

**DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL**

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**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

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The Chief, Metropolitan Police Department, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with § 801(d) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01(d)) (2006 Repl.), hereby gives notice of the adoption of the following rule which amends the regulation governing the authority of the Chief of Police to return Inspectors, Commanders, and Assistant Chiefs of Police to their previous rank/position, as published at 49 DCR 1859, March 1, 2002.

This rule is vital to the Chief of Police's efforts to promote and appoint the highest-quality candidates. Without this emergency rule, the Chief of Police will be hampered in her efforts to fill supervisory vacancies on the force and to assign commanders to crime fighting operations. Therefore, to ensure the preservation of public safety and welfare, action was taken on September 7, 2007, to adopt the following rule on an emergency basis effective on that date. The amended regulation will remain in effect until January 5, 2008, or until publication of a notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Chief, Metropolitan Police Department, also gives notice of her intent to take final rulemaking action to adopt these rules in not less than thirty (30) days.

This emergency amendment will amend Chapter 8, "Career Service," of the District Personnel Manual.

Chapter 8, section 872.5 is amended to read as follows:

872.5 Assistant Chiefs of Police, Commanders, and Inspectors appointed by the Chief of Police pursuant to D.C. Official Code § 1-609.03 are Excepted Service employees. Assistant Chiefs of Police, Commanders, and Inspectors selected by the Chief of Police from the force pursuant to D.C. Official Code §§ 5-105.01 and 1-608.01, are Career Service employees, who serve in such positions at the pleasure of the Chief of Police, and may be returned to their previous rank/position at the discretion of the Chief of Police.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be filed with Terrence D. Ryan, General Counsel, Metropolitan Police Department, Room 4125, 300 Indiana Avenue NW, Washington, D.C. 20001. Copies of these rules may be obtained at the address stated above.

## 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 7, 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 an amendment to Chapter 65, Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Medicaid Reimbursement to Nursing Facilities".

Beginning January 1, 2006 each nursing facility in the District of Columbia is reimbursed on a prospective basis, at a facility specific per diem rate. The facility specific per diem rate is developed by establishing a base year per diem rate for each facility, subject to a ceiling, adjusted semi-annually for case mix and subject to other adjustments. These proposed rules will increase the nursing facility payment rates to ensure that reimbursement for nursing facility services in the District of Columbia keeps pace with increased costs by adjusting payment rates annually for inflation and shortening the time period when the nursing facility base year data is updated from four years to three years. The rate increase will be funded through the Nursing Quality of Care Fund and will not have an impact on the General Fund.

During calendar year 2007 one District nursing facility is closing and a second District facility has applied to close. The first closure will remove 355 nursing facility beds, which is a 12 percent reduction and the second closure will remove 296 beds, which is a 10 percent reduction. Thus in the span on one year the District may experience a 22 percent reduction in the number of nursing facility beds. In order to accommodate the needs of individuals requiring nursing facility services, the Department has identified several placement options, one of which is the placement of individuals in another District facility. District nursing facilities have not had a rate increase since October 1, 2005. Emergency action is necessary for the immediate preservation of the health, safety and welfare of individuals served by District nursing facilities.

The District of Columbia Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect these changes. The Council of the District of Columbia has approved the attendant State Plan amendment. The emergency rulemaking was adopted on September 7, 2007 and will become effective on October 1, 2007, if the corresponding State Plan amendment has been approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) with an effective date of October 1, 2007 or the effective date established by CMS in its approval of the attendant State Plan amendment. If approved, the Department of Health will publish a notice which sets forth the effective date of the rules. The emergency rules will remain in effect for 120 days or until January 5, 2008

unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

**Chapter 65 (Medicaid Reimbursement to Nursing Facilities) of Title 29 DCMR is amended as follows:**

A. Section 6508.1 is amended to read as follows:

- 6508.1 Each nursing facility's per diem rate effective October 1, 2007 shall be the sum of (a), (b), and (c) as set forth below:
- (a) The nursing and resident care base year cost per diem established pursuant to subsection 6505.6, adjusted for inflation to March 30, 2003 using the CMS Prospective Payment Skilled Nursing Facility Input Price Index ("CMS Index") and effective October 1, 2007 and annually thereafter beginning October 1, 2009 adjusted for inflation using the CMS Index, except as provided in §6508.1(d);
  - (b) The routine and support base year cost per diem established pursuant to subsection 6506.3, or subsection 6506.4 if applicable adjusted for inflation to March 30, 2003 using the CMS Index and effective October 1, 2007 and annually thereafter beginning October 1, 2009 adjusted for inflation using the CMS Index, except as provided in §6508.1(d); and
  - (c) The capital related base year cost per diem established pursuant to section 6507 adjusted for inflation to March 30, 2003 using the CMS index and effective October 1, 2007 and annually thereafter beginning October 1, 2009 adjusted for inflation using the CMS Index, except as provided in §6508.1(d). The inflation adjustment in this subsection shall not be applied to depreciation, amortization and interest on capital related expenditures.
  - (d) The nursing and resident care base year cost per diem and the routine and support base year cost per diem shall not be adjusted for inflation the year the costs are rebased as required in section 6517.

B. Section 6517.1 is amended to read as follows:

6517.1 Not later than October 1, 2008 and every three years thereafter, the base year data, medians, day-weighted medians and ceilings shall be updated.

Comments on the proposed rules shall be submitted in writing to Robert Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, DC 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 from the same address.

**DEPARTMENT OF HUMAN SERVICES**

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**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Acting Director of the Department of Human Services, pursuant to the authority set forth in section 31 of the Homeless Services Reform Act of 2005 (Act), effective October 22, 2005, D.C. Law 16-35, D.C. Official Code § 4-756.02 (2006 Supp.), and Mayor's Order 2006-20, dated February 13, 2006, hereby gives notice of the adoption, on an emergency basis, of the following revised version of Chapter 25 of Title 29 of the District of Columbia Municipal Regulations, entitled "Shelter and Supportive Housing for Individuals and Families". The revised chapter sets out the rules governing the provision of services within the homeless services Continuum of Care, including transfer of residents between shelter and supportive housing programs, facility closure, transfers of large number of residents within the Continuum of Care, and a client's right to a fair hearing to appeal any adverse action.

