

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2001)), and Mayor's Order 87-259, dated November 13, 1987, hereby gives notice of adoption, on an emergency basis, of a revision of Section 3107A (Signs) of Title 12A of the District of Columbia Municipal Regulations (DCMR), the Construction Codes Supplement of 2003.

This emergency rulemaking is necessary to continue in effect a clarification, first adopted on an emergency basis on May 30, 2006, of the applicability of the sign regulations to signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property. The current building code regulations are ambiguous and could create uncertainty concerning the legal requirements for posting these signs, and the adoption of the original emergency rulemaking on May 30, 2006 allowed the public to receive guidance on the manner in which they may use signs on private property to express themselves on non-commercial personal and political matters. The original emergency rulemaking has been renewed consistently since it was first adopted. The most recent version was adopted on December 14, 2006 and will expire on April 13, 2007. Further, an identical notice of proposed rulemaking was published in the *D.C. Register* on December 22, 2006 (53 DCR 10135) and has been submitted to the Council of the District of Columbia (Council) for a 45-day period of review pursuant to section 10 of the Act (D.C. Official Code § 6-1409 (2006 Supp.)). The Council's review period will expire on May 1, 2007, and this emergency rulemaking is therefore needed to maintain the *status quo* while the Council completes its review of the proposed rules. This emergency rulemaking was adopted on March 26, 2007, became effective on that date, and will expire on July 24, 2007, unless superseded by another rulemaking notice.

Section 3107A of Title 12A of the District of Columbia Municipal Regulations (DCMR), the Construction Codes Supplement of 2003, is amended as follows:

Section 3107.1 (General) is amended by adding the following sentence at the end:

“Except as otherwise specifically provided, Section 3107 shall not apply to signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property.”

Section 3107.3 (Permits) is amended by striking the word “exceeding” and inserting the phrase “subject to the provisions of Section 3107 that exceeds” in its place.

Section 3107.3.5.6 (Show cards) is repealed.

Section 3107.4 (Commission of Fine Arts submission) is amended by inserting the phrase “for review of signs subject to the provisions of section 3107” after the word “applications”.

Section 3107.6 (Character of Advertising) is amended by striking the words "of any character" and inserting the phrase "subject to provisions of Section 3107" in its place.

Section 3107.6.2 (Removal of signs) is amended by inserting the phrase "subject to the provisions of Section 3107 that was" after the phrase "Any sign" and inserting the word "and" after the word "maintained".

Section 3107.6.3 (Miscellaneous signs) is repealed.

Section 3107.6.6 (Directional signs) is amended by striking the phrase "under Section 3107.3.5.6 for show cards,".

Section 3107.6.7 (Special permits) is amended by striking the phrase "will aid in the promotion of an activity of an exclusively civic nature or" after the phrase "approval of the permit".

Section 3107.7 (Types of signs) is amended by inserting the phrase "subject to provisions of Section 3107." after the phrase "for all signs".

Section 3107.7.9 (Transported signs and banners) is amended by inserting the phrase ", or to any other signs bearing non-commercial statements of fact, belief, or personal or political opinion." after the word "dispute".

Section 3107.9 (Residential or Special Purpose District limitations) is amended by inserting the phrase "subject to provisions of Section 3107" after the word "signs".

Section 3107.9.1 (General Residential District limitations) is amended by inserting the phrase "except signs bearing non-commercial statements of fact, belief, or personal or political opinion," after the word "Regulations".

Section 3107.9.3 (Location restrictions) is amended by inserting the phrase "subject to the provisions of Section 3107" after the phrase "district signs".

Section 3107.9.5 (Authorized signs) is amended to read as follows:

3107.9.5 Authorized signs. The code official is authorized to issue a permit for signs complying with any of Sections 3107.9.5.1 through 3107.9.5.8.

Section 3107.9.5.1 (Public Information) is repealed.

Section 3107.9.6 (Signs in special purpose districts) is amended by inserting the phrase "subject to the provisions of Section 3107" after the phrase "total area of signs".

Section 3107.10 (Maximum size of signs) is amended by inserting the phrase "subject to the provisions of Section 3107 and" after the word "signs".

Section 3107.10.7 (Exemptions) is amended by inserting the phrase “and signs not subject to the provisions of section 3107” after the phrase “through 3107.3.5.8”.

Section 3107.11 (Structural and materials requirements) is amended by inserting the phrase “subject to the provisions of Section 3107,” after the phrase “All signs”.

Section 3107.13 (Dangerous signs) is amended by inserting the phrase “, including signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property,” after the phrase “When any sign”.

Section 3107.14 (Obstructive signs) is amended by inserting the phrase “, including signs bearing non-commercial statements of fact, belief, or personal or political opinion posted on private property,” after the phrase “No sign”.

Copies of the emergency rules can be obtained from Paul Waters, Legislative Liaison, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, N.E., Washington, D.C. 20002. A copying fee of one dollar (\$1) will be charged for each copy of the emergency rulemaking requested.

