
NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 19(a)(3) of the District of Columbia Pharmacist and Pharmacy Regulation Act of 1980, effective September 16, 1980, (D.C. Law 3-98; D.C. Official Code § 47-2885.18.01(a)(3)); the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901.01); Mayor's Order 98-48, dated April 15, 1998, Section 4902 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731); Section 15 of the District of Columbia Drug Manufacture and Distribution Licensure Act of 1990, effective June 13, 1990, (D.C. Law 8-137; D.C. Official Code § 48-714(a)); and Mayor's Order 98-88, dated May 29, 1998; hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 13 of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

These rules were previously published as proposed rulemaking on March 24, 2006, at 53 DCR 2232. Written public comments were received from SureScripts, AllScripts, the American Academy of Physician Assistants, the National Association of Chain Drug Stores, and DrFirst. As a result of the comments received, substantive amendments were made to the following sections: 1300.7, 1300.8, 1301.5, 1301.7, 1302.6, 1302.9, 1303.10, 1303.12, 1304.2, 1304.3, 1304.7, 1304.8, 1304.10, 1310.6, and 1399.1.

The purpose of the amendments is to authorize the issuance of, and implement procedures for the issuance of, prescriptions for legend drugs and medical devices by telephone facsimile and electronic transmission in the District of Columbia.

The following rulemaking action is proposed:

22 DCMR Chapter 13, PRESCRIPTIONS AND DISTRIBUTION, is amended as follows:

Section 1300 is amended to read as follows:

1300 GENERAL PROVISIONS

1300.1 This chapter shall apply to all categories of prescriptions drugs.

1300.2 Unless otherwise prohibited in this chapter or by District or federal law, a pharmacist may accept as valid for dispensing, a written prescription, an oral prescription, a telephone facsimile prescription, or an electronic prescription, issued by a practitioner who holds a valid license issued by the District of Columbia, or other U.S. state, to prescribe drugs or medical devices.

- 1300.3 A prescription shall only be issued by a practitioner who holds a valid license issued by the District of Columbia, or other U.S. state, to prescribe drugs or medical devices. If the prescription is for a controlled substance, the practitioner must also have a valid federal Drug Enforcement Agency (DEA) registration number and if applicable, a valid District of Columbia controlled substance registration or be exempt from registration pursuant to § 302 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D.C. Law 4-29, D.C. Official Code § 48-901.01).
- 1300.4 A prescription issued by an individual practitioner may be communicated to a pharmacist by an employee or agent of the individual practitioner only pursuant to the directions and order of the practitioner, and in conformance with the applicable federal and District of Columbia laws and regulations, and this chapter.
- 1300.5 A prescription shall only be filled by a licensed pharmacist or individual practitioner legally authorized to dispense a prescription.
- 1300.6 Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription they dispense. If the pharmacist questions the accuracy or authenticity of prescription, he or she shall verify the order with the practitioner prior to dispensing.
- 1300.7 Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist shall not dispense a prescription if the pharmacist knows that the prescription was issued without a valid patient-practitioner relationship.
- 1300.8 An internet based or telephone consultation or questionnaire evaluation is not adequate to establish a valid patient-practitioner relationship except as follows:
- (a) In the event of a documented medical emergency;
 - (b) In an on-call or cross-coverage arrangement; or
 - (c) Where patient care is rendered in consultation with another practitioner who has an ongoing relationship with the patient and who has agreed to supervise the patient's treatment, including the use of any prescribed medications.
- 1300.9 Nothing in this chapter shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under other Federal laws or obligations under international treaties, conventions or protocols, or under the law of the State in which he or she desires to do such act nor shall compliance with such parts be construed as compliance with other Federal or State laws unless expressly provided in such other laws.

