

CHILD AND FAMILY SERVICES AGENCY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Child and Family Services Agency ("CFSA"), acting pursuant to section 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03 (2006 Supp); section 106 of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006, D.C. Law 16-69; Mayor's Order 2006-38, dated March 20, 2006; and section 3 of the Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007, D.C. Act 17-69, effective July 9, 2007 hereby gives notice of her intent to amend Chapter 68 of Title 29 DCMR, "Grandparent Caregivers Pilot Program Subsidies" on an emergency basis.

The emergency action is based upon an immediate need in the District of Columbia for grandparents to receive subsidies in order to care for and to protect the safety and welfare of their grandchildren. The emergency rules were adopted and became effective on August 7, 2007. They will remain in effect for 120 days from the date of adoption, or until publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Director also gives notice of her intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and following the review by the Council of the District of Columbia (Council) required by section 106 of the Act. Pursuant to that section, the proposed rules will be transmitted to the Council and will become effective upon the Council's approval of the rules by resolution or the expiration of the Council's thirty (30) day review period, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

29 DCMR § 6802.1 is amended as follows:

Paragraph (c) is amended to read as follows:

(c) The applicant has been the child's primary caregiver for at least the previous six (6) months;

Paragraph (e) is amended to read as follows:

(e) The child's parent has not resided in the applicant's home for at least the most recent six (6) continuous months; provided that a parent may reside in the home without disqualifying the applicant from receiving a subsidy if:

(1) The parent has designated the applicant to be the child's standby guardian pursuant to Chapter 48 of Title 16;

- (2) The parent is a minor enrolled in school; or
- (3) The parent is a minor with a medically verifiable disability that prevents him or her from caring for the child;

Paragraph (f) is amended by striking “§ 6804” and substituting “§ 6805” in its place.

Paragraph (g) is amended by striking “§ 6804” and substituting “§ 6805” in its place.

Paragraph (k) is amended by striking “§ 6806” and substituting “§ 6807” in its place.

A new paragraph (l) is added to read as follows:

- (l) The applicant is not currently receiving a guardianship or adoption subsidy for the child.

29 DCMR § 6803.2 is amended as follows:

Paragraph (c) is amended to read as follows:

- (c) Proof that the applicant is the primary caregiver as provided in § 6804;

Paragraph (h) is amended to read as follows:

- (h) Proof that the child’s parent has not resided in the applicant’s home for at least the most recent six (6) months or proof of the following:

- (1) The parent has designated the applicant to be the child’s standby guardian pursuant to Chapter 48 of Title 16;
- (2) The parent is a minor enrolled in school; or
- (3) The parent is a minor with a medically verifiable disability that prevents him or her from caring for the child;

29 DCMR § 6803.5 is amended as follows:

A new § 6803.5 is added to read as follows:

6803.5 Any statement under this section made with knowledge that the information set forth therein is false shall be subject to prosecution as a false statement under D.C. Code § 22-2405(a) and punishable by a fine of not more than \$1,000 or imprisonment for not more than 180 days, or both.

29 DCMR §§ 6804 through § 6809 are renumbered as §§ 6805 through § 6810 and a new section § 6804 is added to read as follows:

6804 DOCUMENTATION OF STATUS AS PRIMARY CAREGIVER

6804.1 The applicant shall demonstrate that he or she is the primary caretaker of the child by providing at least one of the following documents:

- (a) A court order granting custody of the child to the applicant;
- (b) A court order granting the applicant standby guardianship of the child, pursuant to D.C. Code §§ 16-4801 – 4810; or
- (c) A decree stating that the applicant has adopted the child.

6804.2 If the applicant is unable to provide any of the documents listed in 29 DCMR § 6804.1(a) through (c), the applicant may demonstrate that he or she has been the primary caretaker of the child by providing documentation required in § 6804.4 and at least one of the following documents:

- (a) Records showing that the applicant enrolled the child in school the current or previous school year or is the primary educational contact for the child;
- (2) Immunization or medical records indicating that the applicant is tending to the medical needs of the child. The records provided must be no older than two years old;
- (3) Proof that the applicant has received either Supplemental Security Income or TANF for the child; or
- (4) A letter from any legal, medical, military, law enforcement, social service or similar professional, or the applicant's landlord describing the applicant's status relevant to the child.

