the fiscal year for which appropriated pursuant to District law codified at D.C. Official Code § 1-204.51(c). The total of the base and option periods in a contract for services or supplies shall not exceed five (5) years unless:

(a) prior to solicitation, the Chief Procurement Officer or designee determines in writing that it is in the best interest of the District and the solicitation for the contract specifies the total of the base and option periods of the contract; or

(b) prior to the expiration of a contract, the Chief Procurement Officer or designee determines in writing that it is in the best interest of the District to extend the term beyond the total term specified in the contract and the contracting officer provides justification for using a sole source modification in accordance with chapter 17 of this title.

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 933 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Skilled Nursing Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for skilled nursing services provided by a practical nurse, registered nurse or trained unlicensed personnel to participants in the Home Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for skilled nursing services.

This rulemaking will amend the previously published rules by clarifying those nursing interventions which may be delegated to trained unlicensed personnel consistent with the scope of practice requirements for registered and practical nursing set forth in Chapters 54 and 55 of Title 29 DCMR. This change will ensure that standards governing Medicaid reimbursement for skilled nursing services are consistent with District law and rules. This proposed rule also establishes a residential services rate for skilled nursing services provided to consumers in need of skilled nursing services while receiving independent habilitation or residential habilitation services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of Skilled Nursing Services.

The emergency rulemaking was adopted on December 7, 2006 and will become effective one day following the date of publication of this notice of emergency rulemaking in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until April 6, 2007, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director 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 933 (Skilled Nursing Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

DISTRICT OF COLUMBIA REGISTER

SECTION 933

SKILLED NURSING SERVICES

- 933.1 Skilled nursing services shall be reimbursed by the Medicaid Program for each participant in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 933.2 To be eligible for reimbursement, skilled nursing services shall be:
- (a) Ordered by a physician;
 - (b) Provided by a registered nurse, or by a practical nurse under the supervision of a registered nurse or unlicensed trained personnel in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 of the District of Columbia Municipal Regulations (DCMR); and
 - (c) Reasonable and necessary to the treatment of the consumer's illness or injury.
- 933.3 Skilled nursing services shall be authorized and provided in accordance with each consumer's individual habilitation plan (IHP) or individual service plan (ISP).
- 933.4 Each person providing skilled nursing services shall:
- (a) Be employed by a home health agency, nurse staffing agency or provider of independent habilitation services or residential habilitation services that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services;
 - (b) Be at least eighteen (18) years of age;
 - (c) Be acceptable to the consumer;
 - (d) Be a citizen of the United States or an alien who is lawfully authorized to work in the United States;
 - (e) Be certified in cardiopulmonary resuscitation (CPR) and thereafter maintain current CPR certification;
 - (f) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual purified protein of tuberculin (PPD) skin test or documentation from a physician;
 - (g) Have the ability to read and write the English language;
 - (h) Have the ability to communicate with the consumer;
 - (i) Be able to recognize an emergency and execute emergency procedures;
 - (j) Complete pre-service and in-service training approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- 933.5 Each home health agency or nurse staffing agency shall be certified or licensed by the District of Columbia prior to providing services and meet all standards set forth in the applicable licensure statute and implementing rules.

- 933.6 All nurses shall wear a pictured identification badge with lettering clearly visible to a client bearing the name of the nurse and the nurse's title "Registered Nurse" or "RN" or "Practical Nurse" or "PN".
- 933.7 The duties of a registered nurse shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 DCMR. They may include, at a minimum, but not be limited to the following duties:
- (a) Preparing an initial assessment and evaluation;
 - (b) Coordinating the consumer's care and referrals;
 - (c) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia; and
 - (d) The administration of nursing services.
- 933.8 The duties of a practical nurse shall be consistent with the scope of practice standards for a practical nurse set forth in Chapter 55 of Title 17 (DCMR). They may include, at minimum, but not be limited to the following duties:
- (a) Recording progress notes on each visit and summary notes at least quarterly;
 - (b) Reporting, immediately, any changes in the consumer's condition to the supervising registered nurse;
 - (c) Providing wound care, tube feeding, diabetic care and other treatment regimens prescribed by the physician; and
 - (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia.
- 933.9 Nursing interventions may be delegated to trained unlicensed personnel in accordance with the requirements set forth in Chapters 54 and 55 of Title 17 of the District of Columbia Municipal Regulations.
- 933.10 The registered nurse shall monitor and supervise the provision of services provided by the practical nurse including a site visit at least once every sixty-two (62) days or as specified in the consumer's ISP.
- 933.11 The registered nurse shall be responsible for documenting in the consumer's clinical record, notes that are clearly written and contain a statement of the consumer's progress or lack of progress, medical conditions, functional losses and treatment goals which demonstrate that the consumer's services are and continue to be reasonable and necessary.
- 933.12 Each provider shall maintain a copy of the IHP or ISP approved by MRDDA for at least six (6) years after the consumer's date of discharge.