Section 1301 is amended to read as follows:

1301 WRITTEN PRESCRIPTION ORDERS

- 1301.1 In addition to conforming to all applicable federal and District requirements, a written prescription drug order shall contain the following:
- (a) The printed or typed full name, address, and telephone number of the practitioner;
 - (b) The original, legal signature of the practitioner, in ink;
 - (c) The date of issuance;
 - (d) The full name of the patient;
 - (e) The name, strength and quantity of the drug prescribed, directions for use, and number of refills, when applicable; and
 - (f) Be written in ink, indelible pencil or typewriter.
- 1301.2 In addition to the requirements of § 1301.1, a prescription drug order for a controlled substance shall also include the following:
- (a) The patient's address;
 - (b) The practitioner's Federal Drug Enforcement Administration (DEA) registration number;
 - (c) The practitioner's District of Columbia controlled substances registration number, if applicable;
 - (d) Be signed by the practitioner in the same manner as the practitioner would sign a check or legal document (for example: "J.H. Smith" or "John H. Smith").
- 1301.3 Any person who is exempted from registration under federal or District of Columbia statute shall include on all prescriptions for controlled substances issued by him or her the registration number of the hospital or other institution and the special internal code number assigned to him or her by the hospital or other institution as provided in the Act or this chapter, in lieu of the registration number of the practitioner required by this chapter.
- 1301.4 An official exempted from registration under federal or District of Columbia statute shall include on all prescriptions issued by that individual, his or her branch of service or agency (e.g., "U.S. Army" or "Public Health Service") and the individual's service identification number, in lieu of the registration

number of the practitioner required by this chapter.

- 1301.5 The service identification number for a Public Health Service employee is his or her social security identification number or, if applicable, his or her National Provider Identifier (NPI) number. Each prescription shall have the name of the individual stamped or printed on it, as well as the signature of the individual.
- 1301.6 The dispensing pharmacist shall document the following information on each prescription order that has been dispensed:
- (a) The name or initials of the pharmacist who performed the final verification; and
 - (b) Any change or alteration made to the prescription dispensed based on contact with the practitioner to show a clear audit trail. This shall include but not be limited to, a change in quantity, directions, or number of refills.
- 1301.7 Authorization obtained from the practitioner to substitute a drug, shall be documented on the prescription order, except in the case of an institutional pharmacy which maintains readily retrievable, written, documented policies authorizing such substitution.

Section 1302 is amended to read as follows:

1302 ORAL PRESCRIPTION ORDERS

- 1302.1 A pharmacist shall not dispense an oral prescription drug order for a controlled substance listed in Schedule II except as provided in § 1306.5 of this chapter.
- 1302.2 An oral prescription drug order from a practitioner or a practitioner's designated agent shall:
- (a) Only be received by a pharmacist; and
 - (b) Be immediately reduced to writing.
- 1302.3 In addition to conforming to all applicable federal and District requirements, an oral prescription drug order shall contain the following:
- (a) The full name, address, and telephone number of the practitioner;
 - (b) The date of issuance;
 - (c) The full name and address of the patient;

- (d) The name, strength, and quantity of the drug, directions for use, and number of refills, when applicable; and
 - (e) The name of the practitioner's designated agent authorized to orally communicate the prescription to the pharmacist.
- 1302.4 In addition to the requirements of § 1302.3, a prescription for a controlled substance, when authorized by law for dispensing, shall also include the following:
- (a) The practitioner's federal Drug Enforcement Administration (DEA) registration number; and
 - (b) The practitioner's District of Columbia Controlled Substances registration number, if applicable.
- 1302.5 The dispensing pharmacist shall document the following information on the written record of each prescription order that has been dispensed:
- (a) The name or initials of the pharmacist who performed the final verification; and
 - (b) Any change or alteration made to the prescription dispensed based on contact with the practitioner to show a clear audit trail. This shall include, but not be limited to, a change in quantity, directions, or number of refills.
- 1302.6 Authorization obtained from the practitioner to substitute a drug, shall be documented on the prescription order, except in the case of an institutional pharmacy which maintains readily retrievable, written, documented policies authorizing such substitution.
- 1302.7 For any person who is exempted from registration under federal or District of Columbia statute, the pharmacist shall include on all prescriptions for controlled substances issued by the exempted practitioner the registration number of the hospital or other institution and the special internal code number assigned to him or her by the hospital or other institution as provided in the Act, in lieu of the registration number of the practitioner required by this chapter.
- 1302.8 For an official who is exempted from registration under federal or District of Columbia statute, the pharmacist shall include on all prescriptions issued by that individual, his or her branch of service or agency (e.g., "U.S. Army" or "Public Health Service") and the individual's service identification number, in lieu of the registration number of the practitioner required by this chapter.

