

**DISTRICT OF COLUMBIA  
BOARD OF EDUCATION**

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**NOTICE OF FINAL RULEMAKING**

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The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101, et seq., hereby gives notice of final rulemaking action taken by the Board at its meeting on July 16, 2003, to amend Chapter 4 of the Board Rules, (Title 5 of the D.C. Municipal Regulations).

The amendments include a change in the title of Chapter 4 from "Community Involvement in Education" to "Parent and Community Involvement in Education," deletion of existing Rule 401 (Neighborhood School Councils), and establishment of a new section that governs the District of Columbia Public Schools' implementation of its programs and practices in a manner that ensures parent involvement at both the local school and district levels. The new section includes a requirement that principals facilitate the creation of parent-school associations and ensure the election of a parent member of the parent-school organization to lead the local school's governance council.

Parent involvement in the District of Columbia Public Schools (DCPS) is key to student achievement. The intent of this section of Chapter 4 is to further the active, ongoing participation of all parents, who are the primary decision makers in their children's lives, as full partners with DCPS in every aspect of the education of their children, by setting forth requirements for the involvement of parents in a variety of roles in the DCPS.

The Rulemaking will take effect upon publication of this Notice in the DC Register. Proposed Rulemaking on this subject was published in the D.C. Register on June 6, 2003. No comments were received during the thirty-day public comment period.

Amend the title of Chapter 4 as follows:

**Chapter 4 Parent and Community Involvement in Education**

The existing Section 401 (Neighborhood School Councils) is deleted in its entirety and replaced with a new Section 401 as follows:

**401 Parent Involvement in the District of Columbia Public Schools**

401.1 The Superintendent shall direct the development and implementation of practices and programs that:

- a) welcome parent involvement at both the system-wide and local school levels, including local school governance councils;

- b) establish a climate that is conducive to open communication, mutual trust, and respect between parents and school district personnel at all levels of the system;
- c) enhance parent involvement at all grade levels in every local school; and
- d) include parent involvement outcomes in all staff evaluations, as appropriate.

401.2 The Superintendent shall ensure that the practices and programs at the local schools meet the following standards:

- a) Communication between home and school is regular, two-way, and meaningful;
- b) Parenting skills are promoted and supported;
- c) Parents play an integral role in assisting student learning;
- d) Parents are welcome in the school, and their support and assistance are sought;
- e) Parents are full partners in the educational decisions that affect children and families; and
- f) Community resources are used to strengthen school programs, family practices, and student learning.

401.3 The Superintendent shall develop procedures and programs to ensure that appropriate school system personnel receive the training in parent involvement required to implement this section.

401.4 The Superintendent shall develop programs, at local schools, with the support of parent and community organizations, for parents who need support in order to provide effective aid to their children.

401.5 The Superintendent shall ensure that these programs, at a minimum, have the following characteristics:

- a) Are comprehensive and coordinated;
- b) Are developed consistently with nationally recognized best practices and research on effective parent involvement;
- c) Recognize and accommodate the rich cultural and linguistic diversity of local school communities; and
- d) Respond to the specific needs of students, their families and their communities.

401.6 The Superintendent shall where appropriate, involve parents in the development of new policy and the practices of the school district, and principals shall, where appropriate, involve parents in the development of new policy and the practices of the local school.

- 401.7 Reflecting the Board's desire to ensure that there is a home-school association in every school, the Superintendent shall direct principals to
- a. Facilitate the establishment of parent-school organizations such as a Parent Teacher Association (PTA), Home School Association (HSA), or Parent Teacher Student Association (PTSA) at the school;
  - b. Ensure that parents decide what type of organization will be established; and
  - c. Ensure that a member of the chosen parent-school organization, who is elected by the parents, chairs the school's local school governance council.
- 401.8 Within the constraints of the budget, the Board shall ensure that the Superintendent and local schools have appropriate resources to implement this section effectively.

**Delete Sections 401.7 – 401.29**

**Add Section 404 as follows:**

404 Definitions

**404.1 When used in this Chapter, the following terms and phrases shall have the meanings ascribed.**

**Parent** - a natural or adoptive parent, a guardian (but not if the child is a ward of the District), a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), or a surrogate parent who has been appointed in accordance with 34 C.F.R. 300.515.

A foster parent may act as a parent if:

- a) The natural parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law; and
- b) The foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child, and has no interest that conflicts with the interests of the child.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 3(a) of the Preventive Health Services Amendments Act of 1985 ("Act"), effective February 21, 1986, D.C. Law 6-83, D.C. Official Code § 7-131(a) and Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of the adoption of an amendment to Chapter 2 of Title 22 of the District of Columbia Municipal Regulations (DCMR) (Public Health and Medicine)(August 1986). Final action to adopt these rules was taken on July 18, 2003, and it will become final upon publication of this notice in the *D.C. Register*. This final rule requires reporting of cases that exhibit symptoms of Severe Acute Respiratory Syndrome. A notice of emergency and proposed rulemaking was published in the *D.C. Register* on June 13, 2003, at 50 DCR 4758. No comments were received in connection with this notice, and no changes have been made to the text of the proposed rules.

**Chapter 2 of Title 22 DCMR is amended as follows:**

I. Section 201.1 is amended by renumbering paragraphs (k) through (p) as paragraphs (l) through (q) and adding a new paragraph (k) to read as follows:

(k) Severe Acute Respiratory Syndrome (SARS);

II. Section 299.1 is amended by adding the following term:

**Severe Acute Respiratory Syndrome or SARS**--a contagious viral illness that spreads person-to-person by close proximity to an infected person. A suspect case may be identified by onset since February 1, 2003, of a temperature above 100.4 degrees Fahrenheit (100.4° F); one or more findings of respiratory illness including cough, shortness of breath, difficulty breathing, or hypoxia; and travel within ten (10) days of onset of symptoms to an area where there is current, documented community transmission of SARS or close contact within ten (10) days of onset of symptoms with a person known or suspected to have SARS. A probable case may be identified by the above findings plus radiographic evidence of pneumonia, respiratory distress syndrome, or autopsy findings consistent with pneumonia or respiratory distress syndrome without an identifiable cause.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia (the District) 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 920 to Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services". Final action to adopt these rules was taken on July 18, 2003, and the rules will become final upon publication of this notice in the *D.C. Register*. These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for prevocational services, a habilitative service provided to participants with mental retardation in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement rates for prevocational services for persons with mental retardation. A Notice of Emergency and Proposed Rulemaking was published on May 9, 2003, and no comments were received during the 30-day comment period that ended on June 9, 2003. No changes have been made to the text of the proposed rules except a technical correction to make it clear that transportation to carry out this service must be provided by a provider that has a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of prevocational services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of prevocational services.

**Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 920 to Chapter 9 (Medicaid Program) to read as follows:**

**920 PREVOCATIONAL SERVICES**

- 920.1 The Medicaid program shall reimburse for prevocational services for each participant in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements in this section.
- 920.2 Clients who are not expected to be able to join the general work force or participate in transitional shelter workshops within (1) year (excluding supported employment programs) may receive prevocational services.