- 933.13 Each provider shall ensure that the practical nurse or the trained unlicensed personnel are properly supervised and that the service provided is consistent with the consumer's IHP or ISP.
- 933.14 Each provider shall review and evaluate skilled nursing services provided to each consumer, at least quarterly.
- 933.15 Medicaid reimbursement governing the provision of skilled nursing services shall be developed using the following three (3) rate structure:
- (a) Skilled nursing services rate;
 - (b) Extended skilled nursing services rate; and
 - (c) Residential services skilled nursing services rate.
- 933.16 All skilled nursing services provided in accordance with the requirements set forth in this section shall be prior authorized by the consumer's case manager as a condition of reimbursement by the Medicaid program.
- 933.17 The skilled nursing services reimbursement rate shall be sixty-five dollars (\$65.00) per visit, with a maximum of one (1) visit per day for services provided by a registered nurse or practical nurse or thirty-two dollars and sixty cents (\$32.60) per visit, with a maximum of one (1) visit per day for services provided by delegated trained unlicensed personnel in accordance with section 993.9. Each visit shall consist of four (4) hours or less in duration, and services shall be provided by a registered nurse, practical nurse or trained unlicensed personnel. Providers shall obtain prior authorization for skilled nursing services in excess of four (4) hours per visit. Services that extend beyond four (4) hours shall be billed at the extended skilled nursing services rate.
- 933.18 The reimbursement rate for extended skilled nursing services shall be seven dollars (\$7.00) per billable unit for services provided by a registered nurse, five dollars (\$5.00) per unit for services provided by a practical nurse and four dollars and eight cents (\$4.08) per billable unit for services provided by trained unlicensed personnel in accordance with section 933.9.
- 933.19 The billable unit of service for the extended skilled nursing services shall be 15 minutes. A provider shall provide at least eight (8) minutes of service in a span of 15 continuous minutes to be able to bill a unit of service.
- 933.20 The residential services skilled nursing services rate shall be a daily rate. The rate shall be billed according to the ratio the service is provided as set forth in the following ratios and rates:
- a. For Services Provided by a Registered Nurse

RN Staff	Consumers	Daily Rate
1	1	\$56.00
1	2	\$28.00
1	3	\$18.67
1	4	\$14.00
1	5	\$11.20
1	6	\$9.33

b. For Services provided by a Practical Nurse

PN Staff	Consumers	Daily Rate
1	1	\$40.00.
1	2	\$20.00
1	3	\$13.33
1	4	\$10.00
1	5	\$8.00
1	6	\$6.67

c. For services delegated to trained unlicensed personnel in accordance with section 933.9.

Delegated trained Staff	Consumers	Daily Rate
1	1	\$32.60
1	2	\$16.30
1	3	\$10.87
1	4	\$8.15
1	5	\$6.52
1	6	\$5.43

d. In addition to the rates set forth in sections 933.20 (a), (b) and (c), each consumer may also receive one (1) skilled nursing service visit per month at sixty-five (\$65.00) per visit.

933.21

If the services provided by the skilled nurse is to provide respite on a short-term basis because of the absence or need for relief of the primary caregiver who is responsible for providing some skilled aspect of care, the reimbursement rate for the skilled nursing services shall be seven dollars (\$7.00) per billable unit for services provided by a registered nurse and five dollars (\$5.00) per billable unit for services provided by a practical nurse consistent with the requirements set forth in § 994 of Title 29 DCMR. Respite services shall be limited to seven hundred and twenty (720) hours or thirty (30) days per year.

933.99 **DEFINITIONS**

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

Consumer- an individual who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Clinical Record- A comprehensive compilation of medical and other data that identifies the consumer, justifies and describes the diagnosis and treatment of the consumer.

Home health agency- Shall have the same meaning as "home care agency" as set forth in 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.*), and implementing rules.

Individual Habilitation Plan (IHP) - The same meaning 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 2-13 ; D.C. Official Code § 7-1304.03)

Individual Service Plan (ISP) - The successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Nurse Staffing Agency – The same meaning as set forth in the Nurse Staffing Agency Act of 2003, effective November 25, 2003 (D.C. Law 15-74; D.C. Official Code §§ 44-1051.01 *et seq.*) and implementing rules.