This emergency action is necessary for the immediate preservation of the health, safety and welfare of homeless District residents based on the approach of the severe weather season and the upcoming expedited closing of the D.C. Village Emergency Family Shelter facility. The revised rules are needed to transfer the families currently residing at D.C. Village to apartment-style units in conformance with the Act, prior to the closure of the facility on or about October 1, 2007 and prior to the onset of the severe weather season. This emergency rulemaking was adopted on September 12, 2007 and became effective immediately on that date. The emergency rulemaking will expire on January 10, 2008, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director also gives notice of his intent to seek public comment on the proposed rules during an extended comment period of not less than forty-five (45) days from the date of publication of this notice in the *D.C. Register*. The Director gives further notice of his intent to republish these proposed rules upon completion of the public comment period, and to take final rulemaking action not less than fifteen (15) days following republication, and following the review by the Council of the District of Columbia (Council) required by section 31 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 forty-five (45) day review period, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

Chapter 25 of Title 29 DCMR, Public Welfare, is amended to read as follows:

**CHAPTER 25. SHELTER AND SUPPORTIVE HOUSING FOR INDIVIDUALS  
AND FAMILIES**

**2500 SCOPE**

2500.1 This chapter shall govern the provision of services within the homeless services Continuum of Care.

2500.2 Nothing in these rules shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any services within the Continuum of Care, other than shelter in severe weather conditions as authorized by section 9(5) of the Homeless Services Reform Act of 2005 (Act), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-754.11(5)).

**2501 GENERAL ELIGIBILITY CRITERIA**

2501.1 An applicant, including an individual or family, is eligible to receive services within the Continuum of Care if the applicant:

- (a) Is homeless or at imminent risk of becoming homeless because the applicant:
  - (1) Lacks a fixed, regular residence that provides safe housing, and lacks the financial means to acquire such a residence immediately;
  - (2) Has a primary nighttime residence that is:
    - (A) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations; or
    - (B) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
  - (3) Is likely, because of the applicant's circumstances, to become homeless in the absence of prompt government intervention;

- (b) Is a resident of the District of Columbia as defined by section 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.03);
- (c) Meets any additional eligibility requirements established by the provider from whom services are sought, as long as such eligibility requirements are approved by the Department as part of the program's rules as required by D.C. Official Code § 4-754.32(b);
- (d) Meets any additional eligibility requirements established by any federal program, if the program's receipt of such funds requires compliance with such eligibility requirements; and
- (e) For services within the Continuum of Care other than shelter or supportive housing, meets any additional program eligibility requirements established by rule for receipt of such services.

2501.2 No individual or family may be deemed ineligible for services solely because the individual or family cannot establish proof of homelessness or residency at the time of the individual's or family's application for assistance.

## **2502 INTAKE**

2502.1 Intake for individual adults shall be conducted by the particular provider from whom the individual is seeking services.

2502.2 Intake for families shall be conducted at one or more central intake centers.

2502.3 Intake for families shall consist of application, assessment and referral.

## **2503 APPLICATION**

2503.1 An individual applicant shall apply for services according to the application process of the particular provider from whom the individual is seeking services.

2503.2 A family applying for services shall complete an application. The application shall be in writing on a form prescribed by the Department and shall be signed by the applicant and submitted to a central intake center.

2503.3 The purpose of the family application is to assess each family's general eligibility for shelter or supportive housing, to gather information sufficient to assess each family's needs, including information necessary

to determine preliminary eligibility for programs other than shelter or supportive housing as applicable, and to determine the appropriate referral.

- 2503.4 If a family includes more than one head of household, it is not necessary for both adults to be present at the time of application.
- 2503.5 A family applicant shall be required to provide as part of the application information necessary to assess the family's eligibility and make appropriate referrals to services within the Continuum of Care, including:
- (a) Housing status and history, including prior receipt of shelter or housing services through the Continuum of Care;
  - (b) Income and source of income, including public benefits;
  - (c) Family composition;
  - (d) Employment status and history;
  - (e) Special needs of any family member;
  - (f) Assets; and
  - (g) Any other information necessary to make an appropriate referral.
- 2503.6 Each family applicant shall provide documentation that is reasonably available to the applicant in support of the application.
- 2503.7 The intake center shall determine the family's eligibility and make an appropriate referral, based on the information provided on the application and the documentation available to the applicant at the time of application.
- 2503.8 A family applicant shall be allowed up to seven (7) days to provide necessary documentation not available at the time of application; however, the intake center shall not delay its eligibility determination or referral because of lack of documentation.
- 2503.9 If a family applicant is unable to provide necessary documentation within seven (7) days of the application, the intake center may either extend the time frame for providing the documents based on the particular circumstances or waive the requirement for the documentation, provided the applicant signs an affidavit containing the necessary information, such as residency status, or state of homelessness.

- 2503.10 Once referred to a particular program or provider, the program or provider may require a family applicant to provide documentation as set forth in the provider's approved Program Rules. The applicant shall provide such documentation in order to enter or remain in that program.
- 2503.11 If a provider later receives documentation, which if available at the time of application would have made the individual or family ineligible, the provider may re-evaluate the individual's or family's current eligibility for services.
- 2503.12 If a provider later determines, based on additional documentation or a change in a family applicant's circumstances, that the applicant is no longer eligible for family shelter or supportive housing, but is eligible for individual adult shelter or supportive housing, the provider shall initiate a transfer of the applicant to a more appropriate placement, pursuant to section 2506.
- 2503.13 If a provider later determines that an individual adult, based on reunification with children, change in child care or custody arrangements, pregnancy, or other similar change in applicant's circumstances, is eligible for family shelter or supportive housing, the provider shall initiate a transfer of the applicant to a more appropriate family placement, pursuant to section 2506.
- 2503.14 Any applicant who requires assistance with filling out the application form may request and shall receive such assistance.
- 2503.15 If a request for assistance is made by an applicant with a disability, or by the authorized representative of an applicant with a disability, the provider or the intake center shall assist such applicant or authorized representative with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.
- 2503.16 Pursuant to section 2512, a person with a disability may request a reasonable accommodation at any time during the application process. All requests shall be reduced to writing by the applicant, intake or provider staff, or any person identified by the individual, and submitted in accordance with the provider or intake center policy and procedure.

## **2504 ASSESSMENT AND REFERRAL OF FAMILIES**

- 2504.1 At intake each family shall be assessed based on information provided on the application, documentation available at the time of application, and an assessment interview with an intake case management worker.

2504.2 Subject to the availability of program resources and capacity and based on the assessment, the intake center shall seek to make the appropriate referral that best prevents placement in shelter and best supports a family's ultimate return to or placement in permanent housing.

2504.3 Families determined to be eligible for services shall receive appropriate referrals, based on:

(a) The chronological order in which they apply. For purposes of this subsection, the date and time used for determining "chronological order" shall be the date and time the intake center received the applicant's most recent signed application. The intake center staff shall document receipt of the signed application by date and time stamping or manually recording the date and time the signed application is received by the intake center;

(b) Relevant factors, which may be used to prioritize referrals, including:

(1) Degree of homelessness, prioritized as follows:

(A) The family is homeless and living in a place not intended as a residence, such as outdoors, or in a vehicle, or in a condemned or abandoned building, or the family is living in any situation that is dangerous to the health or safety of any household member;

(B) The family is homeless and living with another household or in another living situation that is tenuous and in which the family's right to remain has been revoked; or

(C) The family is at imminent risk of becoming homeless, such as when the family is at risk of foreclosure or eviction, or is living with another household but the family's right to remain has not yet been revoked;

(2) The family's available resources, needs and any additional circumstances that have a bearing on what is appropriate for the family; and

(3) Housing unit availability, including:

(A) Availability of units;

- (B) Size of available units;
  - (C) Affordability of units; or
  - (D) Expected wait time of a program's specific wait list;
- (c) The family's ability to meet additional eligibility requirements of particular programs and providers; and
- (d) Input from the family in development of appropriate referrals received during intake and assessment.
- 2504.4 If a provider later determines, based on additional documentation or a change in applicant's circumstances, that the referral provided to the applicant is no longer appropriate, the provider may initiate a transfer of the applicant to a more appropriate placement, pursuant to section 2506.