- 920.3        Prevocational services are services designed to prepare a client for paid or unpaid employment, but not to a specific job skill.
- 920.4        Prevocational services eligible for reimbursement shall be as follows:
- (a)        Prevocational assessment activities, including situational assessments provided at community businesses and other community resources;
  - (b)        Social skills training, including the following services:
    - (1)        Instructions;
    - (2)        Interpersonal relations;
    - (3)        Communication;
    - (4)        Respecting the rights of others; and
    - (5)        Problem solving;
  - (c)        The development of work site skills, which shall include, at a minimum, teaching the client the following concepts:
    - (1)        Compliance with employer instructions;
    - (2)        Attendance;
    - (3)        Task completion; and
    - (4)        Safety;
  - (d)        Time-limited volunteering and other prevocational skills training indicated in the client's individual habilitation plan (IHP) or individual support plan (ISP); and
  - (e)        Transportation to community activities necessary to carry out this service, provided that the transportation provider has a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.
- 920.5        Prevocational services may be provided in non-facility-based or facility-based settings.

- 920.6 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or State and local laws and regulations.
- 920.7 Before a provider of prevocational services may pay a client wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.
- 920.8 Prevocational 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"). Each client receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and individual habilitation plan (IHP) or individual support plan (ISP).
- 920.9 Each provider shall provide appropriate services for each client requiring physical assistance to participate in prevocational services activities and ensure that each client has access to first aid.
- 920.10 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each client's IHP or ISP. All prevocational services shall be reflected on the IHP or ISP as habilitative rather than explicit employment objectives.
- 920.11 Each prevocational services provider 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 prevocational services under the Waiver;
  - (c) Maintain a copy of the IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
  - (d) Ensure that all prevocational services staff are qualified and properly supervised;
  - (e) Ensure that the service provided is consistent with the client's IHP or ISP;

- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
  - (g) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), US Department of Labor regulations 29 CFR 1910.1030; and
  - (h) Maintain a staff-to-client ratio, indicated in the IHP or ISP that ensures that the service meets the client's individual needs, and that services are provided appropriately and safely.
- 920.12 Each provider of prevocational services shall demonstrate, through experience or academic attainment, the ability and qualification to provide prevocational services for individuals with mental retardation with varying habilitation needs.
- 920.13 Each person providing prevocational services for a provider under section 920.11 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 a general educational development (GED) certificate;
  - (g) Complete required training; and
  - (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002, (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).
- 920.14 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2)

years of combined supervisory and job coaching experience.

920.15 Prevocational services shall not be provided concurrently with day treatment, supported employment, or day habilitation services.

920.16 The reimbursement rate for prevocational services shall be one hundred dollars (\$100.00) per day. Services shall be provided for a minimum of five (5) hours per day, not including travel time.

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

920.99 **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 Section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

**Individual Habilitation Plan or 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, § 7-1304.03).

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

**Situational Assessment** — Provides competitive or real work sites in the community for the systemic assessment and observation of the client; identifies work site characteristics and client adaptations, training procedures, support needs related to the client's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

**DEPARTMENT OF HEALTH**  
**NOTICE OF FINAL 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 of a new section 928 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Adaptive Equipment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for adaptive equipment devices and related 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). The rules also authorize reimbursement for adaptive equipment devices and related services. There are numerous types of adaptive equipment devices authorized pursuant to this Waiver. Therefore, descriptions of each adaptive equipment device and corresponding reimbursement rate are set forth in a separate fee schedule maintained by the Medical Assistance Administration. The fee schedule is available upon request.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of adaptive equipment services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of adaptive equipment services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on May 30, 2003 (50 DCR 4281). No comments on the proposed rules were received. No substantive changes have been made. These 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 928 to Chapter 9 (Medicaid Program) to read as follows:

**SECTION 928      ADAPTIVE EQUIPMENT SERVICES**

- 928.1      Adaptive equipment 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 in this section.
- 928.2      Adaptive equipment services eligible for reimbursement are as follows:
- (a)      Adapted or Modified Equipment for Activities of Daily Living;
  - (b)      Adaptive Communication Devices;

- (c) Functional Mobility Aids;
  - (d) Installation costs, if applicable; and
  - (e) Repair and Maintenance Costs.
- 928.3 All adaptive equipment devices shall be the most cost-effective method of meeting the client's needs and comply with applicable standards of manufacture, design, usage and installation.
- 928.4 All requests for adaptive equipment services shall be supported by a physician's order and related clinical assessment performed by a speech pathologist, audiologist, physical therapist or occupational therapist.
- 928.5 Any physician or clinician performing the required assessment set forth in section 928.5 shall not be a provider of adaptive equipment nor have a financial relationship with a provider or manufacturer of adaptive equipment.
- 928.6 Providers of speech, language and hearing services shall meet all of the requirements set forth in section 932 of Title 29 DCMR.
- 928.7 Providers of physical therapy services shall meet all of the requirements set forth in section 934 of Title 29 DCMR.
- 928.8 Providers of occupational therapy services shall meet all of the requirements set forth in section 935 of Title 29 DCMR.
- 928.9 Adaptive equipment services shall be pre-authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 928.10 The client's IHP or ISP shall indicate whether the equipment is for initial use or replacement.
- 928.11 The Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) shall approve or deny the request for adaptive equipment based upon its review of the following:
- (a) Form 719A;
  - (b) Clinical Assessment;
  - (c) Physician's Order;
  - (d) Results of the Health-Risk Screening Tool;
  - (e) ISP or IHP with identified outcomes; and
  - (f) Vendor information.

- 928.12 MRDDA shall submit the approved 719A Form to the Department of Health, Medical Assistance Administration (MAA) for appropriate action.
- 928.13 Each provider of adaptive equipment services shall:
- (a) Be a non-profit organization, 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 adaptive equipment services; and
  - (c) 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.*).
- 928.14 Adaptive equipment services expenditures shall be limited to three thousand dollars (\$3,000.00) per client during any one (1) year period, which shall commence on the date that the service is authorized.
- 928.15 MAA shall maintain the fee schedules which sets forth the description and reimbursement amount for adaptive equipment services.

928.99 **DEFINITIONS**

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

Activities of Daily Living- The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

Adapted or Modified Equipment- Equipment and supplies the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that would assist a client with impairments related to activities of daily living and is necessary for the client to meet functional goals toward a least restrictive environment .

Adaptive Communication Device- A speech, hearing, visual or other communication aid the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that provides a client with severe communication impairment the ability to meet their functional communication goals toward a least restrictive environment .

**Audiologist-** A person who meets the education and experience requirements for a Certificate of Clinical Competence in the area of audiology granted by the American Speech Hearing Language Association or is licensed or certified as a audiologist in the state where the services are provided.

**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.

**Functional Mobility Aids-** Equipment and supplies the client would not be qualified to receive under the District's Medicaid Durable Medical Equipment Program that would assist a client with impairments related to mobility in and out of the home and is necessary for the client to meet mobility goals towards a least restrictive environment.

**Individual Habilitation Plan (IHP)**—The plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

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

**Occupational Therapist**—A person who is licensed or authorized to practice occupational therapy 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 an occupational therapist in the jurisdiction where services are being provided.

**Physical Therapist-** A person who is licensed or authorized to practice physical therapy 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 physical therapist in the jurisdiction where services are provided.

**Speech Pathologist**—A person who meets the education and experience requirements for a Certificate of Clinical Competence in the areas of speech pathology or audiology granted by the American Speech Hearing Language Association or is licensed or certified as a speech pathologist in the state where the services are provided.

**DEPARTMENT OF HEALTH**  
**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia (the District) 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 945 to Chapter 9 of Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations (DCMR), entitled "Day Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for day habilitation services, a habilitative service, 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). These rules also authorize Medicaid reimbursement for day habilitation services for person with mental retardation.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of day habilitation services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on May 9, 2003 (50 DCR 3721). No comments on the proposed rules were received. No changes have been made to the text of the proposed rules except a technical correction to make it clear that transportation to carry out this service must be provided by a provider that has a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.

