DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 2(a) of the "District of Columbia Uniform Controlled Substances Amendment Act of 1998", effective July 24, 1998 (D.C. Law 12-136; D.C. Official Code §48-902.01) ("Act"), and Mayor's Order 98-49, dated April 15, 1998, hereby gives notice of the adoption of the following amendments to Chapter 12 of Title 22 of the District of Columbia Municipal Regulations (DCMR). The amendments to the Schedule of Controlled Substances will add Gamma-Hydroxybutyric Acid (GHB) [other names include "gamma-hydroxybutyrate"; "4-hydroxybutyrate"; "4-hydroxybutanoic acid"; "sodium oxybate"; and "sodium oxybutyrate"] to Schedule I; add any drug product containing Gamma-Hydroxybutyric Acid, including its salts, isomers, and salts of isomers to Schedule III; reschedule Buprenorphine, marketed as Subutex® and Suboxone®, from Schedule V to Schedule III; and correct errors and reformat the listing of some substances in 22 DCMR Chapter 12. All of the enumerated scheduling of controlled substances are included in this rulemaking to provide the public with a single reference to the regulatory provisions governing controlled substances in the District as required by D.C. Official Code §48-902.01. The sections affected by this rulemaking are highlighted in boldface type.

A Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on December 5, 2003, at 50 DCR 10421.

No comments were received and no changes were made to the Notice of Emergency and Proposed Rulemaking published in the D.C. Register on December 5, 2003, at 50 DCR 10421. These rules take effect immediately upon publication of this notice in the D.C. Register.

Chapter 12 of Title 22 of the DCMR is amended to read as follows:

CHAPTER 12

CONTROLLED SUBSTANCES ACT RULES

1200 PURPOSE

1200.1 This chapter shall comprise all the enumerated schedules of controlled substances under the District of Columbia Uniform Controlled Substances Act of 1981 (Act), effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code §48-902.01), and all final rulemakings made by the Mayor or designee which add, delete, or reschedule a controlled substance under the authority of section 201 of the Act (D.C. Official Code §48-902.01).

1201 SCHEDULE I ENUMERATED

1201.1 The controlled substances listed in this section are included in Schedule I of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) ***Opiates:*** Unless specifically excepted or unless listed in another schedule, any of the following opiates including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation;

(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Diampromide;
(14) Diethylthiambutene;
(15) Difenoxin;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetylbutyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan;
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;
(34) Phenadoxone;
(35) Phenampromide;

(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Propriam;
(42) Racemoramide;
(43) Thiophene;
(44) Trimeperidine;
(45) Acetyl-Alpha-Methylfentanyl;
(46) Alpha-Methylfentanyl;
(47) Alpha-Methylthiofentanyl;
(48) Beta-hydroxyfentanyl;
(49) Beta-hydroxy-3-Methylfentanyl;
(50) 3-Methyfentanyl;
(51) 3-Methythiofentanyl;
(52) MPPP;
(53) Para-fluorofentanyl;
(54) PEPAP;
(55) Thiofentanyl;
(56) Tilidine;

(b) ***Opium Derivates:*** Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochlorine salt);
(11) Diacetylated morphine (heroin);
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;

(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon;

(c) ***Hallucinogenic Substances:*** Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, its salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-Bromo-2,5-dimethoxyamphetamine;
(2) 2,5-Dimethoxyamphetamine;
(3) 4-Methoxyamphetamine;
(4) 5-Methoxy-3,4-methylenedioxyamphetamine;
(5) 4-Methyl-2,5-dimethoxyamphetamine;
(6) 3,4-Methylenedioxyamphetamine;
(7) 3,4,5-Trimethoxyamphetamine;
(8) Bufotenine;
(9) Diethyltryptamine;
(10) Dimethyltryptamine;
(11) Ethylamide analog of phencyclidine, PCE;
(12) Ibogaine;
(13) Lysergic acid diethylamide;
(14) Mescaline;
(15) Peyote;
(16) N-Ethyl-3-piperidyl benzilate;
(17) N-Methyl-3-piperidyl benzilate;
(18) Psilocybin;
(19) Psilocyn;
(20) Pyrrolidine analog of phencyclidine, PCPY;
(21) Thiophene analog of phencyclidine;
(22) (Repealed by section 2(a)(3) of the "Uniform Controlled Substances Amendment Act of 1999", D.C. Law 13 (47 DCR 791; 2000));
(23) Parahexyl;
(24) 4-Bromo-2,5-dimethoxyphenethylamine; and
(25) 3,4-Methylenedioxymethamphetamine;

