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), 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 937 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Preventive, Consultative and Crisis Support Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for preventive, consultative and crisis support services provided by health care professionals 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).

The former Preventative, Consultative and Crisis Support Services rules incorporates two discrete services into a single rule: preventive and consultative services, which focus on long-term behavioral support, and crisis services, which focuses on short-term response to an immediate crisis. This rule amends the previously published rules at 54 DCR 2348 (March 16, 2007), by changing the name of the services to Behavioral Support Services, by focusing on the preventive and consultative services while removing some of the crisis services which will be duplicative of Community Support Team Services, and by modifying the rate structure that covers professionals, paraprofessionals, and other staff.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the Waiver with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published in the *DC Register* on December 14, 2007 (54 DCR 012074). Comments were untimely received and considered. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 937 (Preventive, Consultative and Crisis Support Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

937 BEHAVIORAL SUPPORT SERVICES

937.1 Behavioral support services shall be reimbursed by the District of Columbia Medicaid Program for each person 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.

937.2 Behavioral support services are services designed to support and encourage the person in his or her decision to reside within the community; decrease the impact of a behavioral event; assist the person in developing alternative and more effective communication, adaptive and coping mechanisms; and enable the person to achieve positive personal outcomes. These services shall be available to all Waiver-eligible persons to prevent any unnecessary change in placement; placement in a more restrictive environment; prevent a psychiatric hospitalization; enhance the person's ability to lead a more typical life; and support the positive development of community living skills and social relationships.

937.3 Behavioral support services shall be authorized and provided in accordance with each person's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care. To qualify for this service, each person must be referred by the support team to address specific behavioral support needs that jeopardize the person's health and welfare, and/or interfere with the person's ability to gain independent living skills.

937.4 To be eligible for any additional behavioral support services, the provider shall develop a Diagnostic Assessment that is a clinical and functional evaluation of a person's psychological and behavioral condition. Based on this evaluation, the provider shall develop a Diagnostic Assessment Report, including recommendations as to whether to continue or discontinue services. The Diagnostic Assessment shall also determine whether the person may benefit from a Behavior Support Plan (BSP), based upon the person's presenting problems and behavioral goals. The Diagnostic Assessment shall also evaluate the person's level of readiness and motivation to respond to behavioral intervention. The Diagnostic Assessment Report shall include the following information:

(a) The names of individuals to contact in the event of a crisis;
(b) Conflict resolution counseling and problem solving strategies used to date and their effectiveness;
(c) A written evaluation, including a full description of the target behavior; antecedents to the target behavior; history of reinforcers used and their effectiveness; environmental contributors to the target behavior; contributing medical and psychiatric diagnoses; and proposed interventions as needed; and
(d) Recommendation for any needed continuing services.

937.5 Development of the required plan set forth in section 937.4 shall be based on the following activities:

(a) Interviews with the person and his/her support staff as well as others as appropriate;
(b) Observations of the person at his/her residence and in the community;

(c) Conversations with family members, friends and other professionals;
(d) Review of all available and pertinent data;
(e) Interpreting results of laboratory or other medical diagnostic studies; and
(f) Medical and psychiatric history.

937.6 If the Diagnostic Assessment requires development of a BSP, that plan shall be consistent with the following guideline:

The goal of developing and implementing a Behavior Support Plan is to identify techniques and strategies that will build on a person's skills, abilities, and motivations to help him or her develop positive alternatives to identified challenging behavior. The BSP should emphasize positive, proactive and effective strategies, and should minimize and seek to eliminate the use of restricted or intrusive procedures for the individual and circumstance. The BSP may also include the limited use of restrictive procedures, but only with the consent and approval of the person and/or their guardian, the agreement of the individual's support team, and the written approval of the Department on Disability Services (DDS) Human Rights Committee or its Restricted Control Review Committee. The form for including the use of restricted controls is available from DDS. A formal BHP includes:

(a) A description of the techniques for gathering information;
(b) The goals of the BSP;
(c) Strategies for positive behavior support;
(d) Requirements for training staff and other caregivers;
(e) Support strategy tracking documentation;
(f) Review schedule of BSP progress toward goals; and
(g) Regular (at least quarterly) professional assessments of BSP progress toward goals.

937.7 Ongoing behavioral support services eligible for reimbursement include, but shall not be limited to, the following services:
(a) Training to create positive environments and coping mechanisms, as well as developing interventions, teamwork, and evaluation strategies to assess the effectiveness of interventions;
(b) Consultative services to assist in the development of person-specific strategies; and
(c) Follow-up services, including personal progress assessment.

937.8 Behavioral support services shall be available to family members, service providers, or other individuals that provide support and/or services to the person.

937.9 Behavioral support services may be provided to supplement traditional medical and clinical services available under the District of Columbia State Plan for Medical Assistance.

937.10 Each provider of behavioral support services shall be:

(a) An independent professional in private practice as defined in Title 29 DCMR, Chapter 19, General Provisions, Section 1903.2;
(b) A Freestanding Mental Health Clinic as defined in Chapter 8 of Title 29 DCMR;
(c) Employed by a home health agency as defined in Title 29 DCMR, Chapter 19,General Provisions, Section 1903.3; or
(d) Employed by a social service agency as defined in Title 29 DCMR, Chapter 19, General Provisions, Section 1903.

937.11 The agency or therapist in private practice shall have a current Medicaid Provider Agreement that authorizes the service provider to bill for behavioral support services. Persons authorized to provide all services without supervision shall be as follows:

(a) Psychologist;
(b) Psychiatrist;
(c) Licensed Independent Clinical Social Worker;
(d) Advance Practice Registered Nurse or Nurse-Practitioner;
(e) Licensed Professional Counselor;
(f) Licensed Graduate Social Worker; and
(g) Certified Behavior Analysts® in jurisdictions where that credential is accepted.

