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 an amendment to section 929 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Supported Employment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Supported Employment Services, a habilitative service provided to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on April 4, 2008 (55 DCR 003502). Comments were received and considered. This rulemaking amends the April 4th rules by reducing the work experience requirements from three years to one year for an employment specialist with a four year college degree.

A notice of emergency and proposed rulemaking was published in the *DC Register* on July 25, 2008 (55 DCR 008154). No comments were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 929 (Supported Employment Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

929 SUPPORTED EMPLOYMENT SERVICES

929.1 Supported employment services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

929.2 Supported employment is intended for individuals for whom competitive employment has not traditionally occurred or has been interrupted. The aim of supported employment services is to emphasize the assets, preferences and skills of the person and to match the person to a job that maximizes those assets and minimizes deficits.

929.3 Supported employment shall consist of paid competitive work that offers ongoing support services in an integrated work setting where wages are paid at or above minimum, consistent with the Fair Labor Standards Act. The level of employment participation may be full-time or part-time based on the interests and abilities of the individual.

929.4 Supported employment services eligible for reimbursement shall be as follows:

(a) Intake and assessment;
(b) Job placement;
(c) Job training and support; and
(d) Follow-along services.

929.5 Supported employment services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.)* or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.)* (hereinafter the "Acts"). Each person receiving supported employment services shall submit documentation that demonstrates that 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) and Plan of Care. Court-ordered vocational assessment shall be provided by authorizing intake and assessment services under this section if services provided through programs funded under Title I of the Rehabilitation Act of 1973 cannot provide assessment services in the timeframe set forth in the Court's Order.

929.6 Professionals authorized to provide supported employment activities without supervision are as follows:

(a) Vocational Rehabilitation Counselor;
(b) A person with a Master's degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities;
(c) A person with a bachelors degree and two years of experience working in supported employment; or
(d) A Rehabilitation Specialist.

929.7 Paraprofessionals authorized to perform supported employment activities under the supervision of a professional listed in section 929.6 are as follows:

(a) Job Coaches; or
(b) Employment Specialists.

Supervision is not intended to mean that the paraprofessional performs supported employment activities in view of the professional authorized in section 929.6, but rather that the paraprofessional has a supervisor who meets those qualifications.

929.8 Intake and assessment activities include, but are not limited to, the following:

(a) Conducting an individualized vocational and situational assessment;
(b) Developing an individualized employment plan that includes the person's job preferences and desires;
(c) Assessing person-centered employment information, including the employee's interest in doing the job, transportation to and from work, family support, and financial issues;
(d) Counseling an interested person on the tasks necessary to start a business; and
(e) Providing individual and/or group employment counseling.

929.9 As a result of intake and assessment activities, the provider shall complete and deliver a comprehensive vocational assessment report to the Department on Disability Services (DDS) Service Coordinator that includes the following:

(a) Employment-related strengths and weaknesses (*e.g.*, task focus);
(b) Available family and community supports;
(c) Personal concerns;
(d) Accommodations and supports that may be required on the job; and
(e) If a specific job or entrepreneurial effort has been targeted the assessment may also include:
    (1) Individualized training needed to acquire and maintain acceptable production skills;
    (2) Anticipated level of interventions that will be required by the job coach;
    (3) Type of integrated work environment in which the person can potentially succeed; and
    (4) If the individual is not immediately employable, activities and supports that are need to improve potential for employment.

929.10 Intake and assessment activities shall be billed at the unit rate. This service shall not exceed three hundred twenty (320) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The reimbursement rate is forty-three dollars ($43.00) per hour if performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents ($25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended intake and assessment services are required, the provider shall submit a written justification to the DDS Service Coordinator and the DDA Waiver

Office a minimum of ten (10) business days before the prior authorized services have been expended. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through the Department of Health's Medical Assistance Administration (MAA). The disposition also shall be documented in the person's IHP or ISP and Plan of Care. Intake and assessment shall be prior authorized by DDS as a discrete service and no other supported employment services will be approved without the development and delivery of the completed vocational assessment to the DDS Service Coordinator.