**Title 29 (Public Welfare)(May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 945 to Chapter 9 (Medicaid Program) to read as follows:**

**SECTION 945 DAY HABILITATION SERVICES**

- 945.1 Day habilitation 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.
- 945.2 Day habilitation services for persons with mental retardation shall be designed to support the client outside the home through training and skills development, which will enable the client to experience greater participation in community-integrated activities.
- 945.3 Day habilitation services eligible for reimbursement shall be as follows:

- (a) Training and skills development that increases participation in community activities and fosters independence;
  - (b) Activities that will allow the client the opportunity to choose and identify their own areas of interest and preferences;
  - (c) Activities that provide opportunities for socialization and leisure activities in the community; and
  - (d) Transportation to participate in community activities necessary to carry out this service, provided that the transportation provider has a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.
- 945.4 Day habilitation services may be provided in non-facility based or facility based settings as determined by the needs of the client. When services are provided in a facility based setting, each facility shall comply with all applicable federal, District, or State and local laws and regulations.
- 945.5 The provision of day habilitation services shall be coordinated with any other service identified in the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 945.6 Day habilitation services shall be pre-authorized and provided in accordance with the IHP or ISP. The IHP or ISP shall indicate if the staffing plan requires the participation of a licensed professional and identify the type of professional to provide the service in accordance with the client's needs.
- 945.7 Each professional providing day habilitation services shall be licensed to practice his or her respective 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 § 3-1202 *et seq.* ) or be licensed to practice his or her profession in the jurisdiction where services are provided.
- 945.8 A copy of the client's IHP or ISP shall be maintained in all of the following locations:
- (a) The client's home;
  - (b) The client's file maintained by case manager; and
  - (c) The day habilitation provider.
- 945.9 Each provider of day habilitation services shall:
- (a) Be a public or private agency licensed to do business in the District of Columbia, Maryland or Virginia;

- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for day habilitation services;
- (c) Ensure that all staff are qualified and properly supervised;
- (d) Ensure that the service provided is consistent with the client's IHP or ISP;
- (e) Develop a quality assurance system to evaluate the effectiveness of services provided;
- (f) Maintain the required staff-to-client ratio, indicated on the client's IHP or ISP;
- (g) Ensure that services are provided appropriately and safely;
- (h) Develop a staffing plan which includes licensed professionals, where applicable and appropriate;
- (i) Maintain records which document staff training and licensure, for a period of not less than six (6) years;
- (j) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine;
- (k) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor, as set forth in 29 CFR 1910.1030; and
- (l) Have a plan to provide interpreters for non-English speaking clients.

945.10 Each provider of day habilitation services shall provide appropriate supervision of all day habilitation staff. The supervisor shall be an employee of the day habilitation services provider and make site visits to assess the level of services provided. Periodic site visits shall be conducted and documented at least twice per year and more frequently if warranted.

945.11 Each person providing day habilitation services for a provider under section 945.9 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 a high school diploma or general educational development (GED) certificate;
- (e) Have a least one (1) year's experience working with persons with mental retardation;
- (f) Agree to carry out the responsibilities to provide services consistent with the client's IHP or ISP;

- (g) Complete pre-service and in-service training approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration;
- (h) Have the ability to communicate with the client;
- (i) Be able to read and write the English language; and
- (j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §44-551 et seq.).

945.12 Day habilitation services shall not be provided concurrently with day treatment, supported employment, or prevocational services.

945.13 The reimbursement rate for day habilitation services shall be one hundred dollars (\$100.00) per day. Services shall be provided for a minimum of five (5) hours per day, not including travel time.

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

**945.99 DEFINITIONS**

When used in this section, the following terms and phrases shall have the meaning 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 (Waiver).

Communicable Disease — Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, 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 to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL 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. 774; D.C. Official Code § 1-307.02(b)), and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to Chapter 15 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Childless Adults Aged 50-64 Demonstration". The Director took final action to adopt these rules on July 24, 2003. The rules will become final upon publication in the *D.C. Register*.

These rules establish program requirements for the 50-64 1115 Demonstration Project to expand coverage under Medicaid to approximately 2,400 low-income, childless adults from ages 50 to 64 whose income is at or below 50% of the federal poverty limit (FPL) or at or below the medically needy limit. A Notice of Emergency and Proposed Rulemaking previously published in the *D.C. Register* on December 20, 2002, at 49 DCR 11457. A revised Notice of Emergency and Proposed Rulemaking was published on May 16, 2003, at 50 DCR 3878 incorporating changes requested in comments received after the first publication. One additional comment was received in response to the revised notice, but the Director is not making any additional changes as a result of the comment. No changes other than technical changes have been made to the text of the proposed rule published on May 16, 2003.

**Title 29 of the District of Columbia Municipal Regulations is amended by adding a new Chapter 15 to read as follows:**

**CHAPTER 15 CHILDLESS ADULTS AGED 50-64 DEMONSTRATION**

1500	GENERAL PROVISIONS
1501	PROVIDER REQUIREMENTS
1502	ELIGIBILITY
1503	ENROLLMENT CEILING
1504	REIMBURSEMENT
1505	COVERED SERVICES
1506	QUALITY ASSURANCE
1507	GRIEVANCE AND APPEALS
1599	DEFINITIONS

**1500 GENERAL PROVISIONS**

- 1500.1 This chapter shall apply to persons between fifty (50) and sixty-four (64) years of age whose gross annual income is less than or equal to fifty percent (50%) of the federal poverty line.
- 1500.2 This chapter implements a waiver of State plan requirements as a demonstration project pursuant to section 1115 of the Social Security Act (42 U.S.C. § 1315) (demonstration program) and is subject to certain

special terms and conditions. The demonstration waiver has been approved for a five- (5) year period effective on the date of implementation.

- 1500.3 This demonstration program does not constitute an entitlement to coverage for all eligible persons or for the duration of eligibility for enrollees. These programs may be terminated at any time by the Centers for Medicaid and Medicare Services of the U.S. Department of Health and Human Services (CMS) or the District, however, both entities would assist in appropriate transition planning. Nothing in this chapter shall be interpreted to create or constitute an entitlement or right to medical assistance for any person.

#### **1501 PROVIDER REQUIREMENTS**

- 1501.1 Providers shall meet the following requirements:

- (a) Be enrolled and certified with MAA;
- (b) Meet standards established in the State Plan and the demonstration program; and
- (c) Provide services to recipients in the same scope, quality, and manner as provided to the general public under the State Plan.

- 1501.2 All Medicaid regulations and terms of the provider agreements shall apply to providers billing for services rendered to demonstration program enrollees. Providers who furnish services to demonstration program enrollees shall comply with all specified Medicaid participation requirements under the State Plan and as defined in the Medicaid regulations.

- 1501.3 Providers shall begin to provide benefits to persons who qualify for coverage under the demonstration program on the date of their enrollment. Except as provided in section 1505.1, no provider may provide benefits retroactively to a person who qualifies for coverage under the demonstration program.