Physician- A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) or licensed as a physician in the jurisdiction where services are provided.

Practical Nurse- A person who is license or authorized to practice practical nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) or licensed as a practical nurse in the jurisdiction where services are provided.

Progress Note- A dated, written notation by a member of the health care team that summarizes facts about the consumer's care and response to treatment during a given period of time.

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) or licensed as a registered nurse in the jurisdiction where services are provided.

Skilled Nursing Service- Health care services that are delivered by a registered or practical nurse acting within the scope of their practice as defined in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) and implementing rules.

Comments on the proposed rules shall be submitted in writing to Robert 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.

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 in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules by requiring providers to: (1) eliminate the caps for nursing services and preventive, consultative, and crisis support services; (2) delete the prohibition of concurrent billing for personal care services and residential habilitation services; and (3) authorize the expansion of services in the State of Maryland consistent with the terms and conditions of an agreement between the District of Columbia and Maryland governing oversight and provider standards. The elimination of the caps for nursing and crisis services and the removal of the prohibition of concurrent billing will ensure that persons with intensive service needs receive the necessary supports, in addition to the habilitation services, to remain in a community-based setting.

Many providers have opened facilities in neighboring jurisdictions in response to the need to obtain affordable housing. The amendment will authorize the expansion of services in the State of Maryland consistent with the terms and conditions of an agreement between the District of Columbia and Maryland governing oversight and provider standards. The expansion of service providers will allow the Waiver to serve additional clients in need of residential habilitation services.

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 emergency rulemaking was adopted on December 5, 2006 and will become effective on the date of publication of this notice of rulemaking in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until April 4, 2007, 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*.

DISTRICT OF COLUMBIA REGISTER

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

SECTION 946 RESIDENTIAL HABILITATION SERVICES

- 946.1 Residential habilitation services shall be reimbursed by the Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community Based 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).
- 946.3 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, except as set forth in these rules.
- 946.4 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state.
- 946.5 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 to the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and
 - (d) Prepare a specific plan on meeting family and community requirements.
- 946.6 Residential habilitation services shall only be available to a client with a demonstrated need for continuous training, assistance, and supervision, and shall be authorized and provided in accordance with the client's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP).
- 946.7 Each provider of residential habilitation services shall assist 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 client to reside in the community.

946.8 Each provider of residential habilitation services shall ensure that each client of the GHMRP receives training and habilitation, 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) Employment and work adjustment;
- (k) Mobility;
- (l) Time management;
- (m) Financial management;
- (n) Academic and pre-academic skills;
- (o) Motor and perceptual skills;
- (p) Problem-solving and decision-making;
- (q) Human sexuality;
- (r) Aesthetic appreciation; and
- (s) Opportunity for social, recreational, and religious activities utilizing community resources.

946.9 Each provider of residential habilitation services shall ensure that each client receives the professional services required to meet his or her goals as identified in the client's IHP or ISP. 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 and language therapy; and
- (k) Recreation.

- 946.10 Each provider of residential habilitation services shall ensure the provision of transportation services to enable the clients to gain access to Waiver and other community services and activities. Each provider of transportation services shall have a current District of Columbia Medicaid Provider Agreement that authorizes the provision of transportation services under the Waiver.
- 946.11 The minimum daily ratio of on-duty, direct care staff to clients in each GHMRP that serves severely physically handicapped clients, clients who are aggressive, assaultive or security risks, clients who manifest severely hyperactive or psychotic-like behavior, and other clients who require considerable adult guidance and supervision shall not be less than the following:
- (a) 1:4 during the waking hours of the day, approximately 6:00 a.m. to 10:00 p.m., when clients remain in the GHMRP during the day; and
 - (b) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.
- 946.12 The minimum daily ratio of on-duty direct care staff to clients present in each GHMRP that serves clients who require training in basic independent-living skills 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 clients 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.
- 946.13 The minimum daily ratio of on-duty direct care staff to clients in each GHMRP that serves clients who are in day programs such as sheltered workshops, vocational training, supported, or competitive employment programs, and who have acquired basic independent living and survival skills shall not be less than 1:6 at all times that clients are in the GHMRP.
- 946.14 The minimum daily staffing levels set forth in sections 946.11 through 946.13 in each GHMRP shall be increased if required by the client, as indicated in the client's IHP or ISP.
- 946.15 Each provider of residential habilitation services shall:
- (a) Be a non-profit or other business entity;
 - (b) Be a member of the interdisciplinary team;
 - (c) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation services under the Waiver;
 - (d) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by MRDDA for each client;