1302.9 For any Public Health Service employee that is exempted from registration under federal or District of Columbia statute, the pharmacist shall include the individual's social security identification number or, if applicable, his or her National Provider Identifier (NPI) number, office, title, and business address on the prescription.

Section 1303 is amended to read as follows:

1303 TELEPHONE FACSIMILE PRESCRIPTION ORDERS

1303.1 A practitioner shall not transmit a prescription via telephone facsimile if in doing so it would interfere with a patient's freedom to choose a pharmacy, or without a patient's consent.

1303.2 A pharmacist shall not dispense a telephone facsimile prescription drug order for a controlled substance listed in Schedule II, except as permitted under § 1306 of this chapter.

1303.3 A telephone facsimile prescription shall be transmitted only by a practitioner or a practitioner's designated agent directly from the practitioner's office or a health care facility to the pharmacy with no intervening person having access to the prescription drug order.

1303.4 To maintain the confidentiality of patient records:

(a) The pharmacy and the practitioner shall both have adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and telephone facsimile transmissions; and

(b) The pharmacy shall implement and maintain procedures, system controls and other efforts to ensure compliance with the Health Insurance Portability and Accountability Act ("HIPAA"), federal and District laws regarding the confidentiality and protection of patient information.

1303.5 The pharmacy shall implement and maintain procedures to verify the authenticity of the telephone facsimile transmission and its source of origin which may include:

(a) Maintenance of a practitioner's telephone facsimile number reference;

(b) Verification of the telephone number of the originating telephone facsimile equipment; and

- (c) Telephone verification with the practitioner's office that the prescription as transmitted via telephone facsimile contains the same exact information it contained when originated by the practitioner and contains no alterations by any intervening parties.

1303.6

In addition to conforming to all applicable federal and District requirements, a telephone facsimile prescription drug order shall contain the following at the time it is transmitted:

- (a) A prescription bearing the following information:
 - (1) The printed or typed full name, address, telephone number and facsimile number of the practitioner;
 - (2) The signature of the practitioner;
 - (3) The date of issuance;
 - (4) The full name and address of the patient;
 - (5) The name and dosage of the drug, directions for use, quantity dispensed, and number of refills, when applicable; and
 - (6) A statement which indicates that the prescription was transmitted via telephone facsimile;
- (b) Along with the prescription, the following information shall be transmitted:
 - (1) The name, address, and facsimile number of the pharmacy to which the prescription was transmitted;
 - (2) The date the prescription was transmitted via facsimile to the pharmacy, if the date is different from the date of issuance of the prescription;
 - (3) If transmitted by a designated agent, the full name of the designated agent; and
 - (4) A clearly legible statement that:
 - (A) The telephone facsimile transmission is intended only for the recipient to which it was addressed and contains information that is confidential;
 - (B) The recipient is prohibited from distribution or dissemination of the information contained in the transmission unless permitted by federal or District law; and

- (C) If the recipient is not the intended recipient or the authorized agent of the intended recipient, the recipient should immediately notify the sender by telephone and return the original message to the sender.
- 1303.7 In addition to the requirements of § 1303.6, a prescription for a controlled substance, when authorized by law for dispensing, shall also include the following:
- (a) The practitioner's federal Drug Enforcement Administration (DEA) registration number;
 - (b) The practitioner's District of Columbia Controlled Substances registration number, if applicable;
 - (c) Be signed by the practitioner in the same manner as the practitioner would sign a check or legal document (for example: "J.H. Smith" or "John H. Smith"); and
 - (d) Any other requirements under District or federal law.
- 1303.8 Any person who is exempted from registration under federal or District of Columbia statute shall include on all prescriptions for controlled substances issued by him or her the registration number of the hospital or other institution and the special internal code number assigned to him or her by the hospital or other institution as provided in the Act or this chapter, in lieu of the registration number of the practitioner required by this chapter.
- 1303.9 An official exempted from registration under federal or District of Columbia statute shall include on all prescriptions issued by that individual, his or her branch of service or agency (e.g., "U.S. Army" or "Public Health Service") and the individual's service identification number, in lieu of the registration number of the practitioner required by this chapter.
- 1303.10 The service identification number for a Public Health Service employee is his or her social security identification number or, if applicable, his or her National Provider Identifier (NPI) number. Each prescription shall have the name of the officer stamped or printed on it, as well as the signature of the officer.
- 1303.11 The dispensing pharmacist shall document the following information on each facsimile prescription order that has been dispensed:
- (a) The name or initials of the pharmacist who performed the final verification; and
 - (b) Any change or alteration made to the prescription dispensed based on contact with the practitioner to show a clear audit trail. This shall include, but not be

