DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 993 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Independent Habilitation Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for independent habilitation services provided by licensed or supervised professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for independent habilitation services.

On March 14, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 2262). These emergency and proposed rules supercede and replace the rules published on March 14, 2003 (50 DCR 2262) by expanding independent habilitation services to persons residing in supervised apartments. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of independent habilitation services.

The emergency rulemaking was adopted on October 21, 2003 and will become effective on the date of publication of this notice of emergency rulemaking in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until February 17, 2004 unless earlier superceded by another emergency rulemaking or by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 993, to read as follows:

993 INDEPENDENT HABILITATION SERVICES

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

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

993.3 Independent habilitation services shall include the following activities:

(a) Training in activities of daily living and independent living skills;

(b) Assistance in performing personal care tasks;

(c) Training on, and assistance in using community resources;

(d) Training on, and assistance in the monitoring of health, nutrition, and physical condition;

(e) Training in adapting to a community and home environment, including management of financial and personal affairs and awareness of health and safety precautions; and

(f) Coordinating transportation to community events.

993.4 A client shall be eligible for independent habilitation services if he or she is living in one of the following types of residences:

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

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

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

993.7 The IHP or ISP shall indicate whether the staffing plan requires the participation of a licensed professional to meet the client's individual needs.

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

licensed to practice his or her profession within the jurisdiction where he or she provides the services.

993.9 Each provider of independent habilitation services shall:

(a) Be a non-profit, home health agency, social service agency, or other business entity;

(d) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for independent habilitation services under the Waiver;

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

(f) Have a current Human Care Agreement with MRDDA for residential services if independent habilitation services are provided in a supervised apartment;

(g) Ensure that all independent habilitation services staff are qualified and properly supervised;

(h) Ensure that the service provided is consistent with the client's IHP or ISP;

(i) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;

(j) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations as set forth in 29 CFR 1910.1030;

(k) Maintain records that support billed services and document in each record the type of activity provided including the date and time the service was rendered;

(l) Maintain a policy manual which contain the following subjects:

(1) Admission and discharge of clients;
(2) Operational procedures for client care;
(3) Clients rights and responsibilities;
(4) Procedures for emergency care, infection control and reporting of unusual incidents;
(5) Health and safety issues;

(6) Staffing and personnel;
(7) Financial and record-keeping requirements; and
(8) Quality Assurance.

(m) Ensure that each supervised apartment comply with the zoning regulations set forth in Title 11 of the District of Columbia Municipal Regulations (DCMR) and the Housing Code set forth in Title 14 DCMR;

(n) Ensure that each supervised apartment is accessible to public transportation and emergency vehicles;

(o) Ensure that each supervised apartment for wheelchair-bound clients is handicapped-accessible; and

(p) Maintain a written staffing plan and provide a written staffing schedule for each site that services are provided.

993.10 Each person providing independent habilitation services pursuant to section 993.9 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 the ability to communicate with the client;

(e) Be able to read and write the English language;

(f) Have a high school diploma or a general educational development (GED) certificate;

(g) Have at least one (1) year of experience working with persons with developmental disabilities;

(h) Complete training as required by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);

(i) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (Act), effective April 20, 1999 (D.C. Law 12-238; D.C. Official

Code § 44-551 *et seq.*) and any rules issued pursuant to the Act; and

(j) Complete training in First Aid and CPR.

993.11 Each billable unit of service shall be one (1) hour.

993.12 The reimbursement rate shall be thirteen dollars and eighty cents ($13.80) per billable hour and shall not exceed eight (8) hours per day Monday through Friday and sixteen (16) hours per day Saturday and Sunday, if the client resides in an supervised apartment. If the client resides in his or her own home or the home of an unpaid caregiver, reimbursement shall be limited to eight (8) hours per day.

993.13 Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the client. There shall be face-to-face contact between the client and the provider to bill for the service.

993.14 Nursing services attributable to the administration of medication when a client is unable to self-administer or take medication independently shall not be billed as a Waiver service.

993.15 Reimbursement for independent habilitation services shall not include:

(a) Room and board costs;
(b) Protective oversight costs;
(c) Routine care and general supervision that would be expected to be provided by the family or the provider;
(d) Overhead or administrative costs;
(e) Building maintenance costs;
(f) Household supplies, including towels and linens; or
(g) Services or costs for which payment is made by a source other than Medicaid.

993.16 Independent habilitation services shall not be billed concurrently as:

(a) Attendant care;
(b) Homemaker, except when the client is living in his or her own home;
(c) Personal Care;
(d) Day Habilitation;
(e) Supportive Employment;
(f) Pre-vocational;
(g) Chore, except when the client is living in his or her own home;
(h) Residential habilitation services;
(i) Respite;

(j) Family Training; or
(k) Adult Companion.

993.99 **DEFINITIONS**

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

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

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

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

Supervised Apartment- A living arrangement located in the District of Columbia for one to three clients with mental retardation that provides drop-in to twenty-four hour supervision and is funded by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, excluding holidays, between 8:15 A.M. and 4:45 P.M. from the same address.