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED 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 (2006 Repl.), section 1103(b) of the PPA (D.C. Official Code § 2-311.03(b)), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of the adoption of the following emergency rule and of the intent to adopt the following amendment to Chapter 21 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). This rulemaking is intended to amend Chapter 21 of Title 27 D.C. Municipal Regulations ("DCMR"), which chapter concerns required sources of supplies and services, to establish a sales discount on all sales, purchase orders, delivery orders, task orders, and purchase card transactions made under contracts awarded under the District of Columbia's multiple award schedule procurement program, also known as the D.C. Supply Schedule ("DCSS").

The emergency rule was adopted on March 22, 2007 and will allow the CPO to charge and collect, on a quarterly basis, from contractors awarded contracts in the DCSS, a sales discount in the amount of one percent (1%), on all sales, purchase orders, delivery orders, task orders, and purchase card transactions made under contracts awarded under the DCSS. Adoption of the emergency rule was necessary because, without the rule, the CPO may not charge and collect the sales discount from DCSS contractors, which funds pay the costs of operating the DCSS program. The emergency rule will remain in effect up to one hundred twenty (120) days from date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The CPO also gives notice of the intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The CPO will submit the proposed rule to the Council of the District of Columbia for a sixty (60) day period of review, pursuant to section 205(b) of the PPA (D.C. Official Code § 2-302.05(b)), and will not take final rulemaking action until completion of the 60-day review period or Council approval of the rules by resolution before the end of the review period.

CHAPTER 21

REQUIRED SOURCES OF SUPPLIES AND SERVICES

Chapter 21, Title 27 DCMR, is amended by adding a new section 2106 to read as follows:

2106 SALES DISCOUNT UNDER MULTIPLE AWARD SCHEDULE PROCUREMENT PROGRAM

2106.1 The Chief Procurement Officer may charge and collect, on a quarterly basis, a sales discount in the amount of one percent (1%), on all sales, purchase orders, delivery orders, task orders, and purchase card transactions invoiced under contracts awarded under the District of Columbia's multiple award schedule procurement program, also known as the District of Columbia Supply Schedule.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, and send them to the Chief Procurement Officer, 441 4th Street, Suite 700 South, Washington, D.C. 20001. Comments must be received no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 927 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulation (DCMR), entitled "Attendant Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Attendant Care Services provided by qualified professionals to participants in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

On December 15, 2006, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (53 DCR 9944). Comments were received and substantive changes have been made. These rules amend the December 15th rules by establishing a definition for the term "Medically Stable"; deleting the requirement to limit reimbursement when anyone else in the household is capable of providing attendant care services; clarifying the requirements for consumer directed care; requiring providers to assist a consumer in selecting a new provider if the provider discharges a client; revising the requirements regarding waiver of the 1,040 hours service limitation; and other technical changes. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of attendant care services.

The emergency rulemaking was adopted on March 12, 2007 and will become effective on the date of publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until July 12, 2007, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

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

Section 927 (Attendant Care Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

SECTION 927 ATTENDANT CARE SERVICES

927.1 Attendant care services shall be reimbursed by the Medicaid Program for each consumer enrolled in the Home and Community Based Waiver for

Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

- 927.2 Attendant care services shall consist of hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically handicapped individual. Supportive services are those services which substitute for the absence, loss, diminution, or impairment of physical or cognitive function.
- 927.3 Attendant care services eligible for reimbursement include, but are not limited to the following services:
- (a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, lifting and transferring, feeding and bowel and bladder care;
 - (b) Household services including assistance with meal preparation, shopping, cleaning and laundry which are incidental to the performance of care;
 - (c) Cognitive services including assistance with money management, use of medications, and cueing with adaptive living skills;
 - (d) Mobility services including escort and consumer transportation; and
 - (e) Health-related tasks, including those medical tasks that can be performed by an unlicensed person or delegated to an unlicensed person by a licensed health professional to the extent permitted by State law.
- 927.4 Attendant care services eligible for reimbursement may be provided in the following settings:
- (a) An individual's home;
 - (b) A foster home;
 - (c) A supervised apartment; and
 - (d) A non-institutional place of residence other than as described in (a) through (c) of this section as permitted by District law.
- 927.5 Attendant care services shall be authorized and provided in accordance with each consumer's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP).
- 926.6 Each person providing attendant care services shall be supervised by one of the following:
- (a) A registered nurse subject to the requirements set forth in section 927.7;