#### **1502 ELIGIBILITY**

- 1502.1 Participation in the demonstration program shall be limited to District residents who meet the following qualifications:

- (a) Are between the ages of fifty (50) and sixty-four (64);

- (b) Have a gross annual income that is at or below the medically needy limit, or fifty percent (50%) of the poverty federal poverty limit, whichever is higher;
  - (c) Have resources below the categorically-needy limits as noted in the State Plan (two thousand six hundred dollars (\$2,600) for individuals and three thousand dollars (\$3,000) for couples);
  - (d) Are not eligible for benefits under Title XIX or Title XXI of the Social Security Act, including "spend-down" Medicaid; and
  - (e) Do not reside in long-term care, mental health, or penal institutions.
- 1502.2 The IMA shall make no posthumous eligibility determinations.
- 1502.3 Persons who wish to receive benefits pursuant to this chapter shall submit an application for Medical Assistance to the Income Maintenance Administration or its designee.
- 1502.4 The District shall enroll demonstration program clients to Title XIX or Title XXI-funded Medicaid programs as they become eligible. The District will change eligibility status as appropriate and inform the affected beneficiaries in a timely manner. During the process of changing eligibility status there shall be no disruption in a recipient's enrollment in Medicaid or in the continuity of care for the recipient.
- 1502.5 The MAA shall redetermine eligibility annually following an enrollee's initial date of enrollment. The MAA may submit notices of redetermination to demonstration program enrollees and the case manager, if appropriate. Demonstration program enrollees shall have ninety (90) days to respond to notices of redetermination. The District may vary these provisions in extraordinary circumstances.
- 1502.6 Satisfaction of the eligibility requirements of this section shall not constitute an entitlement to receive benefits. Eligibility shall be determined according to the requirements of section 1503 when there are more applicants than the demonstration program allows.
- 1503 ENROLLMENT CEILING**
- 1503.1 The Administrator shall limit the number of persons eligible for enrollment according to demonstration program requirements for budget neutrality. To remain within the demonstration program's budget parameters, the Administrator shall set and modify the enrollment ceiling in consultation with the CMS.

1503.2 If the number of applicants for participation in the demonstration program exceeds the enrollment ceiling, IMA shall select enrollees and a waiting list as follows:

- (a) During the initial enrollment period IMA shall select eligible individuals in the order the applications are received until the number of participants reaches the enrollment ceiling.
- (b) During the initial enrollment period IMA shall select individuals not eligible for immediate enrollment for a waiting list in the order the applications are received.
- (c) After the initial enrollment period and after all persons on the initial waiting list have been placed or deemed ineligible for placement, IMA shall enroll eligible persons in the order that their applications are received.
- (d) After the initial enrollment period IMA shall place individuals not eligible for immediate enrollment on a waiting list, and persons on the waiting list shall become eligible for enrollment in the order that their applications were received.

1503.3 Space in the demonstration program may become available when initial demonstration program enrollees disenroll from the demonstration program. Disenrollment may occur for the following reasons:

- (a) Death of an enrollee;
- (b) Failure to continue to satisfy eligibility requirements; or
- (c) Eligibility for Medicaid coverage without need of the demonstration program.

1503.4 The number of participants in the traditional Medicaid program shall not affect the enrollment ceiling.

**1504 REIMBURSEMENT**

1504.1 Consistent with the provider agreements for both the State Plan and demonstration program services, providers shall submit claims for reimbursement to the fiscal intermediary or other MAA designee.

**1505 COVERED SERVICES**

1505.1 The demonstration program shall cover the Medicaid benefits outlined in the State Plan. Coverage will begin on the first day of the month of application. The MAA shall not authorize retroactive coverage for hospital services, however, the Administrator may extend retroactive coverage to other services.

**1506 QUALITY ASSURANCE**

1506.1 To ensure that clients receive optimal care, MAA shall incorporate quality assurance activities into the health care delivery and administrative system. The quality assurance requirements under Titles XIX and XXI of the Social Security Act shall apply to providers that bill for services rendered to demonstration program enrollees.

**1507 GRIEVANCE AND APPEALS**

1507.1 Individuals may file grievances in writing with the Administrator. The Administrator shall respond to the grievance in writing within thirty (30) days after the grievance has been filed. The Administrator's determination shall be final, and individuals shall have no further appeals within the Department of Health.

**1599 DEFINITIONS**

1599.1 When used in this chapter, the following terms shall have the meanings ascribed:

**Administrator** - the Senior Deputy Director of the Medical Assistance Administration within the District of Columbia Department of Health.

**Centers for Medicaid and Medicare Services or CMS** - the branch of the Social Security Administration responsible for overseeing the Medicaid and Medicare programs, which was formerly known as the Health Care Finance Administration or HCFA.

**Demonstration program**— a program authorized under § 1115 of the Social Security Act whereby state plan requirements are waived for one or more demonstration projects. For the purpose of this chapter this term means eligibility under Medicaid for childless adults aged fifty (50) to sixty-four (64) with annual gross income that is fifty percent (50%) or less of the federal poverty line.

**Gross income** – the total pre-tax income for a household; this amount includes all income that the Income Maintenance Administration and other agencies may disregard in their eligibility determinations for other programs including Medicaid.

**Enrollment ceiling** – the limit on the number of enrollees in the demonstration; the limits are based on the amount of funds available from the Disproportionate Share Hospital allocation.

**Medical Assistance Administration or MAA**- the administration within the Department of Health that administers Medicaid for the District.

**Provider** – the vendors of State Plan services, which are rendered to Medicaid and Demonstration program enrollees.

**Resources** – the countable assets as defined by the Income Maintenance Administration.

**State Plan** – the document specifying scope of Medicaid services, Medicaid eligibility, Medicaid reimbursement, etc. The state plan is available online at <http://cms.hhs.gov/medicaid/stateplans/toc.asp?state=DC>.

## DEPARTMENT OF HUMAN SERVICES

NOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Human Services, pursuant to the authority set out in Reorganization Plan No. 3 of 1986 (effective January 3, 1987), the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 *et seq.*, 34 C.F.R. Part 361, the Rehabilitation Services Program Establishment Temporary Act of 2002, effective April 4, 2003 (D.C. Law 14-290), any substantially similar succeeding legislation, and Mayor's Order 2002-173, dated October 14, 2002, hereby gives notice of the adoption of the following amendment to Chapter 1 of Title 29 of the *District of Columbia Municipal Regulations* to incorporate new subsections 100.1 through 118.11 and section 199, entitled "Vocational Rehabilitation Services". Although the Rehabilitation Services Program Act was signed by the Mayor on January 7, 2003, the Act provided that it was applicable as of January 1, 2003. These rules establish the standards for the management and operation of the District of Columbia Vocational Rehabilitation Services Program, which provides vocational rehabilitation services to individuals with disabilities.

It is critical that the District of Columbia respond to the myriad needs of individuals with disabilities for vocational rehabilitation services. Currently, the District of Columbia administers a federally funded vocational rehabilitation services program, which responds to a wide-range of rehabilitative needs of District of Columbia residents. These rules enable the District to operate a vocational rehabilitation services program as an entity established as part of the District of Columbia government.

No comments were received to the rules published in the D.C. Register on May 23, 2003 at 50 DCR 4003. No changes have been made to the rules since the previous publication. These final rules will be effective upon publication of this notice in the D.C. Register.

29 DCMR, Chapter 1, is amended by deleting sections 100 to 104 and 199, renumbering sections 105 through 139 as sections 135 through 169, and inserting subsections 100.1 through 118.11 and section 199 as follows:

**CHAPTER 1                    VOCATIONAL REHABILITATION SERVICES****100            GENERAL PROVISIONS**

- 100.1        This chapter shall govern the administration and operation of the District of Columbia Vocational Rehabilitation Services Program that is:
- (a)        An integral part of a statewide workforce investment system; and
  - (b)        Designed to assess, plan, develop, and provide vocational rehabilitation services to individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in gainful employment.