(d) ***Depressants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers, whenever

the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:

(1) Gamma-Hydroxybutyric Acid [other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium xybutyrate];
(2) Mecloqualone;
(3) Methaqualone; and

(e) ***Stimulants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethyline; and
(2) N-ethylamphetamine.

1202 SCHEDULE II ENUMERATED

1202.1 The controlled substances listed in this section are included in Schedule II of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis;

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextophan, nalbuphine, naltrexone, and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid extracts;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethlymorphine;
(I) Ethorphine Hydrochloride;
(J) Hydrocodone (K);
(K) Metopon;

(L) Morphine;
(M) Oxycodone;
(N) Oxymorphone;
(O) Thebaine;
(P) Hydromorphone;
(Q) Dihydrocodeine;
(R) Sufentanil;
(S) Alfentanil;
(T) Carfentanil;

(2) ***Opium:*** Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (1) of this paragraph, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy or poppy straw;

(4) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy);

(6) Hashish;

(7) Synthetic Tetrahydrocannabinols: Chemical equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(A) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

(B) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;

(C) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (compounds of these structures, regardless of numerical designation of atomic

positions covered); and

(b) ***Opiates:*** Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;
(2) Anileridine;
(3) Benzitramide;
(4) Biphetamine;
(5) Diphenoxylate;
(6) Eskatrol;
(7) Fentanyl;
(8) Fetamine;
(9) Isomethadone;
(10) Levomethorphan;
(11) Levorphanol;
(12) Metazocine;
(13) Methadone;
(14) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(15) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(16) Pethidine (meperidine);
(17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(20) Phenazocine;
(21) Piminodine;
(22) Racemethorphan;
(23) Racemorphan;

(c) ***Stimulants:*** Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamines, its salts, optical isomers, and salts of its optical isomers;
(2) Methamphetamine, its salts, isomers, and salts of isomers;
(3) Phenmetrazine and its salts;
(4) Methylphenidate and its salts; and
(5) Repealed by section 2(b)(2) of D.C. Law 8-138 (37 DCR

2638; June 13, 1990;

(6) Amphetamine/methamphetamine immediate precursor; Phenylacetone (Phenyl-2-propanone), P2P;

(d) ***Depressants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specifically chemical designation:

(1) Methaqualone;
(2) Amobarbital;
(3) Secobarbital;
(4) Pentobarbital;
(5) Phencyclidine;
(6) Phencyclidine immediate procursors:
(A) 1-Phenyleyclohexylamine; and
(B) 1-Piperidinocyclohexanecarbonitrile (PCC);
(7) Dronabinol;
(8) Nabilone; and
(9) Glutethimide.

1203 SCHEDULE III ENUMERATED

1203.1 The controlled substances listed in this section are included in Schedule III of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Schedule III shall consist of the following controlled substances:

(1) ***Stimulants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric), and salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971 as excepted compounds under §1308.32 of the Code of Federal Regulations (CFR), and any other drug of the quantitative composition shown in that

list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;
(C) Chlorphenetermine;
(D) Chlortermine;
(E) Mazindol; and
(F) Phendimetrazine;

(2) ***Depressants:*** Unless listed in another schedule, any material compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital; or any salt thereof and 1 or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

(i) Chlorhexadol;
(ii) Rescheduled to Schedule II;
(iii) Lysergic acid;
(iv) Lysergic acid amide;
(v) Methyprylon;
(vi) Sulfondiethylmethane;
(vii) Sulfonethylmethane;
(viii) Sulfonmethane;
(ix) Tiletamine & Zolazepam Combination Product;

(x) Vinbarbital; and

(D) Any drug product containing gamma-hydroxybutric acid including its salts, isomers, and salts of isomers.