- (b) The consumer subject to the requirements set forth in section 927.8; or
 - (c) The consumer's case manager.
- 927.7 The frequency and intensity of supervision by the registered nurse shall be specified in the consumer's written plan of care.
- 927.8 If under consumer directed care, the consumer may supervise his care after training to perform this function and receipt of written certification by a registered nurse who has observed the consumer and the person providing attendant care services during the actual provision of care. Documentation of the certification shall be maintained in the consumer's Individual Plan of Care (IPC).
- 927.9 Each provider of attendant care services shall:
- (a) Be a non-profit, home health agency, social service agency, or other business entity;
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes billing for attendant care services under the Waiver;
 - (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) or the Department on Disability Services (DDS);
 - (d) Ensure that each person providing attendant care services is qualified and properly supervised;
 - (e) Be available twenty-four (24) hours a day, seven (7) days a week;
 - (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
 - (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030.
- 927.10 Each person providing attendant care services for a provider under section 927.9 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the consumer;
 - (c) Be certified in cardiopulmonary resuscitation (CPR) and thereafter obtain CPR certification annually;
 - (d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual purified protein derivative of tuberculin (PPD) Skin Test or documentation from a physician;
 - (e) Have the ability to communicate with the consumer;
 - (f) Be able to read and write the English language;

- (g) Have a high school diploma or general equivalency development (GED) certificate;
- (h) Be able to recognize an emergency and execute emergency procedures;
- (i) Agree to carry out attendant care responsibilities consistent with the consumer's IHP or ISP;
- (j) Complete MRDDA or DDS approved pre-service and in-service training;
- (k) Complete a forty (40) hour training consistent with the training guidelines for Level 1 Home Care workers established by the National Home Caring Council, prior to employment; and
- (l) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code, §§ 44-551 *et seq.*).

927.11 A family member other than a spouse or parent of a minor recipient may provide attendant care services. Each family member providing attendant care services shall meet all the requirements set forth in sections 927.9 and 927.10 of these rules.

927.12 A provider shall notify, in writing, the consumer's case manager and the consumer or consumer's representative no later than seven (7) calendar days prior to a discharge or referral. An oral notice may be substituted in place of the written notice, if the discharge is the result of:

- (a) A medical emergency;
- (b) A physician's order to admit the consumer to an inpatient facility;
- (c) A determination by the provider that the discharge or referral is necessary to protect the health, safety or welfare of agency staff; or
- (d) A determination by the ISP or IHP team indicates that a need for service no longer exists.

927.13 If the consumer seeks to change providers or if a provider is discharging a consumer, the current provider shall assist the consumer in selecting a new provider and cannot abandon the consumer until the transfer has been successfully completed.

927.14 Each provider shall develop contingency staffing plans for each consumer in the event the assigned attendant care aide is unable to provide services.

927.15 The billable unit of service for attendant care services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

- 927.16 The reimbursement rate for attendant care services shall be \$4.08 per billable unit.
- 927.17 Attendant care services shall be limited to 1,040 hours per consumer during a one (1) year period commencing on the date that services are authorized.
- 927.18 The 1,040 hours limitation set forth in section 927.17 may be waived by the Department of Health, Medical Assistance Administration for a consumer with evidence of a long-term physical or cognitive disability that requires individually trained and focused support. Waiver of the 1,040 hours limitation shall be approved by the MRDDA Human Rights Committee, its subsidiary the Restricted Control Review Committee, or a successor entity in DDS. The plan of care shall include the consumer's therapeutic goals and a staffing schedule.

927.99 DEFINITIONS

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

Activities of Daily Living - The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

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

Communicable Disease - Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family - Any person related to the consumer by blood, marriage or adoption.

Individual Habilitation Plan (IHP) - That plan as forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, § 7-1304.03).

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

Medically Stable - Means that the consumer is not currently receiving treatment for a chronic condition.

Plan of Care- A written plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR.

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

Registered Nurse - A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, §§ 3-1202 *et seq.*) or licensed as a registered nurse in the jurisdiction where the services are provided.

Supervised Apartment - A living arrangement for one to three consumers with mental retardation that provides drop-in to twenty-four hour supervision, and is funded through a Human Care Agreement with MRDDA or DDS. The living arrangement site where services are provided is not limited to an apartment, but may include a condominium or townhouse.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, 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.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

DOCKET NO. 07-24-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following emergency rulemaking which amends Chapter 40 of the Vehicles and Traffic Regulations (18 DCMR) to establish a multi-way stop for the intersection of 43rd Street and Military Road, N.W.

Emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), is necessary to temporarily install a multi-way stop at the intersection of 43rd Street and Military road, N.W., while DDOT continue to evaluate the intersection.

This emergency action was taken to provide for the immediate preservation of the public health, safety and welfare. The emergency rulemaking was adopted on March 27, 2007, and became effective immediately upon that date.

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

These emergency rules will expire on July 25, 2007, or upon the publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Title 18 DCMR, Section 4008, STOP SIGNS, Subsection 4008.1, (a) Northwest Section, is amended by deleting the following from the list of locations where the Director has authorized the placement of STOP signs:

“On 43rd Street, N.W., so as to stop at Military Road”;

and by substituting the following:

“On 43rd Street and on Military Road, N.W., so as to stop at both streets”.

All persons interested in commenting on the subject matter in this emergency and proposed rulemaking action may file comments in writing, not later than thirty (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 07-24-TS). Copies of this proposal are available, at cost, by writing to the above address.