6804.3 If the Applicant is establishing eligibility under § 6804.2, he or she, by providing the documentation listed in § 6804.4, shall demonstrate that he or she has become the primary caregiver of the child because both parents are unable to fulfill the duties of a primary caretaker due to at least one of the following situations:

- (a) Death;
- (b) Incarceration;
- (c) Lack of Involvement or Abandonment or Voluntary; Relinquishment of physical custody;

- (d) Separation due to abuse or neglect;
- (e) Active military assignment; or
- (f) Serious illness.

6804.4 If the Applicant is required to establish eligibility under § 6804.2, the applicant shall demonstrate that the situation listed in § 6804.3 has occurred by providing the following documents:

- (a) A death certificate for one or both parents;
- (b) A letter from any legal, medical, military, law enforcement, or social services professional describing the situation;
- (c) A signed statement from the caregiver, sworn under penalty of perjury;
- (d) A court order sentencing a parent to prison or another form of state or federal confinement; or
- (e) A report by CFSA substantiating an allegation of abuse or neglect, or other reports from medical or other professionals establishing that the child has been abused or neglected.

6804.5 The Agency reserves the right to request a home visit if probable cause exists to suspect the documents being provided are fraudulent or that the applicant has misrepresented himself or herself for the purpose of receiving the subsidy.

6804.6 If a home visit is requested, the applicant will be informed that:

- (a) The Agency representative visiting the home is a mandated reporter of child abuse or neglect and that any evidence of abuse or neglect will be reported to the child abuse hotline;
- (b) Any substantiated fraud will be reported to the Office of the Inspector General;
- (c) Upon completion of the home visit, the Agency representative will complete a report stating whether the suspicion of fraud is substantiated by a preponderance of the evidence known to the Agency;
- (d) If the suspicion is not so substantiated, the suspicion may not affect the Agency's decision regarding the application;

- (e) If the suspicion is so substantiated, the Agency may deny the application; and
- (f) If the applicant does not submit to a home visit, the Agency may deny the application; and
- (g) The applicant may withdraw their application without repercussion at any time.

§ 6805.6 is amended by striking the phrase “§ 6804.4 or 6804.5” and substituting “§ 6805.4 or 6805.5” in its place.

Amend § 6806.1 as follows:

6806.1 The amount of the subsidy an applicant is eligible to receive shall be no less than five percent (5%) of the regular daily rate of the subsidy for a long-term permanent Level 1 guardianship subsidy pursuant to Title 29 DCMR Chapter 61, less any TANF or Supplemental Security Income (SSI) benefits received for the child.

§ 6806.2 is amended by striking “§ 6807” and substituting “§ 6808” in its place.

§ 6807.3(b) is amended by striking “§ 6807” and substituting “§ 6808” in its place.

§ 6807.3(d) is amended by striking “§ 6807” and substituting “§ 6808” in its place.

§ 6807.5(b) is amended by striking “§ 6806.4” and substituting “§ 6807.4” in its place.

§ 6809.1 is amended by striking “§ 6808.2” and substituting “§ 6809.2” in its place.

Amend § 6808.4 as follows:

6808.4(b) Updated criminal background check every two years from the date of the initial application;

§ 6808.4(c) is renumbered as 6808.4(d) and a new § 6808.4(c) is added as follows:

6808.4(c) Updated child protection register checks; and

Amend § 6899 (Definitions) as follows:

The definition of “Crime against a Child” is amended as follows:

“Crime against a Child” – A criminal offense which is comparable to:

- (a) Kidnapping of a child, except by a parent;
- (b) False imprisonment of a child, except by a parent;
- (c) Criminal sexual conduct toward a child;
- (d) Solicitation of a child to engage in sexual conduct;
- (e) Use of a child in a sexual performance;
- (f) Solicitation of a child to practice prostitution;
- (g) Any conduct that by its nature is a sexual offense against a child; or
- (h) Production or distribution of child pornography.