100.2 This chapter shall refer to vocational rehabilitation services that include services for:

- (a) Vocational Rehabilitation;
- (b) Independent Living; and
- (c) Supported Employment.

100.3 The Rehabilitation Services Administration shall be responsible for implementing the procedures of this chapter.

#### **101 PROCESSING REFERRALS AND APPLICATIONS**

101.1 An individual may apply for vocational rehabilitation services by contacting the Rehabilitation Services Administration directly or upon referral by an individual, organization, public or private agency and other sources.

101.2 The Rehabilitation Services Administration shall provide technical assistance regarding transitional activities that are available to students with disabilities upon receipt of a referral from the appropriate educational institutional authority.

101.3 The individual or referral source shall, to the extent possible, make available to the Rehabilitation Services Administration medical, social and vocational information to assist in the determination of eligibility for vocational rehabilitation services.

101.4 The Rehabilitation Services Administration may schedule an orientation meeting for an individual upon initial contact or referral to explain the vocational rehabilitation process, the individual's rights, including the right to an appeal hearing, the right to pursue mediation, and the availability of the resources within the Client Assistance Program.

101.5 The Rehabilitation Services Administration shall schedule an interview for an individual with a vocational rehabilitation counselor upon completion of the orientation meeting to assist the individual to apply for vocational and other rehabilitation services.

101.6 The orientation meeting may be waived by the Chief, Client Services Division or his or her designee. If the orientation meeting is waived, the Client Services Division shall schedule an interview with a vocational rehabilitation counselor to assist the individual to apply for vocational rehabilitation services.

101.7 An individual shall be considered to have submitted an application for services when the individual or the individual's representative, as appropriate:

- (a) Applies for services by:
  - (1) Completing and signing an application form;

- (2) Completing a common intake application form in a One-Stop center requesting vocational rehabilitation services; or
  - (3) Otherwise requesting services from the Rehabilitation Services Administration; and
- (b) Has provided to the Rehabilitation Services Administration the information necessary to initiate an assessment to determine eligibility for services; and
  - (c) Is available to complete the assessment process.

**102 ELIGIBILITY DETERMINATION**

- 102.1 Once an individual has submitted an application for vocational rehabilitation services, an eligibility determination shall be made within sixty (60) days, unless:
- (a) Exceptional and unforeseen circumstances beyond the control of the Rehabilitation Services Administration preclude making an eligibility determination within sixty (60) days and the Rehabilitation Services Administration and the individual agree to a specific extension of time; or
  - (b) An exploration of the individual's abilities, capabilities and capacity to perform in work situations is carried out in accordance with subsection 103.13 or, if appropriate, an extended evaluation is carried out in accordance with subsection 103.14.

**103 ASSESSMENT FOR DETERMINING ELIGIBILITY**

- 103.1 In order to determine whether an individual is eligible for vocational rehabilitation services, the Rehabilitation Services Administration shall conduct an assessment for determining eligibility in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with this section.
- 103.2 The Rehabilitation Services Administration shall base an applicant's eligibility for vocational rehabilitation services only on the following basic requirements:
- (a) A determination by qualified personnel that the applicant has a physical or mental impairment;
  - (b) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;
  - (c) A determination by a qualified vocational rehabilitation counselor employed by the Rehabilitation Services Administration that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment

consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

- (d) A presumption, in accordance with subsection 103.3 of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

103.3 The Rehabilitation Services Administration shall presume that an applicant who meets the eligibility requirements in subsections 103.2(a) and (b) of this section can benefit in terms of an employment outcome unless the Rehabilitation Services Administration demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

103.4 The Rehabilitation Services Administration may presume an applicant eligible for services based on the following:

- (a) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act shall be:
  - (1) Presumed eligible for vocational rehabilitation services pursuant to subsections 103.2 and 103.3 of this chapter; and
  - (2) Considered an individual with a significant disability as defined in section 199, and
- (b) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under subsection 103.4(a) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the Rehabilitation Services Administration shall verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification shall be made within a reasonable period of time that enables the Rehabilitation Services Administration to determine the applicant's eligibility for vocational rehabilitation services within sixty (60) days of the individual submitting an application for services in accordance with subsection 102.1.

103.5 The Rehabilitation Services Administration shall ensure that an eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, intends to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, by:

- (a) Informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome, and
  - (b) Considering that the applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and that no additional demonstration on the part of the applicant is required for purposes of satisfying subsection 103.5(a) of this section.
- 103.6 Nothing in this section, including subsection 103.4, shall be construed to create an entitlement to any vocational rehabilitation service.
- 103.7 The Rehabilitation Services Administration may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the sixty (60) day period described in subsection 102.1.
- 103.8 When making an interim determination of eligibility, the Rehabilitation Services Administration shall:
- (a) Obtain a written approval from the Administrator of the Rehabilitation Services Administration or his or her designee;
  - (b) Document in the individual's records the criteria and conditions for making the determination; and
  - (b) Document in the individual's records the scope of services that may be provided pending the final determination of eligibility.
- 103.9 When providing services based on an interim determination of eligibility, the Rehabilitation Services Administration shall make a final determination of eligibility within sixty (60) days of the individual submitting an application for services in accordance with subsection 102.1.
- 103.10 When determining eligibility under this section, the Client Services Division, in accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code Sections 2-1401.01 *et seq.*, (Act), shall not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is prohibited by the Act. In addition, harassment based on any of the above-protected categories is prohibited by the Act. Discrimination in violation of the Act shall not be tolerated. Violators shall be subject to disciplinary action.

- 103.11 Except as provided in subsection 103.12 of this section, the Rehabilitation Services Administration shall base its determination of each of the basic eligibility requirements in subsection 103.2 of this section on:
- (a) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and
  - (b) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible.
- 103.12 The Rehabilitation Services Administration shall base its presumption under subsection 103.4 of this section, that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in subsection 103.2 of this section, on determinations made by the Social Security Administration.
- 103.13 Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the Rehabilitation Services Administration shall:
- (a) Conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination;
  - (b) Develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which shall:
    - (1) Be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual;
    - (2) Include supported employment, on-the-job training and other experiences using realistic work settings;
    - (3) Be of sufficient variety and over a sufficient period of time for the Rehabilitation Services Administration to determine that:

- (A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or
  - (B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability; and
- (4) Provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.
- 103.14 If an individual with a significant disability cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the Rehabilitation Services Administration is able to make the determinations described in subsection 103.13(b)(3) of this section, the Rehabilitation Services Administration shall:
- (a) Conduct an extended evaluation to make these determinations;
  - (b) Provide vocational rehabilitation services in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual;
  - (c) Develop a written plan for providing services necessary to make a determination under subsection 103.13(b)(3) of this section; and
  - (d) Provide only those services that are necessary to make the determinations described in subsection 103.13(b)(3) of this section and terminate extended evaluation services when the Rehabilitation Services Administration is able to make the determinations.
- 103.15 To provide vocational rehabilitation services during the extended evaluation period, the Rehabilitation Services Administration shall:
- (a) Obtain the written approval of the Administrator of the Rehabilitation Services Administration or his or her designee;
  - (b) Develop a written extended evaluation plan for each individual;
  - (c) Provide vocational rehabilitation services for not longer than (6) months, unless approved by the Rehabilitation Services Administration; and
  - (f) Ensure that each extended evaluation plan is dated and signed by the vocational rehabilitation counselor and the individual.