## **2505 WAITING LISTS FOR SHELTER AND SUPPORTIVE HOUSING**

- 2505.1 An individual that is determined to be eligible for services pursuant to section 2501, but cannot immediately be served due to lack of capacity, may be placed on one or more waiting lists for a provider from whom the individual is seeking services, if the provider maintains a waiting list.
- 2505.2 An individual on a provider waiting list shall be served according to the policies and procedures of the provider that maintains the waiting list, except that removal from the waiting list shall only be made in accordance with this section, including the right of a client on a waiting list to appeal such removal.
- 2505.3 Any family that is determined to be eligible for services pursuant to section 2501, but cannot immediately be served due to lack of capacity, shall be placed on one or more waiting lists.
- 2505.4 Families on an intake center waiting list shall be served in the order in which appropriate referrals become available, taking into account relevant factors that may be used to prioritize referrals, pursuant to section 2504.3.
- 2505.5 Families on an intake center waiting list shall contact the intake center with any change of information relevant to the applicant's need, eligibility, or appropriate referral, including name, address, family composition, income, housing status or employment status, until such time as the family receives an appropriate referral.

- 2505.6 Families on an intake center waiting list shall contact the intake center, according to a procedure set forth and approved by the Department, as required to acknowledge continued need for services; however, any such procedure shall allow alternative methods for persons without phones or specific technology and for persons with disabilities.
- 2505.7 Any provider within the Continuum of Care may maintain a waiting list for services and impose reasonable requirements on persons on the waiting list to maintain the currency and accuracy of the list.
- 2505.8 Before the intake center or any provider within the Continuum of Care may remove an applicant from a waiting list for services, the intake center or provider shall first make an effort to contact the applicant at the last known address and phone number provided by the applicant.
- 2505.9 If the intake center or provider is unable to contact the applicant and the applicant has not made the required contact for a period of forty-five (45) days or longer, the intake center shall send a Notice of Removal from the Waiting List to the applicant at the last known address provided by the applicant.
- 2505.10 A Notice of Removal from the Waiting List shall be on a form prescribed by the Department and shall include the following:
- (a) The effective date of removal from the waiting list, which shall be no less than fifteen (15) days from the date the notice is mailed, which shall be the postmarked date;
  - (b) The waiting list or lists from which the applicant is being removed;
  - (c) The reason for removal from the list and the legal basis for the removal;
  - (d) The steps the applicant can take to prevent removal from the waiting list, including contact information, hours to call, and procedures to follow to prevent future removal;
  - (e) A clear and complete statement of the client's right to appeal removal from the waiting list through a fair hearing and administrative review, including the appropriate deadlines for instituting the appeal;
- 2505.11 Prior to the effective date of the removal, the applicant may prevent removal by contacting the program or the intake center and following any reasonable requirements to remain on the waiting list.

- 2505.12 An applicant shall have the right to appeal removal from a waiting list, pursuant to section 2516.
- 2505.13 If an applicant appeals the decision to remove and wins the appeal, the applicant shall remain in or be restored to their pre-removal place on the waiting list.
- 2505.14 If an applicant appeals the decision to remove, but does not win the appeal, the applicant, if otherwise eligible, may ask to be placed on one or more waiting lists.
- 2505.15 Once an applicant receives an appropriate referral, the applicant shall continue to be on all waiting lists on which the applicant wishes to remain and for which the applicant remains eligible.

**2506 TRANSFER OF INDIVIDUALS AND FAMILIES IN SHELTER AND SUPPORTIVE HOUSING**

- 2506.1 A provider may transfer a client to another provider to ensure the client receives the most appropriate services available within the Continuum of Care whenever:
- (a) The client consents to the transfer, including a transfer requested by the client; or
  - (b) The provider identifies and secures for the client a placement with another provider that more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's service plan. For purposes of this subsection, a more appropriate placement may include transfer to a different level of service or type of program based on the circumstances upon which the transfer is based or, if necessary, due to unavailability of other services.
- 2506.2 In addition to the provisions for transfer in 2506.1, a provider may transfer a client when a client fails or refuses to comply with the provider's Program Rules provided, that:
- (a) The client has received proper notice of the approved Program Rules as required by D.C. Official Code § 4-754.33(a) and (b); and
  - (b) The provider has made a good-faith effort to enable the client to comply with the Program Rules so that the client is able to continue receiving services without a transfer.

- 2506.3 Providers may transfer clients through direct arrangements with other providers within the Continuum of Care or through coordination with the central intake center.
- 2506.4 A provider shall give written and oral notice to clients of their transfer to another provider at least fifteen (15) days prior to the effective date of the transfer, except for emergency transfers pursuant to section 2509. The provider shall give the client written notice using a form prescribed by the Department.
- 2506.5 The provider shall not issue a notice of transfer until a placement is secured. For purposes of this subsection, a provider has secured a placement if the program with the new placement has agreed to accept the transferee and confirmed that a bed or unit is available and will be held through the effective date of transfer, subject only to reasonable requirements by the new placement on the transferee.
- 2506.6 Any notice of transfer issued pursuant to this subsection shall be mailed to or served upon the client and shall include:
- (a) A clear statement of the placement to which the client is being transferred and the effective date of the transfer;
  - (b) A clear and detailed statement of the factual basis for the transfer, including the date or dates on which the basis or bases for the transfer occurred;
  - (c) A reference to the statute, regulation, policy, or Program Rule pursuant to which the transfer is being implemented; and
  - (d) A clear and complete statement of the client's right to appeal the transfer through a fair hearing and administrative review, including the appropriate deadlines for instituting the appeal.
- 2506.7 The client shall move to the new placement by the effective date of the transfer. The client may move to the new placement any time before the effective date of the transfer, with approval of and in coordination with the new placement.
- 2506.8 If the new placement requires certain procedures or paperwork in order for the transferred client to access the placement, the new placement shall communicate such requirements to the client, either through the originating placement, the client's case manager, or directly to the client. The client shall comply with the provider's requirements to access the new placement. Failure to comply with the requirements for accessing the new

placement shall not invalidate the transfer or allow the client to remain in the original placement.