- (e) Have a current Human Care Agreement with MRDDA for the provision of residential services;
- (f) 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 clients;
- (g) Ensure that the service provided is consistent with the client's IHP or ISP;
- (h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (i) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC);
- (j) Ensure that each staff member or employee has been screened for communicable disease six (6) months prior to providing services to any client, in accordance with the guidelines issued by the CDC, and that each employee or staff member is certified to be free of communicable disease;
- (k) Ensure compliance with MRDDA's policies governing reporting of unusual incidents, human rights, behavior management, and protection of client's funds;
- (l) Ensure that each residence is accessible to public transportation and emergency vehicles;
- (m) Ensure that each residence is handicapped accessible and barrier-free; and
- (n) Maintain a written staffing plan and provide a written staffing schedule for each site where services are provided.

946.16

Each person providing residential habilitation services for a provider under section 946.15 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be screened annually for communicable disease, according to the guidelines issued by the CDC and demonstrate that he or she is free of communicable disease;
- (c) Be able to read and write the English language and otherwise communicate with the client;
- (d) Agree to carry out the responsibilities to provide residential habilitation services consistent with the client's IHP or ISP and Plan of Care;
- (e) Have a high school diploma or general educational development (GED) certificate;
- (f) Have a minimum of one (1) year work experience with clients with mental retardation; and
- (g) 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.).

- 946.17 Each client's case manager shall monitor the delivery of services by conducting visits at least eight (8) times per calendar year to ensure that services are delivered in accordance with the IHP, ISP and Plan of Care.
- 946.18 Each provider of residential habilitation services shall review the client's ISP goals, objectives, and activities at least quarterly and more often, as necessary. The provider shall propose modifications to the ISP, 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 ISP development so that community integration goals are clearly defined. Each provider shall also assist in the coordination of all services that a client may receive.
- 946.19 Each provider of residential habilitation services shall maintain progress notes on a monthly basis or more frequently if indicated on the ISP, and maintain financial records of expenditures of public funds for each client.
- 946.20 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the client's date of discharge.
- 946.21 Residential habilitation services shall not be reimbursed when provided by a member of the client's family.
- 946.22 Reimbursement for residential habilitation services shall not include:
- (a) Cost of room and board;
 - (b) Cost of facility maintenance, upkeep and improvement; or
 - (c) Activities or supervision for which payment is made by a source other than Medicaid.
- 946.23 The reimbursement rate for residential habilitation services shall be one hundred twenty dollars (\$120) per day, per client.
- 946.24 Each provider of residential habilitation services shall coordinate the delivery of necessary preventative, consultative, and crisis support services, personal care services, attendant care services, and skilled nursing services from approved Waiver providers of those services based on the requirements of the ISP.
- 946.25 Residential Habilitation Services shall not be billed concurrently with the following Waiver services:
- (a) Environmental accessibility adaptation;
 - (b) Homemaker;
 - (c) Family training;
 - (d) Independent habilitation;
 - (e) Respite;
 - (f) Chore;

- (g) Adult companion; or
- (h) Personal Emergency Response System (PERS).

946.26 Residential habilitation services shall not be billed when the client is hospitalized, on vacation, or for any other period in which the client is not residing at the GHMRP.

946.99 DEFINITIONS

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

Client-an individual who has mental retardation and has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Communicable Disease-that term as set forth in Title 22 DCMR, § 201.

Direct Care Staff- individuals employed to work in the GHMRP who render the day-to-day, personal assistance clients require in order to meet the goals of their IHP or ISP.

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 home-like environment for at least four (4) but no more than six (6) related or unrelated mentally retarded individuals who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

Individual Habilitation Plan (IHP)-that term 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 § 7-1304.3).

Individual Support Plan (ISP)- the successor plan to the Individual Habilitation Plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

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 client evaluation while participating in the development, implementation, and monitoring of the client's IHP or ISP.

Plan of Care- a written document prepared by the MRDDA Waiver unit which describes medical and other services to be furnished to the client, the frequency of the services, and the type of provider to furnish the services. The Plan of Care shall be consistent with the IHP and ISP.

Practical Nurse- a person licensed or authorized to practice practical nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986,

(D.C. Law 6-99; D.C. official Code §§ 3-1201 *et seq.*) or licensed as a practical nurse in the jurisdiction where services are provided.