limited to, a change in quantity, directions, or number of refills.

- 1303.12 Authorization obtained from the practitioner to substitute a drug, shall be documented on the prescription order, except in the case of an institutional pharmacy which maintains readily retrievable, written, documented policies authorizing such substitution.

Section 1304 is amended to read as follows:

1304 ELECTRONIC PRESCRIPTION ORDERS

- 1304.1 A practitioner shall not electronically transmit a prescription if in doing so it would interfere with a patient's freedom to choose a pharmacy, or without a patient's consent.
- 1304.2 A pharmacist shall not dispense an electronic prescription for a controlled substance listed in any schedule, unless otherwise authorized or permitted by federal law or regulations.
- 1304.3 An electronic prescription may be transmitted only by a practitioner or a practitioner's designated agent:
- (a) Directly to a pharmacy through a secure computer to computer transmission;
 - (b) Directly to a pharmacy through a secure computer to facsimile transmission; or
 - (c) Processed by a commercial intermediary that is duly authorized to operate in the District of Columbia, if applicable, and which ensures the confidentiality and security of the transmission process.
- 1304.4 The original electronic transmission shall be readily retrievable through the pharmacy computer system and shall be immediately reduced to hardcopy and filed in accordance with District of Columbia regulations.
- 1304.5 To maintain the confidentiality of patient records:
- (a) The pharmacy computer system and the practitioner shall both have adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and electronic transmissions; and
 - (b) The Director of Pharmacy or Pharmacist in Charge shall implement and maintain procedures, system controls, and other efforts to ensure compliance with HIPAA, federal and District laws concerning the confidentiality and protection of patient information.

- 1304.6 The Director of Pharmacy or Pharmacist in Charge shall create and maintain an ongoing security program and procedures which are capable of identifying misuse or unauthorized use of electronic signatures;
- 1304.7 The Director of Pharmacy or Pharmacist in Charge shall implement and maintain procedures, computer system controls, and other efforts, including contractual arrangements with commercial intermediaries, to:
- (a) Verify the authenticity of the electronic transmission and its source of origin;
 - (b) Ensure that the electronic transmission contains the same exact information it contained when originated by the practitioner;
 - (c) Ensure that the electronic transmission contains no alterations by any intervening parties;
 - (d) Prevent unauthorized access and changes to electronically transmitted prescriptions; and
 - (e) Other efforts which, in the professional judgment of the pharmacist, may be necessary to ensure the validity of the transmission.
- 1304.8 In addition to conforming to all applicable federal and District requirements, an electronic prescription order shall conform to federally recognized national transmission standards and contain the following information at the time it is transmitted:
- (a) A prescription bearing the following information:
 - (1) The full name, address, and telephone number of the practitioner;
 - (2) The electronic signature of the practitioner;
 - (3) The date of issuance;
 - (4) The full name and address of the patient; and
 - (5) The name and dosage of the drug, directions for use, quantity dispensed, and number of refills, when applicable.
 - (b) Along with the prescription, the following information shall be transmitted:
 - (1) The National Council on Prescription Drug Programs (NCPDP) pharmacy number of the pharmacy to which the prescription was transmitted;

- (2) The date the prescription was transmitted to the pharmacy, if the date is different from the date of issuance of the prescription; and
- (3) If transmitted by the prescriber's designated agent, the full name of the designated agent.

1304.9 The dispensing pharmacist shall document the following information on each electronic prescription order that has been dispensed:

- (a) The name or initials of the pharmacist who performed the final verification; and
- (b) Any change or alteration made to the prescription dispensed based on contact with the practitioner to show a clear audit trail. This shall include, but not be limited to, a change in quantity, directions, or number of refills.