- 2506.9 If a client does not consent to the transfer, the client may appeal the transfer pursuant to section 2516, but the client shall move to the new placement while awaiting the outcome of the appeal. The client shall not have the right to remain in the original placement pending the outcome of the appeal.
- 2506.10 If the client appeals the transfer, and the provider's transfer decision is not upheld, the client shall be returned to the original placement unless the program or facility has closed.
- 2506.11 If, following a client's successful appeal, the original placement has no available unit or bed, the client shall receive the first available opening at the original placement, unless a placement elsewhere is available and the client consents to the alternate placement.
- 2506.12 If the original program or facility is closed, the client shall receive the first available placement in a program providing services as comparable to the pre-transfer placement as possible.
- 2506.13 When a provider or the Department closes a shelter program or facility, except for a severe weather shelter at the end of the severe weather season, clients using the program or facility shall be transferred pursuant to subsection 2506.1.
- 2506.14 When a large number of individuals or families are transferred pursuant to subsection 2506.13, or for any other reason that results in a large number of transfers during the same time period, the transfers shall be made based on each client's case management plan, and providers may prioritize transfers and referrals in accordance with the criteria for appropriate referrals set forth in section 2504.3.
- 2506.15 When a provider or the Department closes a severe weather shelter at the end of the severe weather season, the provider shall give clients using the program or facility at least fifteen (15) days notice of the impending closure and information regarding alternative shelters.
- 2506.16 Clients transferred pursuant to this section shall take all their personal belongings to the new placement.

- 2507           SUSPENSION OF INDIVIDUALS AND FAMILIES IN SHELTER AND SUPPORTIVE HOUSING**
- 2507.1       If a client fails or refuses to comply with the provider's Program Rules and the client responsibilities listed in D.C. Official Code § 4-754.13, or engages in any of the behaviors listed in D.C. Official Code § 4-754.36(2), the provider may suspend services to the client for an appropriate period of time in light of the severity of the act or acts leading to the suspension, but in no case for a period longer than thirty (30) days.
- 2507.2       A provider may suspend a client from shelter, supportive housing or supportive services only when:
- (a)       The client has received proper notice of the Program Rules, including client responsibilities, and prohibited behaviors;
  - (b)       The provider has made a good faith effort to enable the client to comply with the Program Rules so that the client is able to continue receiving services without suspension; and
  - (c)       The provider has made a reasonable effort, given the severity of the situation, to transfer the client to another provider within the Continuum of Care.
- 2507.3       A provider may not suspend adult individuals or adult family members in a manner that results in minor children or dependent adults being left unattended in a shelter or supportive housing unit.
- 2507.4       A provider shall give written and oral notice to clients of their suspension from services at least fifteen (15) days prior to the effective date of the suspension, except for a suspension of supportive services for a period shorter than ten (10) days. For suspension of supportive services for a period shorter than ten (10) days, the provider shall, at a minimum, give oral notice and document such notice to the client in the client's file.
- 2507.5       A provider's written notice to a client of his or her suspension shall be on a form prescribed by the Department and shall include:
- (a)       A clear statement of the beginning and end date of the suspension;
  - (b)       A clear and detailed statement of the factual basis for the suspension, including the date or dates on which the basis or bases for the suspension occurred;
  - (c)       A reference to the statute, regulation, policy, or Program Rule pursuant to which the suspension is being implemented;

- (d) A clear and complete statement of the client's rights to appeal the suspension through a fair hearing and administrative review, including deadlines for instituting the appeal; and
- (e) A statement of the client's right to continuation of shelter or supportive housing services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a suspension of such services.

**2508                    TERMINATION OF INDIVIDUALS AND FAMILIES FROM  
SHELTER AND SUPPORTIVE HOUSING**

2508.1                A provider may terminate delivery of services to a client only when:

- (a) The provider documents in the client's file that it has considered suspending the client in accordance with D.C. Official Code § 4-754.35 and the reasons for not doing so, or, has made a reasonable effort, in light of the severity of the act or acts leading to the termination, to transfer the client in accordance with D.C. Official Code § 4-754.34;
- (b) The client:
  - (1) Possesses a weapon on the provider's premises;
  - (2) Possesses or sells illegal drugs on the provider's premises;
  - (3) Assaults or batters any person on the provider's premises;
  - (4) Endangers the client's own safety or the safety of others on the provider's premises;
  - (5) Intentionally or maliciously vandalizes, destroys, or steals the property of any person on the provider's premises;
  - (6) Fails to accept an offer of appropriate permanent housing or supportive housing that better serves the client's needs after having been offered two (2) appropriate permanent or supportive housing opportunities; or
  - (7) Knowingly engages in repeated violations of a provider's Program Rules; and
- (c) In the case of terminations pursuant to subparagraphs (b)(6) and (b)(7) of this subsection, the provider has made reasonable efforts

to help the client overcome obstacles to obtaining permanent housing.

- 2508.2 A provider shall give written and oral notice to clients of their termination from services at least fifteen (15) days prior to the effective date of the termination.
- 2508.3 A provider's written notice to a client of his or her termination shall be on a form prescribed by the Department and shall include:
- (a) A clear statement of the effective date of the termination;
  - (b) A clear and detailed statement of the factual basis for the termination, including the date or dates on which the basis or bases for the termination occurred;
  - (c) A reference to the statute, regulation, policy, or Program Rule pursuant to which the termination is being implemented;
  - (d) A clear and complete statement of the client's rights to appeal the termination through a fair hearing and administrative review, including deadlines for instituting the appeal; and
  - (e) A statement of the client's right to continuation of shelter or supportive housing services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

**2509 EMERGENCY TRANSFER, SUSPENSION, OR TERMINATION OF INDIVIDUALS AND FAMILIES FROM SHELTER AND SUPPORTIVE HOUSING**

- 2509.1 A provider may immediately transfer, suspend, or terminate a client, without providing prior written notice of the action, whenever a client presents an imminent threat to the health or safety of the client or any other person on a provider's premises. For purposes of this subsection, imminent threat means "an act or credible threat of violence on the grounds of a shelter or supportive housing facility."
- 2509.2 The provider shall consider the severity of the act or acts leading to the imminent threat when deciding whether to proceed with an emergency transfer, suspension, or termination of the client; or a non-emergency sanction.