929.11 Job placement activities eligible for reimbursement include, but are not limited to, the following:

(a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
(b) Conducting workshops or other activities to instruct persons on proper work attire, behaviors and expectations;
(c) Completing job applications with or on behalf of the person;
(d) Assisting the person with job exploration and placement, including assessing opportunities for advancement;
(e) Visiting employment sites and attending employment networking events;
(f) Making telephone calls to prospective employers, utilizing the internet, magazines, newspapers and other publications as leads;
(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of preparing a standardized set of requirements for prospective employees;
(h) Negotiating employment terms with or on behalf of the person;
(i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start up capital, and other tasks necessary to starting a small business; and
(j) Working with interested persons and employers to develop group placements.

929.12 Job placement activities shall be billed at the unit rate. This service shall not exceed four hundred (400) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. The reimbursement rate is forty-three dollars ($43.00) per hour when performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents ($25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended job placement services are required, the provider shall submit a written

justification in support of the extended services to the DDS Service Coordinator and the DDA Waiver Office a minimum of ten (10) business days before the prior authorized services have been expended. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through MAA. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.13 Job training and support activities are those activities designed to assist and support the person after employment has been obtained. The expectation is that the job training and support activities are faded as the individual gains job skills, and support from the existing work structure is increasingly sufficient to maintain employment. Job training and support activities eligible for reimbursement include, but are not limited to, the following:

(a) On-the-job training in work and work-related skills required to perform on the job;
(b) Work site support that is intervention-oriented and designed to enhance work performance, modify inappropriate behaviors, re-training as jobs change, ongoing counseling, and assistance to ensure job retention;
(c) Supervision and monitoring of the person in the workplace;
(d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, transportation systems, mobility training and changing jobs.
(e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of placement, integration, number of hours worked, need for adaptations and offsite supports such as transportation services;
(f) Consulting with other professionals and the person's family, as necessary; and
(g) Consulting with the person's employer, co-workers or supervisors, as necessary.

929.14 Job training and support activities shall not exceed one thousand, two hundred and eighty (1280) units per Plan of Care year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The reimbursement rate is forty-three dollars ($43.00) per hour when performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents ($25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended job training and support activities are required the provider shall submit a written justification in support of the extended services to the

DDS Service Coordinator for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through MAA. The disposition also shall be documented in the person's IHP or ISP and Plan of Care.

929.15 Long-term follow-along activities eligible for reimbursement include, but are not limited to, the following:

(a) Periodic monitoring of job stability;
(b) Interventions to address issues that threaten job stability;
(c) Providing retraining or cross training when job duties change;
(d) Facilitating integration and natural supports at the job site; and
(e) Facilitating job advancement and job mobility.

929.16 Follow-along activities shall be reimbursed at the same rates as set forth in section 929.14 and shall not exceed seven hundred and sixty-eight (768) units per Plan of Care year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. If extended follow-along services are required, the provider shall submit a written justification to the DDS Service Coordinator and the DDA Waiver Office a minimum of ten (10) business days before the prior authorized services have been expended. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Services shall continue if DDS does not respond to the written request with ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights through MAA. The disposition also shall be documented in the person's IHP or ISP and Plan of Care.

929.17 The three models of supported employment eligible for reimbursement shall be as follows:

(a) Individual job support;
(b) Group supported employment; and
(c) Entrepreneurial.

929.18 Group supported employment services are delivered when there is more than one (1) person at the job site who is receiving supported employment services from the supported employment services provider. The job coach shall provide training and other services as described in 929.13 to each Waiver participant as needed. The rate for this service is sixteen dollars and forty cents per hour ($16.40) billable in fifteen (15) minute units of four dollars and ten cents ($4.10). The provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. This rate assumes a

maximum of four (4) persons are receiving support in the same job location, and are receiving job coaching services from one (1) supported employment services staff person. Each Waiver participant may be billed for the time the job coach is supporting any of the four (4) participants.

929.19 Each provider shall provide the ongoing supports at the work site needed for the person to obtain job stability after employment has been obtained. Once the person is stable on the job, the provider shall make a minimum of two (2) job site contacts per month for the purpose of monitoring job stability.

929.20 Reimbursement for supported employment services provided at the work site in which persons without disabilities are employed shall only be made for adaptations, supervision and training required by the person who receives Waiver services pursuant to these rules. No payment shall be made for supervisory activities, which are rendered as a normal part of the business setting.

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

929.22 When applicable, each provider shall coordinate with DDS/DDA and the employer for the provision of appropriate services for each person requiring physical assistance to accomplish basic activities of daily living on the work site.

929.23 When applicable, each provider shall coordinate with the employer to ensure that each person has access to appropriate first aid on the work site.