Registered Nurse- a person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, (D.C. Law 6-99; D.C. official Code §§ 3-1201 *et seq.*) or licensed as a registered nurse in the jurisdiction where services are provided.

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.

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 993 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Independent Habilitation Services provided by licensed or supervised professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

The rules amend the previously published rules by requiring providers: (1) to develop an Individual Program Plan for each client; (2) to report to MRDDA when they are unable or unwilling to provide services, change in client function or suspected abuse or neglect; and (3) to coordinate the delivery of preventative, consultative and crisis support services, transportation services, skilled nursing services and personal care services to ensure that each client is provided the required services. As residential services provided to Waiver clients have transitioned from a system largely composed of licensed group homes to an increasing number of independent residential settings with support services provided by professional providers, there was a need to establish standardized reporting requirements and uniform record keeping requirements, such as the development of the client's Individual Program Plan. This rulemaking will also delete the prohibition of concurrent billing for personal care and independent habilitation services to ensure that clients with intensive needs receive the necessary supports to remain in an independent community-based setting.

Many providers have opened facilities in neighboring jurisdictions in response to the need to obtain affordable housing. This amendment will authorize the expansion of services in the State of Maryland consistent with the terms and conditions of an agreement between the District of Columbia and Maryland governing oversight and provider standards. The expansion of service providers will allow the Waiver to serve additional clients in need of residential services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of independent habilitation services.

The emergency rulemaking was adopted on December 5, 2006, and will become effective on the date of publication of this notice in the *DC Register*. The emergency rules will remain in effect for 120 days or until April 4, 2007, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

993 INDEPENDENT HABILITATION SERVICES

993.1 The Medicaid Program shall reimburse independent habilitation services for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

993.2 Independent habilitation services provide periodic support for the client living in his or her own home or within a supervised apartment enabling the client to live independently and participate in community activities.

993.3 Independent Habilitation Services eligible for reimbursement are as follows:

- (a) Training in activities of daily living and independent living skills;
- (b) Assistance in performing personal care tasks;
- (c) Training on understanding and utilizing community resources;
- (d) Training on, and assistance in the monitoring of health, nutrition, and physical condition;
- (e) Training in adapting to a community and home environment, including: management of financial and personal affairs, and awareness of health and safety precautions; and
- (f) Coordinating transportation to community events.

993.4 A client shall only be eligible for independent habilitation services when living in one of the following types of residences:

- (a) His or her own home;
- (b) The home of an unpaid caregiver; or
- (c) A supervised apartment.

993.5 If, the supervised apartment is located out of state, then each provider shall comply with the following additional requirements:

- (a) Obtain licensure or certification in accordance with host state's laws and regulations;

- (b) Remain in good standing in the jurisdiction where the program is located;
- (c) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action plan to Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA); 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 where services are provided and access to records during announced and unannounced visits or reviews.

993.6 Independent habilitation services shall not exceed forty (40) hours during a transitional period, when provided to a client residing in an institutional setting prior to his or her transition to a supervised apartment and when authorized in the client's individual habilitation plan (IHP) or individual support plan (ISP).

993.7 Independent habilitation services shall be authorized by the client's interdisciplinary team and provided in accordance with each client's IHP or ISP.

993.8 The IHP or ISP shall indicate whether the staffing plan requires the participation of a licensed professional to meet the client's individual needs and include the level of supervision to maintain sufficient oversight and guidance to ensure the health, safety and welfare of the client.

993.9 A professional who participates in a staffing plan pursuant to section 993.7 shall be licensed to practice his or her profession pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, §§ 3-1201 *et seq.*); or be licensed to practice his or her profession within the jurisdiction where he or she provides the services.

993.10 Each provider of independent habilitation services shall:

- (a) Be a non-profit, home health agency, social service agency, or other business entity;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Independent Habilitation Services under the Waiver;
- (c) Maintain a current Human Care Agreement with the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) for residential services, if provided by a paid caregiver;
- (d) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);