1304.10 Authorization obtained from the practitioner to substitute a drug, shall be documented on the prescription order, except in the case of an institutional pharmacy which maintains readily retrievable, written, documented policies authorizing such substitution.

1304.11 Electronic transmission technology shall not be used to circumvent or violate any provision of District or federal laws or regulations.

Section 1305 is amended to read as follows:

1305 ISSUANCE OF CONTROLLED SUBSTANCE PRESCRIPTIONS

- 1305.1 The prescribing practitioner and the pharmacist shall be jointly responsible for compliance with this chapter in prescribing and dispensing a controlled substance.
- 1305.2 A prescription for a controlled substance shall be issued or dispensed only for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.
- 1305.3 A prescription for a controlled substance shall be issued for treatment of individual patients. A prescription for a controlled substance shall not be issued to an individual practitioner for general dispensing purposes.
- 1305.4 A prescription for a controlled substance listed in any schedule shall be used for the purpose of continuing the patient's dependency only when its issuance is pursuant to authorized clinical treatment in a narcotic treatment rehabilitation program.
- 1305.5 Any person issuing a prescription and any person knowingly filling a prescription which is not in conformity with this chapter shall be subject to the penalties provided for violations of the Act and this chapter.

- 1305.6 An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Act, and a person knowingly filling such a prescription, and the person issuing it, shall both be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Section 1306 is amended to read as follows:

1306 PRESCRIPTIONS FOR CONTROLLED SUBSTANCES LISTED IN SCHEDULE II

- 1306.1 Except as otherwise authorized in this section, a controlled substance listed in Schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, shall only be dispensed pursuant to a valid written prescription signed by the prescribing practitioner, unless otherwise authorized by federal law.
- 1306.2 A prescription for a controlled substance listed in Schedule II shall not be filled if submitted more than thirty (30) days after the date on which the prescription was issued.
- 1306.3 A prescription for a controlled substance listed in Schedule II shall not be refilled and shall be cancelled out by a line drawn through the entire prescription order, with the date dispensed and initials of the person that dispensed the drug.
- 1306.4 A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via telephone facsimile equipment, provided that the original written, signed prescription is presented to the pharmacist for review prior to issuance of the controlled substance to the patient or the patient's representative. The original prescription shall be maintained in accordance with the requirements of this chapter and as required under federal and District law.
- 1306.5 In emergency situations, as defined under § 1306.6 of this chapter, a pharmacist may dispense Schedule II drugs upon the oral prescription of a practitioner. The pharmacist shall comply with the following requirements as set forth in 21 CFR § 1306.11(d) and failure to do so may result in suspension or revocation of a pharmacy registration:
- (a) The quantity prescribed and dispensed is limited to no more than a seven (7) day supply to treat the patient during the emergency period (dispensing beyond the emergency period shall be pursuant to a written prescription signed by the prescribing individual practitioner);
 - (b) The prescription shall be immediately reduced to writing by the

DISTRICT OF COLUMBIA REGISTER

pharmacist and shall contain all information required by District and federal law;

- (c) If the prescribing practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the oral authorization came from a registered practitioner, which may include a call back to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory or other good faith efforts to insure the practitioner's identity; and
- (d) Within seven (7) days after authorizing an emergency oral prescription, the practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 1301 of this chapter, the prescription shall:
 - (1) Have written on its face "Authorization for Emergency Dispensing," and the date of the oral order; and
 - (2) The written prescription shall be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the seven (7) day period. Upon receipt, the dispensing pharmacist shall attach the written prescription to the oral emergency prescription which was previously reduced to writing. The pharmacist shall notify, in writing, the Director if the prescribing individual practitioner fails to deliver a written prescription to him or her. Failure of the pharmacist to notify the Director shall void the authority conferred by this section to dispense without a written prescription of a prescribing practitioner.

1306.6

As used in this section "emergency situation" means those situations in which the prescribing practitioner determines the following:

- (a) That immediate administration of the controlled substance is necessary, for proper treatment of the intended ultimate user;
- (b) That no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under Schedule II; and
- (c) That it is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance, prior to the dispensing.