(3) Nalorphine; and

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any other following narcotic drugs, or any salts hereof:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(I) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(1) Buprenorphine

(5) ***Anabolic Steroids:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progesterons, and corticorsteriods) that promotes muscle growth and includes:

(A) Boldenone;
(B) Chlortestosterone (4-chlortestosterone);
(C) Clostebol;
(D) Dehydrochlormethyltestosterone;
(E) Dihydrotestosterone (4-dihydrotestosterone);
(F) Drostanolone;
(G) Ethylestrenol;
(H) Fluoxymestorone;
(I) Formebulone (formebolone);
(J) Mesterolone;
(K) Methandienone;
(L) Methandranone;
(M) Methandriol;
(N) Methandrostenolone;
(O) Methenolone;
(P) Methyltestosterone;
(Q) Mibolerone;
(R) Nandrolone;
(S) Norethandrolone;
(T) Oxandrolone;
(U) Oxymesterone
(V) Oxymetholone;
(W) Stanolone;
(X) Stanozolol;
(Y) Testolactone;
(Z) Testosterone;
(AA) Trenbolone; and

(BB) Any salts, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes such steroid for human use such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

(6) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-o1] or (-)-delta-9-(trans)-tetrahydrocannabinol]; and

(7) Ketamine;

(b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiates the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

1204 SCHEDULE IV ENUMERATED

1204.1 The controlled substances listed in this section are included in Schedule IV of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Schedule IV shall consist of the following controlled substances:

(1) ***Depressants:*** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of

isomers is possible within the specific chemical designation:

(A) Barbital;
(B) Chloral betaine;
(C) Chloral hydrate;
(D) Chlordiazepoxide;
(E) Clonazepam;
(F) Clorazepate;
(G) Dextropropoxyphene;
(H) Diazepam;
(I) Ethchlorvynol;
(J) Ethinamate;
(K) Flurazepam;
(L) Lorazepam;
(M) Mebutamate;
(N) Meprobamate;
(O) Methohexital;
(P) Methylphenobarbital (mephobarbital);
(Q) Oxazepam;
(R) Paraldehyde;
(S) Petrichloral;
(T) Phenobarbital;
(U) Prazepam;
(V) Alprazolam;
(W) Bromazepam;
(X) Camazepam;
(Y) Clobazam;
(Z) Clotiazepam;
(AA) Cloxazolam;
(BB) Delorazepam;
(CC) Estazolam;
(DD) Ethyl loflazepate;
(EE) Fludiazepam;
(FF) Flunitrazepam;
(GG) Halazepam;
(HH) Haloxazolam;
(II) Ketazolam;
(JJ) Loprazolam;
(KK) Lormetazepam;
(LL) Medazepam;
(MM) Midazolam;
(NN) Nimetazepam;
(OO) Nitrazepam;
(PP) Oxazolam;
(QQ) Omitted;
(RR) Pinazepam;
(SS) Quazepam;

(TT) Temazepam;
(UU) Tetrazepam; and
(VV) Triazolam;

(2) ***Fenfluramine:*** Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine;

(3) ***Stimulants***: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(A) Diethylpropion;
(B) Phentermine;
(C) Pemoline (including organometallic complexes and chelates thereof);
(D) Cathine;
(E) Fencamfamin;
(F) Fenproporex;
(G) Mefenorex;
(H) Pipradrol;
(I) SPA;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:

(A) Dextropropoxyphene (Alpha-(+)-4-demethylamino-1),2-diphenyl-1-3-methyl-2-propionoxybutane;

(B) Pentazocine; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

1205 SCHEDULE V ENUMERATED

1205.1 The following controlled substances listed below are included in Schedule V of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) ***Narcotic drugs containing non-narcotic active medicinal ingredients:*** Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains 1 or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone;

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
(2) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
(3) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
(4) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
(5) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; and
(6) Not more than 0.5 milligrams of difenopin and not less than 25 micrograms of atropine sulfate per dosage unit;

(b) Cannabis;

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Rescheduled to Schedule III.