929.24 Supported employment services shall be pre-authorized and provided in accordance with each person's IHP or ISP and Plan of Care.

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

929.26 Each provider of supported employment services shall be a social services agency as described in Chapter 19 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider agrees to:

(a) Be a member of the person's interdisciplinary team;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Supported Employment Services under the Waiver; and
(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person.

929.27 Each person providing supported employment services for a provider under section 929.26 shall meet the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911.

929.28 Supported employment services may be provided either exclusively as the vocational service or in combination with prevocational or day habilitation services. Supported employment services shall not be provided concurrently with day treatment, day habilitation or prevocational services.

929.29 Supported employment services shall be provided for a maximum of eight (8) hours in a day and five (5) days in a week. The provider shall submit a written justification in support of the extended services to the DDS Service Coordinator for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Any disapproval shall be accompanied by notice of Fair Hearing Rights through MAA. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.30 Supported employment services providers shall not bill for incentive payments, subsidies or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;
(b) Payments that are passed through to users of supported employment services programs; or
(c) Payments for vocational training that is not directly related to the person's supported employment services program.

929.31 Each supported employment services provider shall maintain service records that accurately and adequately link the services billed to the IHP or ISP and Plan of Care for each participant receiving services, including:

(a) Person's name;
(b) Staff person's name;
(c) Date(s) of activities;
(d) Start and end times of activities;
(e) Purpose of activities; and
(f) Location of activities.

929.32 Each supported employment services provider shall record and report:

(a) Occurrences or behaviors by a participant that impede the progress of the group or the individual participant;
(b) Any unusual circumstances or events that impact the stability of the group or the individual participant;

(c) Any individual unusual incidents; and
(d) Actions taken to address behaviors or unusual circumstances.

929.33 Supported employment services providers shall submit to the DDS Service Coordinator a completed quarterly update of the IHP or ISP. The report shall include:

(a) Name of the each person;
(b) Confirmation that wages exceed minimum wage;
(c) Average hours a week worked by each person;
(d) Hours of activities for each person if not engaged in employment; and
(e) Aggregate calculation of wages earned, hours worked and hours of activities for persons not engaged in employment.

929.34 Each supported employment services provider shall maintain a copy of each person's record at least six (6) years after the date of discharge.

929.35 Time spent in transportation to and from the program shall not be included in the total amount of services provided per day. However, time spent in transportation to and from the program for the purpose of training the participant on the use of transportation services may be included in the number of hours of services provided per day for a period of time specified in the person's IHP or ISP and Plan of Care.

929.99 DEFINITIONS

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

Employment Specialist – A person with a four-year college degree and a minimum of one (1) year of experience in a supported employment program; a person with a college degree and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a person with a high school degree and three (3) years of experience in a supported employment program.

Entrepreneurial – Development and on-going support for micro-enterprises owned and operated by the participant. This assistance consists of: (a) assisting the participant to identify potential business opportunities; (b) assisting the participant in the development of a business and launching a business; (c) identification of the supports that are necessary in order for the participant to operate the business; and (d) ongoing assistance, counseling and guidance once the business has been launched.

Group – An employment situation in competitive employment in which a group of four or fewer participants with disabilities are working at a particular work setting. The participants may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business.

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 Supported Employment – A supported employment strategy in which a job coach places a participant into competitive employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

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

Integrated Work Setting – A work setting that provides daily contact with other employees and/or the general public.

Job Coach – A person with a four-year college degree and a minimum of one (1) year of experience in a supported employment program; a person with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a person with a high school degree and three (3) years of experience in a supported employment program.

Long-term follow along activities – Ongoing support services necessary to assure job retention.

Person or Participant – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

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

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human

Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Rehabilitation Specialist – A persons with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; a person with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; or a person with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Situational Assessment – A type of assessment that provides the person an opportunity to explore job tasks in real work environments in the community. This assessment is useful in identifying the type of employment that may be beneficial to the person and the support required by each person to succeed in the work environment. Provides competitive or real work sites in the community for the systemic assessment and observation of the person; identifies work site characteristics and person adaptations, training procedures, support needs related to the person's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

Vocational Assessment – An assessment designed to assist persons, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment outlines the life, relationships, challenges, and perceptions of the person as they relate to potential sources of community support and mentorship.

Vocational Rehabilitation Counselor – A persons with a Master's degree in Vocational Counsel Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; a person with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; or, a person with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.