103.16 The Rehabilitation Services Administration shall assess an individual's progress during an extended evaluation as frequently as necessary but at least once every ninety (90) days.

**104 PROCEDURES FOR INELIGIBILITY DETERMINATION**

104.1 If the Rehabilitation Services Administration determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment that is developed pursuant to sections 110 and 111 of this chapter is no longer eligible for services, the Rehabilitation Services Administration shall:

- (a) Make the ineligibility determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;
- (b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including:
  - (1) The reasons for that determination,
  - (2) The requirements under this section, and
  - (3) The means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of determinations in accordance with sections 135 through 169;
- (c) Provide the individual with a description of services available from a Client Assistance Program established under 34 C.F.R. Part 370 and information on how to contact that program;
- (d) Refer the individual to:
  - (1) Other programs that are part of the One-Stop service delivery system under the Workforce Investment Act that can address the individual's training or employment-related needs; or
  - (2) Local extended employment providers if the ineligibility determination is based on a finding that the individual is incapable of achieving an employment outcome as defined in section 199; and
- (e) Review within twelve (12) months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in

situations in which the individual has refused it, the individual is no longer present in the District of Columbia, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

**105 - 108 RESERVED**

**109 CLOSURE WITHOUT ELIGIBILITY DETERMINATION**

109.1 The Rehabilitation Services Administration may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the Rehabilitation Services Administration has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

109.2 The closure of an applicant's record of services without an eligibility determination shall be based on the written approval of the Administrator of the Rehabilitation Services Administration or his or her designee.

**110 INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE)**

110.1 The Rehabilitation Services Administration shall ensure that an Individualized Plan for Employment (IPE) meeting the requirements of this section and section 111 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services.

110.2 The Rehabilitation Services Administration shall ensure that services will be provided in accordance with the provisions of the IPE.

110.3 The Rehabilitation Services Administration shall conduct an assessment:

- (a) To determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE; and
- (b) To ensure that the IPE is designed to achieve a specific employment outcome, as defined in section 199, that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

110.4 The Rehabilitation Services Administration shall provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

- (a) Information on the available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE:
  - (1) Without assistance from the Rehabilitation Services Administration or other entity; or
  - (2) With assistance from:
    - (A) A qualified vocational rehabilitation counselor employed by the Rehabilitation Services Administration;
    - (B) A qualified vocational rehabilitation counselor who is not employed by the Rehabilitation Services Administration; or
    - (C) Resources other than those in subsection (A) or (B) of this section;
- (b) Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including:
  - (1) Information describing the full range of components that shall be included in an IPE; and
  - (2) Information that is appropriate to each eligible individual, such as:
    - (A) An explanation of the agency guidelines and criteria for determining an eligible individual's financial commitments under an IPE;
    - (B) Information on the availability of assistance in completing The Rehabilitation Services Administration forms required as part of the IPE; and
    - (C) Additional information that the eligible individual requests or the Rehabilitation Services Division determines to be necessary to the development of the IPE;
  - (3) A description of the rights and remedies available to the individual, including, if appropriate, recourse based on the processes described in section 135 through section 169; and
  - (4) A description of the availability of a Client Assistance Program and information on how to contact the Client Assistance Program.

110.5 The Rehabilitation Services Administration shall ensure that:

- (a) The IPE is a written document prepared on forms provided by the Rehabilitation Services Administration;
- (b) The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice in selecting:
  - (1) The employment outcome, including the employment setting;
  - (2) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;
  - (3) The entity or entities that will provide the vocational rehabilitation services; and
  - (4) The methods available for procuring the services;
- (c) The IPE is:
  - (1) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and
  - (2) Approved and signed by a qualified vocational rehabilitation counselor employed by the Rehabilitation Services Administration;
- (d) A copy of the IPE and a copy of any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;
- (e) The IPE is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;
- (f) The IPE is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the Rehabilitation Services Administration or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;
- (g) The individual is informed that amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's

representative and by a qualified vocational rehabilitation counselor employed by the Rehabilitation Services Administration; and

- (h) An IPE for a student with a disability receiving special education services is developed:
  - (1) In consideration of the student's individualized education program (IEP); and
  - (2) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under 34 C.F.R. § 361.22.

110.6 The Rehabilitation Services Administration shall develop an IPE for the individuals determined to be eligible for vocational rehabilitation services within a reasonable time whereas to take into consideration the needs of the individuals.

110.7 To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's IPE shall be determined based on the data used for the assessment of eligibility under section 103.

110.8 If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the IPE of an eligible individual, the Rehabilitation Services Administration shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual.

110.9 In preparing the comprehensive assessment, the Rehabilitation Services Administration shall use, to the maximum extent possible and appropriate, and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including:

- (a) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;
- (b) Information provided by the individual and the individual's family; and
- (c) Information obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

## 111 CONTENT OF THE INDIVIDUALIZED PLAN FOR EMPLOYMENT

111.1 Regardless of the approach in subsection 110.4(a) that an eligible individual selects for purposes of developing the IPE, each IPE shall include the requirements set forth in this section.

- 111.2 The Rehabilitation Services Administration shall ensure that each IPE contains the following mandatory components:
- (a) A description of the specific employment outcome, as defined in section 199, that is chosen by the eligible individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice;
  - (b) A description of the specific rehabilitation services under section 113 that are:
    - (1) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and
    - (2) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;
  - (c) Timelines for the achievement of the employment outcome and for the initiation of services;
  - (d) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;
  - (e) A description of the criteria that shall be used to evaluate progress toward achievement of the employment outcome; and
  - (f) The terms and conditions of the IPE, including, as appropriate, information describing:
    - (1) The responsibilities of the Rehabilitation Services Administration;
    - (2) The responsibilities of the eligible individual, including:
      - (A) The responsibilities the individual will assume in relation to achieving the employment outcome;
      - (B) If applicable, the extent of the individual's participation in paying for the cost of services; and
      - (C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in section 114; and

- (3) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in section 114.
- 111.3 An IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate shall:
- (a) Specify the supported employment services to be provided by the Rehabilitation Services Administration;
  - (b) Specify the expected extended services needed, which may include natural supports;
  - (c) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, includes a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
  - (d) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;
  - (e) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other federal or District of Columbia programs;
  - (f) To the extent that job skills training is provided, identify that the training shall be provided on site; and
  - (g) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.
- 111.4 The IPE for each individual shall contain, as determined to be necessary, statements concerning:
- (a) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;
  - (b) A description of the terms and conditions for the provision of any post-employment services; and

- (c) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in section 114.

111.5 The IPE for a student with a disability who is receiving special education services shall be coordinated with the student's individualized education program (IEP) in terms of the goals, objectives, and services identified in the IEP.