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- (e) Ensure that all independent habilitation services staff are qualified and properly supervised;
- (f) Ensure that the service provided is consistent with the client's IHP or ISP;
- (g) Maintain documentation indicating the dates and times of staff training and type of training activities provided;
- (h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (i) Provide training in infection control procedures consistent with the Occupational Safety and Health Administration, U.S. Department of Labor regulations 29 CFR 1910.1030;
- (j) Maintain records that support billed services and document in each record the type of activity provided, inclusive of the date and time service was rendered;
- (k) Maintain a policy manual that contains the following subjects:
 - 1. Admission and discharge of clients;
 - 2. Operational procedures for client care;
 - 3. Client's rights and responsibilities;
 - 4. Procedures for emergency care, infection control and reporting of unusual incidents;
 - 5. Health and safety issues;
 - 6. Staffing and personnel;
 - 7. Financial and record-keeping requirements; and
 - 8. Quality Assurance.
- (l) Report the following changes to designated MRDDA staff:
 - (1) Inability to provide the required Waiver services;
 - (2) Unwillingness to provide the required Waiver services;
 - (3) Any changes in the client's function; and
 - (4) Suspected abuse or neglect.
- (m) Ensure that each supervised apartment is accessible to public transportation and emergency vehicles; and
- (n) Maintain a written staffing plan and provide a written staffing schedule for each site that services are provided.

- 993.11 Providers shall ensure that the individual's residence conforms with all applicable health, sanitation, fire, building and zoning codes as promulgated by the Government of the District of Columbia or the jurisdiction where services are provided; and is handicapped accessible and barrier-free.
- 993.12 Each person providing independent habilitation services pursuant to section 993.9 shall meet all the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the client;
 - (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual purified protein derivative of tuberculin (PPD) Skin Test or documentation from a physician;
 - (d) Have the ability to communicate with the client;
 - (e) Be able to read and write the English language;
 - (f) Have a high school diploma or a general educational development (GED) certificate;
 - (g) Have at least one (1) year of experience working with persons with developmental disabilities;
 - (h) Complete training as required by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
 - (i) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (Act), effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*) and any rules issued pursuant to the Act; and
 - (j) Complete training in First Aid and CPR.
- 993.13 Each provider of independent habilitation services shall review the client's ISP goals, objectives and activities at least quarterly and more, often as needed. The provider shall propose modifications to the ISP as appropriate. The results of these reviews shall be submitted to the client's case manager within 30 days of the end of each quarter.

- 993.14 Each provider shall develop an Individual Program Plan (IPP) for each client receiving independent habilitation services. The IPP shall contain at a minimum all of the following:
- (a) The client's goals;
 - (b) A sequence of measurable objectives to meet the identified outcomes or training goals;
 - (c) Listing of all services to be rendered;
 - (d) Schedule of services to accomplish the goals;
 - (e) Timetable for the accomplishment of the goals;
 - (f) Provider staff responsible for coordination and integration of services specified in the ISP; and
 - (g) Total number of projected hours per week of Waiver services.
- 993.15 The billable unit of service shall be one (1) hour.
- 993.16 The reimbursement rate shall be thirteen dollars and eighty cents (\$13.80) per billable unit and shall not exceed eight (8) hours per day, Monday through Friday and sixteen (16) hours per day if the client resides in a supervised apartment. If the client lives in his or her own home or the home of an unpaid caregiver, reimbursement shall be limited to eight (8) hours per day.
- 993.17 Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the client in a face-to-face environment.
- 993.18 Each provider of independent habilitation services shall coordinate the delivery of necessary preventative, consultative and crisis support services, personal care services, skilled nursing services and transportation services from approved Waiver providers of those services in accordance with the requirements of the ISP.
- 993.19 Reimbursement for independent habilitation services shall not include:
- (a) Room and board costs;
 - (b) Protective oversight costs;
 - (c) Routine care and general supervision expected from the family or provider;
 - (d) Overhead or administrative costs;
 - (e) Building maintenance costs;
 - (f) Household supplies, including towels and linens; or
 - (g) Services or costs for which payment is made by a source other than Medicaid.
- 993.20 Independent Habilitation Services shall not be billed concurrently with the following Waiver services:
- a. Homemaker, except when the client is living in his or her own home;

- b. Adult companion;
- c. Day Habilitation;
- d. Supportive employment;
- e. Prevocational;
- f. Chore, except when the client is living in his or her own home;
- g. Residential habilitation services;
- h. Respite; or
- i. Family training.

993.99 DEFINITIONS

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

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable disease-that term as set forth in section 201 of Title 22 of the District of Columbia Municipal Regulations.

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 plan to the Individual Habilitation Plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Supervised Apartments- A living arrangement located in or outside the District of Columbia for one to three clients with mental retardation and developmental disabilities that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement. The oversight of living arrangements located outside of the District of Columbia shall be performed by the host state in accordance with the terms and conditions of an agreement between the District of Columbia and the host state.

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.