- 2509.3 If necessary to meet the terms of a protective order, the client against whom another party has a protective order may be transferred under the emergency transfer provisions of this section.
- 2509.4 Whenever a provider transfers, suspends, or terminates a client pursuant to the emergency provisions of this section, the provider shall endeavor to provide the client with written notice, on a form prescribed by the Department.
- 2509.5 If it is not possible or safe to provide written notice at the time of the action, a subsequent written notice shall be provided to the client within fifteen (15) days, or, if the client's whereabouts are unknown, upon request within ninety (90) days of the emergency action taken.
- 2509.6 Written notice to the client of an emergency transfer, suspension, or termination shall include:
- (a) A clear statement of the emergency action;
  - (b) A clear and detailed statement of the factual basis for the emergency action, including the date or dates on which the basis or bases for the emergency action occurred;
  - (c) A reference to the statute, regulation, policy, or Program Rule pursuant to which the emergency action is being implemented;
  - (d) A clear and complete statement of the client's rights to appeal the emergency action through a fair hearing and administrative review, including deadlines for instituting the appeal; and
  - (e) A statement that no client transferred, suspended, or terminated because of an imminent threat to health or safety shall have the right to request mediation of the action or to continue to receive shelter or supportive housing services without change pending appeal.
- 2509.7 The provider shall immediately notify the Department of the emergency action by sending a copy of the written Notice of Emergency Transfer, Suspension, or Termination to the designated Department employee. For purposes of this subsection "immediately" shall mean as soon as reasonably possible after the incident. At a minimum, the provider, in its notification to the Department, shall include:
- (a) The identity of the client who was transferred, suspended, or terminated on an emergency basis;

- (b) The nature, date, and time of the emergency action taken by the provider;
  - (c) The provider staff member authorizing the emergency transfer, suspension, or termination; and
  - (d) The act or acts leading to the emergency transfer, suspension, or termination.
- 2509.8 The Department shall issue a written finding of whether the emergency action complies with the statutory requirements of D.C. Official Code § 4-754.38 within twenty-four (24) hours of receiving notification from a provider of an emergency transfer, suspension, or termination.
- 2509.9 In reaching its finding, the Department may make a brief inquiry into the facts and circumstances of the emergency action, including interviews with any party, if additional details or clarifications are needed. The requirement that a decision be made within twenty-four (24) hours of receipt of the Notice of Emergency Transfer, Suspension, or Termination, however, precludes a comprehensive fact finding or inquiry.
- 2509.10 The Department shall issue its written finding on an Emergency Action Compliance Finding form and send it to the provider and to the client or client representative, if requested, by facsimile, electronic mail, or other immediate form of transmission.
- 2509.11 The provider shall deliver or attempt to deliver a copy of the Emergency Action Compliance Finding form to the client as soon as reasonably possible after receipt of the form from the Department. If the client's whereabouts are unknown, the provider shall retain a copy of the Emergency Action Compliance Finding form and deliver it to the client if and when the opportunity arises.
- 2509.12 The provider shall document in the client's file its delivery or its attempt at delivery of the Emergency Action Compliance Finding form to the client.
- 2509.13 If the Department makes a finding that the emergency action complies with D.C. Official Code § 4-754.38, the provider's decision will stand, subject to appeal by the client through the fair hearing process.
- 2509.14 If the Department makes a finding that the emergency action does not comply with D.C. Official Code § 4-754.38, the provider shall immediately reinstate the client's access to services. The provider shall promptly notify the Department that the client was reinstated to services by completing the appropriate section of the Emergency Action Finding

form and sending a copy to the Department as soon as practicable, but no later than twenty-four (24) hours after receipt of the Department's finding.

2509.15 The provider shall make every reasonable effort to contact the client regarding reinstatement to enable the client to have shelter or housing at the earliest possible time.

2509.16 The client shall make every reasonable effort to stay in touch with the provider pending the Department's finding, in order to be available to receive the Department's finding and notification of reinstatement, should the Department find the action is not in compliance.

## **2510 CLIENT PROPERTY**

2510.1 When transferring a client under section 2506, the provider of an original placement, whose program allows a client to store or leave his or her belongings when away from the bed or unit, shall hold any belongings the client does not take to the new placement for a minimum of seven (7) days following the client's departure. After seven (7) days following the client's departure, the provider may dispose of any remaining belongings.

## **2511 REASONABLE ACCOMMODATIONS – PURPOSE AND SCOPE**

2511.1 The provisions of this chapter shall provide procedures for the prompt and equitable resolution of complaints by customers or prospective customers of the Continuum of Care alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 (ADA), approved July 26, 1990 (104 Stat. 327; 42 U.S.C. § 12101 *et seq.*), as required by 28 C.F.R. § 35.107(b).

2511.2 These procedures apply to all services, programs, and activities in the Continuum of Care provided by the Department of Human Services, whether such services, programs, or activities are provided directly by the Department or by the Department through contract or grant.

2511.3 Pursuant to Title II of the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

## **2512 REASONABLE ACCOMMODATION POLICY**

2512.1 If necessary for a qualified person with a disability to have access to covered services, programs, or activities, a public entity is required to provide reasonable accommodation of its policies, practices, or procedures to avoid discrimination unless the responsible entity demonstrates that the

accommodation would fundamentally alter the nature of the services or impose an undue hardship on the operation of the program or activity;

- 2512.2 For purposes of this chapter, a reasonable accommodation is a change, modification, alteration or adaptation in a policy, procedure, practice, program, or facility that provides a person with a disability the opportunity to participate in, or benefit from, a service, program, or activity.
- 2512.3 To receive a reasonable accommodation, an applicant or recipient of services may make a request to the provider of services, according to that provider's reasonable accommodation policy and procedures.

### **2513 FILING A COMPLAINT**

- 2513.1 Any qualified individual with a disability may file a complaint with the Department alleging noncompliance with the provisions of Title II of the ADA or the federal regulations promulgated thereunder.
- 2513.2 If applicable, clients are encouraged to make a reasonable accommodation request to the provider and allow a reasonable time for the provider to respond before filing a complaint under this section.
- 2513.3 A client may file a complaint with the Department's ADA Coordinator at the following address:

ADA Coordinator  
Department of Human Services  
Office of the Director/  
Office of Continuous Quality Improvement (OCQI)  
64 New York Avenue, NE, Room 6150  
Washington, DC 20002  
Telephone: 202-671-4200  
FAX: 202-671-0180  
TTY: 202-741-8778

- 2513.4 A complaint shall be filed as soon as possible but no later than sixty (60) days after the complainant becomes aware of the alleged violation.
- 2513.5 The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant, and shall include:
- (a) The complainant's name and address;
  - (b) The nature of the individual's disability;
  - (c) A description of the alleged noncompliance in sufficient detail to inform the Department of the nature of the allegation, including

dates and place of the alleged violation and names of persons involved, if known;

- (d) If the complaint concerns a reasonable accommodation request that was made to a provider but not resolved to the satisfaction of the client, the complaint shall include information regarding the reasonable accommodation request, including date and nature of request, and response, if any, from the provider;
- (e) The accommodation or remedy desired;
- (f) The name and address of the person's authorized representative, if any; and
- (g) The signature of the complainant or complainant's authorized representative.

2513.6 If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

2513.7 Any person other than the ADA Coordinator who receives a complaint alleging a violation of the ADA shall submit the complaint to the ADA Coordinator within three (3) business days of receipt.