## 112 RECORD OF SERVICES

112.1 The Rehabilitation Services Administration shall maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

- (a) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under section 103;
- (b) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under section 104;
- (c) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the Rehabilitation Services Administration has satisfied the requirements in section 109;
- (d) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination;
- (e) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under subsections 103.13 and 103.14;
- (f) The IPE, and any amendments to the IPE, consistent with the requirements under section 111;
- (g) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and

the extent to which the eligible individual exercised informed choice in the development of the IPE with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services;

- (h) In the event that an individual's IPE provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting;
- (i) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals;
- (j) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act (29 U.S.C. § 214(c)) or the Rehabilitation Services Administration closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the annual reviews required under section 115, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted;
- (k) Documentation concerning any action or decision resulting from a request by an individual under sections 135 through 169 for a review of determinations made by the Rehabilitation Services Administration personnel;
- (l) In the event that an applicant or eligible individual requests under subsection 118.11 that documentation in the record of services be amended and the documentation is not amended, documentation of the request;
- (m) In the event an individual is referred to another program through the Rehabilitation Services Administration's information and referral system, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the Rehabilitation Services Administration to the individual and on the referral itself;

- (n) In the event an individual's record of service is closed under section 116, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome; and
  - (o) In the event an individual's record of service is closed under section 116, documentation verifying that the provisions of section 116 have been satisfied.
- 112.2 The Rehabilitation Services Administration, in consultation with the State Rehabilitation Council, shall determine the type of documentation that the Rehabilitation Services Administration shall maintain for each applicant and eligible individual in order to meet the requirements in subsection 112.1 of this section.
- 113 SCOPE OF VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS WITH DISABILITIES**
- 113.1 The Rehabilitation Services Administration shall ensure, as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, that the vocational rehabilitation services, as set forth in subsection 113.2, are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- 113.2 The Rehabilitation Services Administration shall provide, as appropriate, the following services:
- (a) An assessment for determining eligibility for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with section 103;
  - (b) An assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with section 110;
  - (c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice;
  - (d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, and to advise those individuals about client assistance programs;
  - (e) Physical and mental restoration services, to the extent that financial support is not readily available from a source other than the Rehabilitation Services Administration (such as through health insurance or a comparable service or benefit);

- (f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the Rehabilitation Services Administration and the individual to secure grant assistance in whole or in part from other sources to pay for that training;
- (g) Maintenance, in accordance with the definition of that term in section 199;
- (h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in section 199;
- (i) Vocational rehabilitation services to family members, as defined in section 199, of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- (j) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel;
- (k) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind;
- (l) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
- (m) Supported employment services in accordance with the definition of that term in section 199;
- (n) Personal assistance services in accordance with the definition of that term in section 199;
- (o) Post-employment services in accordance with the definition of that term in section 199;
- (p) Occupational licenses, tools, equipment, initial stocks, and supplies;
- (q) Rehabilitation technology in accordance with the definition of that term in section 199, including vehicular modification, telecommunications, sensory, and other technological aids and devices;
- (r) Transition services in accordance with the definition of that term in section 199;

- (s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and
- (t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

#### 114 COMPARABLE SERVICES AND BENEFITS

- 114.1 The Rehabilitation Services Administration shall use comparable benefits as defined in subsections 114.2 through 114.5, in providing vocational rehabilitation services and benefits.
- 114.2 Prior to providing any vocational rehabilitation services, except those services listed in subsection 114.3 of this section, to an eligible individual, or to members of the individual's family, the Rehabilitation Services Administration shall determine whether comparable services and benefits, as defined in section 199, exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay:
  - (a) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;
  - (b) An immediate job placement; or
  - (c) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.
- 114.3 The following vocational rehabilitation services described in section 113 are exempt from a determination of the availability of comparable services and benefits under subsection 114.2 of this section:
  - (a) Assessment for determining eligibility and vocational rehabilitation needs;
  - (b) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;
  - (c) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under this chapter;

- (d) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
  - (e) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices; and
  - (f) Post-employment services consisting of the services listed under subsections 114.3(a) through (e) of this section.
- 114.4 If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the Rehabilitation Services Administration shall use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.
- 114.5 If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the eligible individual's IPE, the Rehabilitation Services Administration shall authorize the appropriate vocational rehabilitation services only until those comparable services and benefits become available.
- 114.6 The applicant or eligible individual shall be responsible for cooperating with the Client Services Division in seeking and promptly applying for comparable services and benefits.
- 115 ANNUAL REVIEW OF INDIVIDUALS IN EXTENDED EMPLOYMENT AND OTHER EMPLOYMENT UNDER SPECIAL CERTIFICATE PROVISIONS OF THE FAIR LABOR STANDARDS ACT**
- 115.1 The Rehabilitation Services Administration shall ensure the following are conducted:
- (a) An annual review and reevaluation in accordance with the requirements for an individual with a disability served under this chapter:
    - (1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act (29 U.C.S. § 214(c)); or
    - (2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome or that the individual made an informed choice to remain in extended employment; and
  - (b) For each individual with a disability who meets the criteria in subsection (a) of this section, the Rehabilitation Services Administration shall:

- (1) Review annually and reevaluate the status of each individual for two (2) years after the individual's record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;
- (2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and shall document that input in the record of services, consistent with subsection 112.1(j), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and
- (3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive employment.

**116 REQUIREMENTS FOR CLOSING THE RECORD OF SERVICES OF AN INDIVIDUAL WHO HAS ACHIEVED AN EMPLOYMENT OUTCOME**

116.1 The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

- (a) The individual has achieved the employment outcome that is described in the individual's IPE that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
- (b) The individual has maintained the employment outcome for an appropriate period of time, but not less than ninety (90) days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services;
- (c) At the end of the appropriate period under subsection (b) of this section, the individual and the qualified rehabilitation counselor employed by the Rehabilitation Services Administration consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment; and
- (d) The individual is informed through appropriate modes of communication of the availability of post-employment services.

**117 RESERVED**

- 118 USE AND CONFIDENTIALITY OF INDIVIDUAL INFORMATION**
- 118.1 The Rehabilitation Services Administration shall keep records to document information about applicants and eligible individuals in the administration of vocational rehabilitation services program.
- 118.2 All information regarding an applicant or eligible individual provided to or created by the Rehabilitation Services Administration, its representatives, or its employees, in the course of the administration of the vocational rehabilitation services program shall be privileged and confidential.
- 118.3 The applicant or eligible individual has a right to privacy and shall be informed about the confidential nature of information acquired and the conditions governing inspection of records.
- 118.4 All confidential records shall be kept an office(s) designated by the Rehabilitation Services Administration.
- 118.5 The information shall be considered privileged and the case record or information shall not be released in judicial or administrative proceedings, either voluntarily or as a result of any subpoena or judicial process, including requests from a government authority, the courts, law enforcement officials, or from any other outside source, with the following exceptions:
- (a) Information or the contents of the record of services may be released upon the direct order of a judge as part of a judicial proceeding; or
  - (b) Information may be released with the specific written consent of the applicant or eligible individual (or guardian or individual's representative), after the applicant or eligible individual has been informed of the right of choice over release of the information.
- 118.6 Confidential records shall be open to inspection in the Rehabilitation Services Administration's office only under the following conditions:
- (a) By authorized Rehabilitation Services Administration employees and those of the United States government, department of education, in connection with their official duties in the administration of the vocational rehabilitation programs;
  - (b) By personnel of a rehabilitation agency approved by the Administrator of the Rehabilitation Services Administration when inspection of the record is for the sole purpose of providing related rehabilitation services and the agency and personnel are subject to standards of confidentiality comparable to those of the Rehabilitation Services Administration; and