(d) Propylhexedrine;
(e) Pyrovalerone.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF FINAL 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 of a new section 929 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Supported Employment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for supported employment services, a rehabilitative service, provided to participants with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement rates for supported employment services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on January 23, 2004 (51 DCR 967). Comments on the proposed rules were received. Several technical changes have been made. No substantive changes have been made. The rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 929 to read as follows:

SECTION 929 SUPPORTED EMPLOYMENT SERVICES

929.1 Supported employment services shall be reimbursed by the Medicaid Program for each participant with mental retardation 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.

929.2 Supported employment shall consist of paid employment for clients for whom competitive employment at or above the minimum wage is unlikely, and who, because of their mental retardation, need intensive on-going support to perform in a work setting.

929.3 Supported employment shall be conducted in a variety of work settings, including work sites where individuals without mental retardation are employed.

929.4 Supported employment services shall be delivered under the following three venues:

(a) Intake and Assessment;

(b) Job Development; and
(c) Placement and Support.

929.5 Immediately following intake each provider shall conduct an assessment, through the use of a vocational profile or situational assessment, of the supportive services needed by each client to succeed in a work environment.

929.6 Intake and assessment services shall not be billed in excess of thirty (30) days for each client. If extended services are required for continuation of a situational assessment, the provider shall submit a written justification to the client's case manager. Extended services shall be approved by MRDDA and documented in the client's IHP or ISP.

929.7 Job development activities eligible for reimbursement include, but are not limited to the following:

(a) Conducting workshops or other activities designed to assist the client in completing employment applications or preparing for interviews;
(b) Conducting workshops or other activities to instruct clients on proper work attire, behaviors and expectations;
(c) Completing job applications with or on behalf of the client;
(d) Assisting the client with job exploration and placement, including assessing opportunities for advancement;
(e) Visiting employment sites and attending employment networking events;
(f) Making telephone calls to prospective employers, utilizing the internet, magazines, newspapers and other publications as leads;
(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of preparing a standardized set of requirements for prospective employees; and
(h) Negotiating employment terms with or on behalf of the client.

929.8 Job development activities shall not be billed in excess of 90 days for each client, unless previously authorized by the client's case manager and documented in the client's IHP or ISP. The provider shall submit a written justification in support of the extended services to the client's case manager.

929.9 Placement and support activities including follow-along are those activities designed to assist and support the client after employment has been obtained. Activities eligible for reimbursement include but are not limited to the following:

(a) Assisting the client with learning the tasks and responsibilities of the job through various instructional strategies;
(b) Coaching the client on and off the job site;
(c) Consulting with other professionals and the client's family, as necessary; and
(d) Consulting with the client's employer, co-workers or supervisors, as necessary.

929.10 Each provider shall visit the client at the work-site or make telephone contact at least twice per month after employment has been obtained. The provider shall maintain written documentation of each client visit and telephone.

929.11 When supported employment services are provided at a work site where persons without a disability are employed, reimbursement for supported employment services shall only be made for adaptations, supervision and training required by the client who receives Waiver services pursuant to this section. No payment shall be made for supervisory activities, which are rendered as a normal part of the business setting.

929.12 Supported employment services are ineligible for reimbursement if the services are available to the client 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"). The case manager shall obtain documentation which demonstrates that supported employment services are not otherwise available pursuant to the Acts in this section for inclusion in the client's record, IHP, or ISP.

929.13 When applicable, each provider shall be certified by the U.S. Department of Labor.

929.14 Each provider shall provide appropriate services for each client requiring physical assistance to accomplish basic activities of daily living on the job site.

929.15 Each provider shall ensure that each client has access to first-aid on the job site.

929.16 Supported employment services shall be pre-authorized and provided in accordance with each client's IHP or ISP.

929.17 Each provider shall develop a plan that addresses how the provider will meet the needs and communicate with non-English clients.

929.18 Each provider of supported employment services shall:

(a) Be a public or private agency;

(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for supported employment services;

(c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);

(d) Ensure that all staff providing services are qualified and properly supervised;

(e) Offer the Hepatitis B vaccination;

(f) Offer training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030; and

(g) Conduct periodic in-person supervisory assessment of the client and supportive employment staff at least twice a year and more frequently if warranted by the client's circumstances and document each assessment in the client's record.