#### **2514 ADA COMPLAINT AND INVESTIGATION PROCEDURES**

2514.1 Upon receipt of a complaint, the ADA Coordinator or his/her designee shall send a notice to the complainant and the entity that is alleged to be in noncompliance within five (5) business days of its receipt. If the complaint is against a subcontractor or subgrantee of a Department contractor or grantee, the ADA Coordinator shall also send a notice to the contractor or grantee within the same time period.

2514.2 The complaint shall be reviewed by the ADA Coordinator to determine the appropriate method of resolution.

2514.3 If the complainant is making a reasonable accommodation request rather than a complaint, but has not yet made the request to the appropriate provider, the ADA Coordinator may refer the complainant's reasonable accommodation request to the provider for resolution, except when the complainant has expressed a reason for not first making the request of the provider and that reason is the basis of the complaint. The ADA Coordinator shall promptly notify both the complainant and the provider of the referral and inform the complainant and the provider that the ADA Coordinator will consider the matter resolved unless the complainant files a new complaint.

- 2514.4 If the complainant has requested a reasonable accommodation, but the complainant is not satisfied with the provider's response, the ADA Coordinator shall ascertain the relevant facts and work with the complainant and the provider in an attempt to reach a solution acceptable to both parties. If the provider is a subcontractor or subgrantee of a Department contractor or grantee, the ADA Coordinator will work through the Department's contractor or grantee, to the extent possible.
- 2514.5 For all other complaints, or if the complainant and the provider are not able to reach a resolution of a reasonable accommodation request, the ADA Coordinator shall review the complaint and refer for investigation those complaints that allege a violation of Title II of the ADA or its implementing regulations.
- 2514.6 The ADA Coordinator shall refer complaints for investigation to the Department's Office of Program Monitoring and Investigation (OPRMI), which shall complete the investigation and issue a report within thirty (30) days of receipt of the referral. The ADA Coordinator shall notify the Administrator of the Family Services Administration of each referral of an ADA Complaint to OPRMI.
- 2514.7 The ADA Coordinator and the Director or his/her designee shall review the OPRMI report and issue a final written decision within fifteen (15) business days of receipt of the report. The final decision shall be sent to the complainant, the complainant's representative, if any, the provider, and the Family Services Administration Administrator. If the provider is a subcontractor or subgrantee of a Department contractor or grantee, the report shall also be sent to the contractor or grantee.
- 2514.8 No public or private entity that delivers services within the homeless services Continuum of Care shall coerce, intimidate, threaten, or interfere with any individual who files or makes a complaint, or requests a reasonable accommodation, or aids or encourages any other person to file or make a complaint, or request a reasonable accommodation, pursuant to sections 2511 through 2515.

**2515 ASSURANCE OF INDIVIDUAL'S RIGHTS**

- 2515.1 The right of an individual to a prompt and equitable resolution of the complaint shall not be impaired by the individual's pursuit of other remedies. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

- 2515.2 This procedure is established to protect the substantive rights of interested individuals, to meet appropriate due process standards, and to assure that the Department complies with Title II of the ADA.
- 2515.3 The ADA Coordinator shall maintain the files and records relating to complaints filed in accordance with this procedure for three (3) years.
- 2515.4 A complainant has the right to representation, at any stage, in the consideration of his/her complaint or reconsideration.

## **2516 FAIR HEARINGS**

- 2516.1 A client receiving services within the Continuum of Care shall have the right to appeal through a fair hearing, any decision by the Department or a provider to:
- (a) Deny eligibility for services to an applicant;
  - (b) Transfer the client to another provider;
  - (c) Suspend the client from shelter or supportive housing;
  - (d) Suspend the provision of supportive services to the client for a period longer than ten (10) days but no longer than thirty (30) days;
  - (e) Terminate services to the client; or
  - (f) Remove the client from a waiting list.
- 2516.2 In order to obtain any legally available and practicable remedy, a client, in addition to the bases for appeal in 2516.1, may appeal any alleged violation of:
- (a) Any applicable provider standards listed in D.C. Official Code § 4-754.21 through § 4-754.25; or
  - (b) The client rights listed in D.C. Official Code § 4-754.11 or § 4-754.12.
- 2516.3 A client shall request a fair hearing, orally or in writing, within ninety (90) days of receiving written notice of the adverse action.
- 2516.4 The Mayor shall treat a fair hearing request made by a client representative in the same manner as it would be treated if it were made directly by the client; provided, that the Mayor subsequently receives

written documentation authorizing the client representative to act on behalf of the client in accordance with the requirements of section 1005 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-210.05).

2516.5 A request for a fair hearing shall be made to the Office of Administrative Hearings, or to the client's provider, the Department, or the Mayor. If the request is made orally, the individual receiving the request shall promptly acknowledge the request, reduce it to writing, and file the request for a fair hearing with the Office of Administrative Hearings.

2516.6 Any client who requests a fair hearing within fifteen (15) days of receipt of written notice of a suspension or termination of shelter or supportive housing, shall continue to receive shelter or supportive housing pending a final decision from the fair hearing proceedings. This right to continuation of shelter or supportive housing pending appeal shall not apply in the case of a transfer pursuant to 2506 or an emergency action pursuant to section 2509.

## **2517 ADMINISTRATIVE REVIEW PURPOSE AND APPLICABILITY**

2517.1 The purpose of an administrative review is to determine, in a timely manner, whether the service provider's or agency's position is legally valid and, if possible, to achieve an informal resolution of the appeal.

2517.2 An administrative review shall be granted to any client or client representative who wishes to appeal a decision or action subject to review under section 2516.1 or 2516.2 and who requests a fair hearing, orally or in writing, within ninety (90) days of receiving written notice of the adverse action or within ninety (90) days of an alleged violation.

## **2518 ADMINISTRATIVE REVIEW PROCEDURES**

2518.1 Upon receipt of a fair hearing request, the Department shall offer the client or client representative an opportunity for an administrative review by the Department of the decision, action, or inaction that is the subject of the fair hearing request.

2518.2 A client may have a representative to assist him or her at the administrative review. The representative may be either an attorney or lay person. The representative shall not be a Department employee.

2518.3 The client or client representative shall have the right to review the provider's or Department's records regarding the client, or the records of other related service providers regarding the client, prior to the administrative review and throughout the fair hearing process.