The following definition of “Minor” is added after the definition of “legal custody”

“Minor” – An individual who is under twenty-one (21) years of age.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within 30 days after the date of publication of this notice in the D.C. Register. Comments should be filed with Lindsay Hoffman, Program Manager, Child and Family Services Agency, 400 6th Street, S.W., Washington, DC 20024. Copies of these proposed rules may be obtained without charge at this address.

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia ("CPO"), pursuant to authority granted by sections 202 and 204 of the District of Columbia Procurement Practices Act of 1985 ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§ 2-302.02 and 2-302.04), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 32 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). This emergency rulemaking amends section 3205 of Chapter 32 concerning advance payments to permit the Department on Disability Services ("DDS") to make payments to newly recruited Medicaid-eligible providers under the District of Columbia Medicaid Home and Community-based Services Waiver ("HCBW") program for certain start-up and operational costs in accordance with paragraph 1.e. of the Order ("Order"), dated September 12, 2007, entered by U.S. District Judge Ellen Segal Huvelle of the U.S. District Court for the District of Columbia in *Evans v. Fenty*, Civil Action No. 76-293 ("*Evans*").

The Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*), created the DDS as a separate, Cabinet-level agency, subordinate to the Mayor, to lead the reform of the District of Columbia's system of care and habilitation services for citizens with mental retardation and developmental disabilities. To better enable the new agency to institute and support operational reform, the legislation required the Mayor to "delegate to the Director all procurement authority, including contracting and contracting oversight," and to exercise that authority "independent of the Office of Contracting and Procurement." In Mayor's Order 2007-68, dated March 20, 2007, the Mayor delegated to the Director of DDS all procurement authority for the agency, which is to be exercised independent of the CPO, but otherwise fully consistent with the PPA.

In its Order of September 12, 2007, among other things, the *Evans* Court required as follows:

Based on demonstrated need, the defendants shall make payment to newly recruited Medicaid-eligible providers under the HCBW program, for start-up and operational costs associated with leases, utilities, and staff training, for a period not to exceed 30 calendar days, or until the facility is licensed and/or certified as a Medicaid-eligible Waiver provider, whichever is sooner. Such start-up incentive assistance shall be limited to not-for-profit organizations with established management and program structures proven to be successful in providing these services. Within 45 calendar days of the effective date of this Order, the defendants shall publish any emergency, proposed, and final rulemaking necessary to implement this incentive assistance program. This assistance will only be in effect for 90 days from commencement thereof and only as needed to facilitate the recruitment of new providers. This pilot program will be evaluated for its

effectiveness and, if determined to be effective, the defendants agree to seek the means to continue the program beyond the 90-day period.

Adoption of these emergency rules is necessary for the immediate preservation of the public health, safety and welfare so that, on or before October 27, 2007 (*i.e.* within forty-five (45) calendar days of the effective date of the Order), the District of Columbia shall have issued rules to implement the referenced incentive assistance program for newly recruited Medicaid-eligible providers under the HCBW. These emergency rules were adopted on October 18, 2007 and shall remain in effect until January 30, 2008 to give effect to the Court's ninety (90) day limitation on the availability of assistance. If the assistance is found to be effective in facilitating the recruitment of new providers, the CPO will issue a Notice of Emergency and Proposed Rulemaking to continue the program.