929.19 Each person providing supported employment services for a provider under section 929.18 shall meet all of 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 PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;

(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 graduate equivalency development (GED) certificate or have appropriate credentials in the professional field of work;

(g) Have (1) year of experience providing supported employment services;

(h) Agree to carry out the responsibilities to provide supported employment services consistent with the client's IHP or ISP;

(i) Complete pre-service and in-service training approved by MRDDA; 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.*).

929.20 Supported employment services shall not be provided concurrently with day treatment, prevocational, or day habilitation services.

929.21 The reimbursement for supported employment services shall be as follows:

(a) Intake and Assessment - $140.00 per day.
(b) Job Development- $140.00 per day.
(c) Placement and Support- 1:00-3.99 hrs shall be $70.00 per day; and 4.00 hrs and over shall be $140.00 per day.

929.22 If supportive employment services are provided in a facility-based setting, the facility must be suitable for the intended use, accessible to persons with mobility limitations and comply with all applicable federal, State and local laws and regulations.

929.23 The provider shall not bill for incentive payments, subsidies or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the client's participation in a supportive employment services program;

(b) Payments that are passed through to users of supportive employment services programs; or

(c) Payments for vocational training that is not directly related to the client's supportive employment services program.

929.24 No payment shall be made for routine care and supervision, which is the

responsibility of the family, group home provider, or employer.

929.25 Each provider shall maintain a copy of each client's record at least six (6) years after the date of discharge.

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

Follow-up- Ongoing support services necessary to assure job retention.

Individual Habilitation Plan (IHP) - Shall have 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 2-137; D.C. Official Code, 7-1304.03).

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

Intake- A process designed to obtain information about the client and their needs as it relates to community integration and employment.

Provider- Any public or private agency that provides services pursuant to this section.

Situational Assessment- A type of assessment that provides the client an opportunity to explore job tasks in real work environments in the community. This assessment is useful in identifying the type of employment that may be beneficial to the client and the support required by each client to succeed in the work environment.

Vocational Profile - An assessment designed to assist clients, their families and service providers with specific employment related data that will generate positive employment outcomes. The assessment outlines the life, relationships, challenges, and perceptions of the client as they relate to potential sources of community support and mentorship.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under § 8(b)(1)(A) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 2-505(a), 50-307(b) (1)(A), and 50-308(b)), hereby gives notice of its final rulemaking action taken January 6, 2004. By its rulemaking action, the Commission voted to amend Appendix 8-2 (Taxicab Zone Map and Charges) of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on November 7, 2003, at 50 DCR 9393. The final rulemaking will increase the current zone fare rates by average of ten percent (10%). A public hearing was held on December 2, 2003, and comments were received by the Commission and taken into consideration. This rule will become effective on Monday, May 3, 2004.

Accordingly, the Commission's final rulemaking action amends Appendix 8-2 (Taxicab Zone Map and Charges), of the current taxicab zone rates as follows:

No. Zone	Current Fares	New Fares
1	$5.00	$5.50
2	$6.90	$7.60
3	$8.60	$9.50
4	$10.30	$11.40
5	$11.60	$12.80
6	$12.80	$14.10
7	$14.70	$16.20
8	$15.60	$17.20

The Commission' final rulemaking action also amends the current charge for radio dispatch service calls. Therefore, the charge for radio dispatch service is amended in § 802.1 to read as follows:

802.1 Taxicab service in response to a telephone call shall be two dollars in addition to all other charges.

The Panel also increased other taxicab rates and charges as shown in Appendix 8-2 by adding fifty cents ($.50) to the wait time rate for radio dispatch service after five (5) minutes. It also added a charge of five dollars ($5.00) to the current hourly rate for taxicabs employed on an hourly basis along with an added increase of fifty cents ($.50) for additional wait time of fifteen (15) minutes or fraction thereof for such service. Moreover, the Panel increased the personal service charge by fifty cents ($.50).