- 2518.4 The client or client representative shall have the right to submit issues and comments in writing to the Department, prior to or at the time of the administrative review.
- 2518.5 At the administrative review, the client, or client representative, and the provider's or agency's representative may provide oral or written evidence and may bring witnesses to provide oral or written evidence to support their position.
- 2518.6 The administrative review officer may request that additional information or documentation be submitted after the administrative review, if such information or documentation is necessary to support the administrative review decision.
- 2518.7 The client, provider, or agency shall have the right to a continuance of the administrative review for good cause shown.
- 2518.8 If a client or client representative does not obtain a continuance prior to the scheduled administrative review and misses the review, it is within the administrative review officer's discretion to reschedule the review if good cause is provided after the fact.
- 2518.9 If a client or client representative has not requested that the administrative review be rescheduled for good cause, however, and the client fails to appear at the scheduled administrative review, the review shall not be held. The client's failure to appear shall not affect his or her right to the fair hearing he or she has previously requested.
- 2518.10 If the provider or the Department has not obtained a continuance of the administrative review based on good cause, the provider or the Department fails to appear at the scheduled administrative review, and the client appears, the administrative review shall proceed as scheduled.
- 2518.11 If an administrative review is conducted, the administrative review shall be completed before the Office of Administrative Hearings commences a fair hearing.
- 2518.12 The administrative review shall be completed and a decision shall be rendered within fifteen (15) days of receipt of a request for a fair hearing by the Department's Administrative Review Office, unless a continuance is granted. If a continuance has been entered, the administrative review decision shall be rendered no later than five (5) days from the date of the rescheduled review.

2518.13 At any time, a client or client representative may resolve with the provider or the Department the matter that is the subject of the request for a fair hearing. If the matter is resolved after the administrative review has been convened, the client or client representative shall submit written notice to the administrative review officer of the resolution.

2518.14 If the client is satisfied with the administrative review decision, the client's request for a fair hearing shall be considered formally withdrawn upon submission by the client or the client representative of a signed statement to the Office of Administrative Hearings confirming such withdrawal.

## **2519 ADMINISTRATIVE REVIEW NOTICE REQUIREMENTS**

2519.1 Upon receipt of a request for a fair hearing, the Department's Administrative Review Office shall schedule an administrative review. As soon as possible after receipt of the request for a fair hearing, the Department shall mail and, if possible, transmit by facsimile, a notice of the administrative review to the client, the client representative, if there is one, the provider, and the Department's representative if there is a Department action at issue.

2519.2 The notice shall contain the following information:

- (a) The date, time, and place of the review;
- (b) The purpose of the review;
- (c) That the client has the right to have an attorney or lay representative at the administrative review;
- (d) That the client or client representative has the right to submit issues and comments in writing to the Department, prior to or at the time of the administrative review;
- (e) That the client or client representative has the right to review the provider's or Department's records regarding the client, or the records of other related service providers regarding the client at any time during the administrative review process;
- (f) That the review will not be held unless the client appears and that the client's failure to appear will not affect the client's right to the fair hearing previously requested;
- (g) That if an administrative review is conducted, the administrative review will be completed and a decision issued in writing within

fifteen (15) days of the receipt by the Department's Administrative Review Office of the request for a fair hearing, unless good cause is shown;

- (h) That if the client is not satisfied with the result of the administrative review, the fair hearing previously requested will be held; and
- (i) That if the client is satisfied with the result of the administrative review, the client's request for a fair hearing shall be considered formally withdrawn upon the submission of a signed statement by the client or client representative to the Office of Administrative Hearings confirming such withdrawal.

**2520****ADMINISTRATIVE REVIEW OFFICER**

## 2520.1

Each administrative review shall be conducted by an administrative review officer who shall be an employee of the Department but shall not be the person, or a subordinate of the person, who made or approved any decision or action under review.

## 2520.2

The responsibilities of the administrative review officer shall include, but shall not be limited to the following:

- (a) Review the oral and documentary evidence submitted prior to or at the time of the administrative review in order to assess the factual and legal issues that are presented;
- (b) Ascertain the legal validity of the action or decision that is the subject of the fair hearing request and, if possible, achieve an informal resolution of the appeal;
- (c) Issue a written decision within fifteen (15) days of the receipt by the Department's Administrative Review Office of a request for a fair hearing, unless a continuance is granted for good cause, in which case the written decision shall be issued within five (5) days of the rescheduled review. Such decision shall include a clear and detailed description of:
  - (1) The action or decision by the provider or the Department that is being appealed;
  - (2) The factual basis supporting the administrative review decision;

- (3) The actions proposed by the administrative review officer that are intended to resolve the matter being appealed;
  - (4) A reference to the statute, regulation, Program Rule, or policy pursuant to which the administrative review decision is made; and
  - (5) A statement that if the client is not satisfied with the administrative review decision, a fair hearing shall be held.
- (d) Mail and, if possible, send by facsimile a copy of the administrative review decision to the client, the client representative, the provider, the Administrator of the Family Services Administration, and the Department's designee, if any.
  - (e) Mail and send by facsimile to the Office of Administrative Hearings a notice indicating when the administrative review was held and whether the administrative review officer upheld or denied the provider or Department decision, action, or inaction at issue.
  - (f) If a matter has been resolved before a decision has been served on the parties, send a copy of the notice of settlement by mail and, if possible, by facsimile to the client, the client representative, the provider, the Administrator of the Family Services Administration, the Department's designee, if any, and the Office of Administrative Hearings. The administrative review officer shall send this notice as soon as practicable, but no later than fifteen (15) days from the receipt by the Department's Administrative Review Office of a request for a fair hearing, or no later than five (5) days following a rescheduled administrative review.
  - (g) Prepare and file any status reports required by the Office of Administrative Hearings.
  - (h) Review any request for a continuance of the scheduled administrative review. If good cause is shown, issue a written notice of the new date and time of the rescheduled review to the client or client representative, the provider, and the Department, if applicable, prior to the commencement of the continuance.

**2521****ADMINISTRATIVE REVIEW RECORD****2521.1**

The Department shall maintain a record for each administrative review offered or held. Each administrative review record shall include:

- (a) Documentation of the request for a fair hearing;
- (b) Documentation of the notice of the administrative review;
- (c) Evidence considered at the administrative review, if held;
- (d) All status reports issued to the Office of Administrative Hearings;  
and
- (e) All administrative review decisions issued.

## 2599 DEFINITIONS

2599.1 For the purposes of this Chapter, the following terms shall have the meanings ascribed:

**Act** – the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code 4-751.01 *et seq.*).

**Client** – an individual or family seeking, receiving, or eligible for services from a program within the Continuum of Care offered by the District of Columbia under the Act or by a provider receiving funding for the program from either the District of Columbia or the federal government, if such funds are administered, whether by grant, contract, or other means, by the Department of Human Services or its designee.

**Continuum of Care** – a comprehensive system of services for individuals and families who are homeless or at imminent risk of becoming homeless that is designed to serve clients based on their individual level of need. The Continuum of Care may include crisis intervention, outreach and assessment services, shelter, transitional housing, permanent supportive housing, and supportive services.

**Crisis intervention** – assistance to prevent individuals and families from becoming homeless, which may include, but need not be limited to, cash assistance for security deposits, rent or mortgage payments, utility assistance, credit counseling, mediation with landlords, and supportive services.

**Department** – the Department of Human Services.

**District** – the District of Columbia government, its agents, or its designees.

**Family** – either of the following:

- (a) A group of individuals with at least one minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit; or

(b) A pregnant woman in her third trimester.