Chapter 32 (Contract Financing and Funding) of Title 27, DCMR is amended as follows:

Section 3205 is amended by adding a new paragraph 3205.1(i) to read as follows:

- (i) Notwithstanding subparagraphs (a) through (g) above, the contracting officer may authorize advance payments to a responsible, not-for-profit organization, which is a newly recruited Medicaid-eligible provider under the Home and Community-based Services Waiver program ("Waiver"), for start-up and operational costs associated with leases, utilities, and staff training, for a period not to exceed thirty (30) calendar days, or until the facility is licensed and/or certified as a Medicaid-eligible Waiver provider, whichever is sooner. Such start-up incentive assistance shall be limited to not-for-profit organizations with established management and program structures proven to be successful in providing these services. This assistance shall be in effect for the ninety (90) calendar day period from November 1, 2007 through January 30, 2008, and only as needed to facilitate the recruitment of new Medicaid-eligible Waiver providers that do not possess or have access to adequate revenues or lines of credit necessary to finance the start-up and operational costs associated with deposits, the first thirty (30) days of payments for the lease and utilities for the home in which services will be provided, and the salaries for staff for two weeks of training prior to the placement of consumers.

Section 3299 is amended by adding the following definition to read as follows:

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), and as may be further amended and approved by the Council and CMS.

Copies of this emergency rulemaking may be obtained from the Chief Procurement Officer, 441 Fourth Street, N.W., Suite 700 South, Washington, D.C. 20001.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chancellor of the District of Columbia Public Schools, pursuant to section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172), and Mayor's Order 2007-186 (August 10, 2007), hereby gives notice of the adoption of the following emergency rule. This emergency rule will amend Title 5, Section 2701.3(p) of the *District of Columbia Municipal Regulations* to establish a ceiling on the number of seasons a student may participate in any one sport. All other eligibility requirements in section 2701.3(p) remain the same.

This emergency is necessitated by the need to ensure preservation of the public welfare in general and by the change affected in the District of Columbia Public Schools (DCPS) Master Education Plan which moved all ninth (9th) grade students from middle school to high school in the 2007-2008 school year. Even though the eligibility requirement existed prior to the implementation of the DCPS Master Education Plan, on September 28, 2007, the Chancellor signed an emergency order changing from eight (8) semesters to ten (10) semesters as the maximum number of semesters a student from grades nine (9) to twelve (12) would be eligible to play on a school athletic team. That revision went into effect immediately. That change has raised concerns that the ten semester period could be interpreted as allowing a student to play five (5) years in high school and would make District schools not qualified to play schools from other states. To minimize any confusion on the intent and purpose of the change in eligibility, the Chancellor has decided to modify the eligibility provision to allow high school students the option to participate in athletics by providing a maximum number of seasons a student may play a particular sport during grades four (4) through five (5); grades six (6) through eight (8) and grades nine (9) through twelve (12). This action effectively rescinds the earlier emergency revision which extended the eligibility for grades nine (9) through twelve (12) based on the number of semesters a student was in high school. Thus, action was taken on October 4, 2007 to adopt this emergency rule that will be effective on October 4, 2007. This emergency rule will remain in effect for up to one hundred twenty (120) days, unless earlier superseded by a notice of final rulemaking.

The proposed rule will be submitted to the Council for a forty-five (45) day period of review. The Chancellor also hereby gives notice of the intent to adopt this rule, in final, in not less than thirty (30) days from the publication of this notice in the *D.C. Register* or upon approval of the rule by the Council whichever occurs later.

CHAPTER 27 INTERSCHOLASTIC ATHLETICS

Section 2701.3 ELIGIBILITY OF PARTICIPATION is amended as follows:

2701.3 (p) Students enrolled in grades four (4) through five (5) cannot exceed more than two (2) seasons of participation in any one sport; grades six (6) through eight (8) cannot exceed more than three (3) seasons of participation in any one sport; or grades nine (9) through twelve (12) cannot exceed more than four (4) seasons of participation in any one sport.

Comments on this rule should be submitted, in writing, to Michelle Rhee, Chancellor, DCPS, at 825 North Capitol Street, NE, 9th Floor, Washington, DC, 20002, within thirty (30) days of the date of publication of this notice in the D. C. Register. Additional copies of this rule are available from the above address.