- (c) By an outside source, when a written waiver specifically consenting to have the record reviewed has been obtained from the applicant or eligible individual or legal guardian or individual's representative.
- 118.7 The use or disclosure of information concerning applicants and eligible individuals shall be limited to purposes directly connected with the following:
- (a) The administration of the vocational rehabilitation, supported employment, independent living, or other programs of the Rehabilitation Services Administration for the purpose of:
    - (1) Establishing eligibility;
    - (2) Determining the nature and scope of services; and
    - (3) Providing services; and
  - (b) The investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the program, unless expressly prohibited by Federal or District of Columbia laws, rules or regulations.
- 118.8 The Rehabilitation Services Administration shall secure the written and informed consent of the applicant or eligible individual or legal guardian or individual's representative as authorization for requesting information about the applicant or eligible individual from other agencies or individuals. Copies of signed consent forms shall be maintained in the record of services.
- 118.9 When requested in writing by the applicant or eligible individual or their guardian or individual's representative, the Rehabilitation Services Administration shall make all information in the case record accessible to them in a timely manner.
- 118.10 If the Rehabilitation Services Administration believes that medical, psychological, or other information that may be harmful to the individual, may not be released directly to the individual, the Rehabilitation Services Administration may provide such information through their guardian or individual's representative, a physician or a licensed or certified psychologist.
- 118.11 An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the Rehabilitation Services Administration amend the information. If the information is not amended, the request for an amendment shall be documented in the record of services.
- 119 - 134 RESERVED**

199      **DEFINITIONS**

199.1      For purposes of this chapter, the following terms and phrases shall have the meanings ascribed below:

**Act** - means the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 701 *et seq.*).

**Applicant** - means an individual who submits an application for vocational rehabilitation services.

**Appropriate modes of communication** - means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

**Assistive technology device** - means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

**C.F.R.** - means or stands for the Code of Federal Regulations.

**Clear and convincing evidence** (as used in section 103) - means that the Rehabilitation Services Administration shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in the American civil system of law and is to be individually applied on a case-by-case basis. The term "**clear**" means unequivocal.

**Client** - means an applicant for vocational rehabilitation services who meets the eligibility requirements.

**Client Assistance Program or CAP** - means the program established pursuant to 34 C.F.R. Part 370 for the purpose of advising, informing, assisting and advocating for applicants and eligible individuals regarding all services and benefits available pursuant to this chapter.

**Client Services Division** - is a division within the Rehabilitation Services Administration, Department of Human Services.

**Comparable services and benefits** - means:

- (a)      Services and benefits that are:

- (1) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
  - (2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with section 111; and
  - (3) Commensurate to the services that the individual would otherwise receive from the Rehabilitation Services Administration.
- (b) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

**Competitive employment** - means work:

- (a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have a disability.

**Department of Human Services** - means a department within the government of the District of Columbia.

**Determination** - means an official written decision made or an action taken by a representative of the District of Columbia, Department of Human Services, Rehabilitation Services Administration affecting eligibility or the provision of services.

**Eligible individual** - means an applicant for vocational rehabilitation services who meets the eligibility requirements of subsection 103.1.

**Employment outcome** - means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined above, in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**Extended employment** - means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 U.S.C § 214(c)).

**Extended services** - means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a District of Columbia agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under 34 C.F.R. Part 361 and 34 C.F.R. Part 363 after an individual with a most significant disability has made the transition from support provided by the Client Services Division.

**Extreme medical risk** - means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

**Fair Labor Standards Act** - means the United States Fair Labor Standards Act of 1938, as amended, and codified at 29 U.S.C. §§ 201 *et seq.*

**Family member** (for purposes of receiving vocational rehabilitation services in accordance with subsection 113.2(i)) - means an individual:

- (a) Who either:
  - (1) Is a relative or guardian of an applicant or eligible individual; or
  - (2) Lives in the same household as an applicant or eligible individual;
- (b) Who has a substantial interest in the well-being of that individual; and
- (c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

**Good cause** - means a substantial reason, a legitimate justification for acting or failing to act.

**Impartial hearing officer** - means the individual appointed by the Director that is selected to carry out the responsibilities associated with sections 135 through 169.

**Individual with a disability** (except as defined in the subsection that immediately follows) - means an individual:

- (a) Who has a physical or mental impairment;
- (b) Whose impairment constitutes or results in a substantial impediment to employment; and
- (c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

**Individual with a disability for purposes of 34 C.F.R §§ 361.5(b)(14), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(5), and 361.51(b)** - means an individual who:

- (a) Has a physical or mental impairment that substantially limits one or more major life activities;
- (b) Has a record of such an impairment; or
- (c) Is regarded as having such an impairment.

**Individual with a most significant disability** - means an individual with a significant disability who is provided priority vocational services in those states that have implemented order of selection procedures pursuant to 34 C.F.R. § 361.36.

**Individual with a significant disability** - means an individual with a disability:

- (a) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

**Individual's representative** - means any representative chosen in writing by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

**Individualized Plan for Employment (IPE)** - means a plan prepared pursuant to sections 110 and 111 of this chapter.

**Integrated setting** - means:

- (a) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;
- (b) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

**Maintenance** - means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

**Mediation** - means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

**Natural Supports** -- means supports that are typically available to all workers in the workplace. Workplace supports may include, but are not limited to, such things as a co-worker mentor who assists an employee in learning the job, a supervisor who monitors work performance, a co-worker who assists the client in developing social relationships, orientation training or other company sponsored training events, an employee assistance program and other supports that may be available.

**One-Stop Center or One-Stop service delivery system** -- means a service delivery system that is structured pursuant to Title I of the Workforce Investment Act of 1998, in accordance with 20 C.F.R. Part 662.

**Personal assistance services** - means a range of services provided by one (1) or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services shall be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

**Physical or mental impairment** - means:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
- (b) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Post-employment services** - means one (1) or more of the services identified in section 113 of this chapter that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**Rehabilitation Services Administration** - means an administration within the Department of Human Services, District of Columbia.

**Rehabilitation technology** - means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

**Sheltered setting** – means a non-integrated work environment designed for applicants and eligible individuals that are closely supervised by other individuals who provide the necessary vocational services and supports.

**State** - means one (1) of the United States of America to include the District of Columbia, Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam American Samoa and the Commonwealth of the Northern Mariane Islands.

**State Director** - means the Administrator of the Rehabilitation Services Administration.

**Statewide workforce investment system** - means a system described in section 111(d)(2) of the Workforce Investment Act of 1998 (29 U.S.C. § 2821(d)(2)).

**State plan** - means the State plan submitted by the District of Columbia for vocational rehabilitation services submitted pursuant to 34 C.F.R. § 361.10.

**State Rehabilitation Council** – means the council established within the District of Columbia pursuant to 34 C.F.R. §§ 361.16 and 17 for the purpose of assisting the Client Services Division with the development, implementation, and revision of policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services.

**Substantial impediment to employment** - means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

**Supported employment** - means:

- (a) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:
  - (1) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
  - (2) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition to perform this work; or

- (b) Transitional employment for individuals with the most significant disabilities due to mental illness.

**Supported employment services** - means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment that are:

- (a) For a period of time not to exceed eighteen (18) months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and
- (b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

**Transition services** - means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services shall promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

**Transitional employment** (as used in the definition of "supported employment") - means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services shall include continuing sequential job placements until job permanency is achieved.

**Transportation** - means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

**U.S.C.** - means or stands for United States Code.

**Vocational Rehabilitation services** - means those services listed within section 113.2 of this chapter that are necessary to determine an applicant's eligibility or that are necessary for an eligible individual to prepare for, secure, retain, or regain employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**Workforce Investment Act** – when referred to in this chapter, means Title I of the Workforce Investment Act of 1998, which is codified generally at 29 U.S.C. §§ 2801 *et seq.*