**Good cause** – includes, but is not limited to, serious illness, an accident, a childcare problem, severe weather conditions, another emergency, or a client’s desire to obtain a representative for the administrative review.

**Homeless** – either of the following:

- (a) Lacking a fixed, regular residence that provides safe housing, and lacking the financial means to acquire such a residence immediately; or
- (b) Having a primary nighttime residence that is:
  - (1) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations; or
  - (2) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

**Hyperthermia shelter** – a public or private building that the District makes available, for the purpose of providing shelter to individuals or families who are homeless and cannot access other shelter, whenever the actual or forecasted temperature or heat index rises above ninety-five (95) degrees Fahrenheit. The term “hyperthermia shelter” does not include overnight shelter.

**Hypothermia shelter** – a public or private building that the District makes available, for the purpose of providing shelter to individuals or families who are homeless and cannot access other shelter, whenever the actual or forecasted temperature, including the wind chill factor, falls below thirty-two (32) degrees Fahrenheit.

**Individual with a disability** – a person with a physical or mental impairment that substantially limits the major life activities of the person.

**Imminent risk of becoming homeless** – the likelihood that an individual's or family's circumstances will cause the individual or family to become homeless in the absence of prompt government intervention.

**Imminent threat to the health or safety** – means an act or credible threat of violence on the grounds of a shelter or supportive housing facility.

**Interagency Council** – the Interagency Council on Homelessness established pursuant to D.C. Official Code § 4-752.01.

**Low barrier shelter** – an overnight housing accommodation for individuals who are homeless, provided directly by, or through contract with or grant from, the District, for

the purpose of providing shelter to individuals without imposition of identification, time limits, or other program requirements.

**Member agency or member agencies** – the District agencies or divisions thereof represented on the Interagency Council pursuant to D.C. Official Code § 4-752.01(b).

**Qualified person with a disability** – shall have the meaning as defined by section 201(2) of the Americans with Disabilities Act of 1990 (ADA), approved July 26, 1990 (104 Stat. 327; 42 U.S.C. § 12131(2)).

**Permanent supportive housing** – supportive housing for an unrestricted period of time for individuals and families who were once homeless and continue to be at imminent risk of becoming homeless, including persons with disabilities as defined in 24 C.F.R. § 582.5, for whom self-sufficient living may be unlikely and whose care can be supported through public funds.

**Program Rules** – the set of provider rules, client rights, and complaint and appeal procedures that have been proposed by a particular provider and approved by the Mayor, for the purpose of governing the behavior and treatment of clients.

**Provider** – an individual or entity within the Continuum of Care that operates a program covered by the Act.

**Severe weather shelter** – a hyperthermia shelter or hypothermia shelter.

**Shelter** – severe weather shelter, low barrier shelter and temporary shelter.

**Supportive services** – services addressing employment, physical health, mental health, alcohol and other substance abuse recovery, child care, transportation, case management, and other health and social service needs which, if unmet, may be barriers to obtaining or maintaining permanent housing.

**Temporary shelter** – each of the following:

- (a) A housing accommodation for individuals who are homeless that is open either twenty-four (24) hours or at least twelve (12) hours each day, other than a severe weather shelter or a low barrier shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services; or
- (b) A twenty-four (24) hour apartment style housing accommodation for individuals or families who are homeless, other than a severe weather shelter, provided directly by, or through contract with or grant from, the District, for the purpose of providing shelter and supportive services.

**Transitional housing** – a twenty-four (24) hour housing accommodation provided directly by, or through contract with or grant from, the District, for individuals and families who:

- (a) Are homeless;
- (b) Require a structured program of supportive services for up to two (2) years or as long as necessary in order to prepare for self-sufficient living in permanent housing; and
- (3) Consent to a case management plan developed collaboratively with the provider.

Persons who wish to comment on these proposed rules may do so in writing no later than forty-five (45) days after the publication of this notice in the *D.C. Register*. Comments should be forwarded to Fred Swan, Administrator, Family Services Administration, 2146 24<sup>th</sup> Place, N.E., Washington, D.C. 20018. Copies of these rules may be obtained by requesting them in writing or in person at above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

**Case No. 07-24**

**(Text Amendment – DCMR Title 11 - Text Amendment to Eliminate the Certificate of  
Occupancy Requirement for CBRFs Housing Six or Less Persons with Disabilities)**

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat. 797, 799; D.C. Official Code § 6-641-01 (2001)), and the authority set forth in D.C. Official Code § 2-505(c) (2001), hereby gives notice of the adoption, on an emergency basis, of an amendment to Title 11 of the District of Columbia Municipal Regulations (“DCMR”) to eliminate the requirement that a certificate of occupancy (“C of O”) be obtained for community based residential facilities (“CBRF”) intended to house six or fewer unrelated persons with disabilities.

The circumstances justifying emergency action are as follows: The United States Department of Justice filed a law suit in the United States District Court for the District of Columbia alleging that the District of Columbia has violated the Fair Housing Act by imposing a precondition to the occupancy of a residential dwelling that only applies to persons with disabilities. On June 29, 2007, the United States filed a motion for declaratory judgment and injunctive relief against the District of Columbia, which seeks to enjoin enforcement of the C of O requirement in the circumstances discussed above and to have the court maintain jurisdiction over this aspect of the Zoning Regulation for five years.

The Office of the Attorney General for the District of Columbia (“OAG”) believes that it would be in the best interest of the District of Columbia to avoid the issuance of such an injunction. At this juncture, the Zoning Commission has the ability to amend its regulations in a narrow fashion to address the illegality alleged. There is no guarantee that a court order would be similarly circumscribed. OAG believes that the adoption of this amendment on an emergency basis might dissuade the judge from issuing an injunction, but that setting down the application for hearing would not suffice.

The emergency rulemaking took effect immediately upon its adoption on September 10, 2007<sup>1</sup> and will expire 120 days thereafter, *i.e.*, on January 8, 2008, or upon the publication of a notice of the final adoption of this rule in the *D.C. Register*, whichever occurs first.

The Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

Title 11 (DCMR) is amended as follows:

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3203.1, is amended to read as follows (new language is shown in bolded text, deleted language is shown in strikethrough):

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<sup>1</sup> A Notice of Public Hearing for this amendment is published elsewhere in this edition of the *D.C. Register*.

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3203.1 Except as provided in §§ 3203.7, 3203.8, 3203.9, **or the second sentence of this subsection**, no person shall use any structure, land, or part of any structure or land for any purpose ~~other than a one-family dwelling~~ until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. **The requirements of this subsection shall not apply to:**

- (a) **A one-family dwelling; or**
- (b) **A community based residential facility to be occupied by six or fewer persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1 (o) and 330.5 (i).**

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the D.C. Register or by the close of the record for the hearing on this matter, whichever is later. A copy of this proposal may be obtained, at cost, by writing to the above address.