937.12 Persons authorized to provide behavioral support services under the supervision of qualified practitioners set forth in section 937.11 shall be as follows:

(a) Registered Nurse;
(b) Behavior Management Specialists; and
(c) Associate Behavior Analysts® in jurisdictions where that credential is accepted.

937.13 Each professional in section 937.11 shall have at least one (1) year of experience in a setting providing habilitation and positive behavioral support services to persons with developmental disabilities and possess professional knowledge of psychological principles, theories, and methods with an ability to develop and implement treatment and behavior support plans.

937.14 Each non-licensed professional in section 937.12 shall have a minimum of one (1) year of experience developing, implementing, and monitoring behavior

intervention plans and developing effective positive behavioral interventions aimed at reducing and replacing challenging behaviors with more typical and appropriate ones.

937.15 Diagnostic Assessments shall be requested as a service in the IHP or ISP and Plan of Care. All other services in this rule shall be authorized based on the recommendations of a Diagnostic Assessment completed within the previous eighteen (18) months.

937.16 The reimbursement rate for each Diagnostic Assessment under section 937.4 shall be two hundred forty dollars ($240.00) and shall be at least three (3) hours in duration, including the development of the written Diagnostic Assessment.

937.17 The reimbursement rate for the development of the BSP under section 937.5 and professional follow-up visits performed by professionals under section 937.10 shall be one hundred three dollars and twenty cents ($103.20) per hour.

937.18 The reimbursement rate for the development of ongoing behavioral support services under section 937.6 shall be sixty dollars ($60.00) per hour.

937.19 Individualized supervision shall be permitted with prior authorization of the DDS Human Rights Committee and shall be reimbursed at the hourly rate of twenty-two dollars ($22.00) for behavioral support one-to-one services. These behavioral support one-to-one services shall be provided by an intensive behavioral support direct care paraprofessional and shall be formally reviewed every three (3) months by the behavioral support services provider, and the reports shall be submitted to the DDS Human Rights Committee and Case Management. To be eligible for reimbursement for behavioral support one-to-one services, the person shall be required to have a Behavioral Support Plan (BSP) and shall meet at least one of the characteristics set out in section 979.12 for paraprofessional one to one services. For purposes of this section 937.19, in addition to the requirements for paraprofessional one-to-one services as set out in section 979.99, behavioral support one-to-one services means services provided to one person exclusively by a behavioral support services provider who has been trained in all general requirements, who possesses specialized training in physical management techniques and positive behavior support practices, and who possesses all other training required to implement the person's specific BSP, including behavioral and/or clinical protocols, for a pre-authorized length of time.

937.99 DEFINITIONS

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

Advanced Practice Registered Nurse or Nurse-Practitioner – A person who is licensed to practice as a registered nurse 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.*), and meets the additional licensure requirements for practice in a particular area as an advance practice registered nurse or nurse-practitioner in accordance with D.C. Official Code § 3-1206.08(a) or (c), or is licensed as a registered nurse and meets additional national certification standards for practice in a particular area as an advance practice registered nurse or nurse-practitioner in the jurisdiction where services are provided.

Behavioral support services – Services that are designed as an ongoing preventive and consultative service to improve and maintain outcomes in the health, attitude and behavior of the person.

Certified Behavior Analysts® – A person who meets the Behavior Analyst Certification Board (BCBA®) requirements to become a Board Certified Behavior Analyst.

Associate Behavior Analysts® – A person who meets the Behavior Analyst Certification Board (BCABA®) requirements to become a Board Certified Associate Behavior Analyst.

Behavior Management Specialist – A person who has the training and experience in the theory and technique of changing the behavior of individuals to enhance their learning of life skills, adaptive behaviors, and to decrease maladaptive behaviors and works under the supervision of a licensed practitioner.

Diagnostic Assessment – Includes (1) indirect assessment techniques such as interviews, written record reviews and questionnaires; (2) direct assessment techniques such as observation of the person, documentation of the frequency, duration and intensity of problem behaviors; and (3) the evaluation of the relationship between the environmental and emotional variables and the occurrence of problem behaviors.

Freestanding mental health clinic – The same meaning as set forth in Chapter 8 of Title 29 DMCR.

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 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Licensed Graduate Social Worker – A person who is licensed as a graduate social worker 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 § 3-1202 *et seq.*)

or licensed as a graduate social worker in the jurisdiction where the services are being provided.

Licensed Independent Clinical Social Worker – A person who is licensed as an independent clinical social worker 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 § 3-1202 *et seq.*) or licensed as an independent clinical social worker in the jurisdiction where the services are being provided.

Licensed Professional Counselor – A person who is licensed to practice professional counseling 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 § 3-1202 *et seq.*) or licensed as a professional counselor in the jurisdiction where the services are being provided.

Person – 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.

Private Practice – An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing as an employee of an unincorporated practice, a professional corporation, or other incorporated practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes behavior support services in the provider's reimbursement rate.

Psychiatrist – A person who is licensed to practice psychiatry 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 § 3-1202 *et seq.*) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist – A person who is licensed to practice psychology 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 § 3-1202 *et seq.*) or licensed as a psychologist in the jurisdiction where the services are being provided.

Registered Nurse – A person who is licensed as a registered nurse 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 § 3-1202 *et seq.*), or licensed as a registered nurse in the jurisdiction where the services are being provided.

Regular Work Hours – The hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, except days determined to be holidays by the District of Columbia government.

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.