1306.7

A prescription for a Schedule II controlled substance to be compounded for direct administration to a patient by parenteral, intravenous, intramuscular,

subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the institutional or home health care pharmacy by telephone facsimile. The telephone facsimile shall serve as the original written prescription and shall be maintained in accordance with the requirements of this Title and federal and District law.

- 1306.8 A prescription for a Schedule II controlled substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by telephone facsimile. The telephone facsimile shall serve as the original written prescription and shall be maintained in accordance with the requirements of this Title and federal and District law.
- 1306.9 A prescription for a Schedule II controlled substance for a patient enrolled in a hospice care program certified or paid for by Medicare under Title XVIII or a hospice program which is licensed by the District may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by telephone facsimile. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient. The telephone facsimile shall serve as the original written prescription and shall be maintained in accordance with the requirement of this Title and federal and District law.
- 1306.10 An individual practitioner may administer or dispense directly to a patient a Schedule II controlled substance in the course of his or her professional practice without a prescription, subject to the conditions set forth in 21 CFR § 1306.07.
- 1306.11 An institutional practitioner may administer or dispense directly, (but not prescribe) a controlled substance listed in Schedule II only pursuant to:
- (a) A valid written prescription signed by the prescribing individual practitioner;
or
 - (b) An order for medication made by an individual practitioner which is dispensed for immediate administration to the patient, subject to §21 CFR 1306.07.

Section 1307.3 is amended to read as follows:

- 1307.3 A Prescription for Schedule II controlled substance for a patient in a Long Term Care Facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units and in accordance with federal law. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. The pharmacist shall also observe the following:
- (a) Both the pharmacist and the prescribing practitioner have a corresponding

responsibility to assure that the controlled substance is for a terminally ill patient;

- (b) The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient";
- (c) A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the federal and District law;
- (d) For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist;
- (e) The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed; and
- (f) Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed sixty (60) days from the issue date unless sooner terminated by the discontinuance of medication.

Section 1309 is amended to read as follows:

1309 PRESCRIPTIONS FOR CONTROLLED SUBSTANCES LISTED IN SCHEDULES III, IV AND V

1309.1 Unless otherwise permitted under federal law, a pharmacist shall dispense directly a controlled substance listed in Schedule III, IV or V, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act only pursuant to:

- (a) A valid written prescription signed by the prescribing practitioner;
- (b) A telephone facsimile of a written prescription, signed by the prescribing practitioner, transmitted by the practitioner or the practitioner's designated agent to the pharmacy; or
- (c) An oral prescription of a practitioner immediately reduced to writing by the pharmacist containing all information required under § 1302 of this chapter.

1309.2 An individual practitioner may administer or dispense directly to a patient a Schedule III, IV or V controlled substance in the course of his or her professional practice without a prescription, subject to the conditions set forth in 21 CFR § 1306.07.

- 1309.3 An institutional practitioner may administer or dispense directly, but not prescribe, a controlled substance listed in Schedule III, IV, or V only pursuant to:
- (a) A valid written prescription signed by an individual practitioner;
 - (b) A telephone facsimile of a written prescription or order for medication transmitted by the individual practitioner or the practitioner's designated agent to the institutional practitioner or pharmacist;
 - (c) An oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required under § 1302 of this chapter; or
 - (d) An order for medication made by an individual practitioner which is dispensed for immediate administration to the patient, subject to § 21 CFR 1306.07.

Section 1310.3 is amended to read as follows:

- 1310.3 Each refilling of a prescription shall be entered on the back of the prescription, or on another appropriate, uniformly maintained, readily retrievable record such as a patient profile. The following information must be retrievable by the prescription number:
- (a) The name of the controlled substance, or the name and manufacturer of the drug if it is a substitute or generic drug for the drug actually prescribed or filled initially;
 - (b) The strength and dosage form of the controlled substance;
 - (c) The date of each refilling and the quantity dispensed;
 - (d) The identity or initials of the dispensing pharmacist for each refill; and
 - (e) The total number of refills for that prescription.

Section 1310.6 is amended to read as follows:

- 1310.6 The prescribing practitioner may authorize additional refills of a Schedule III, IV or V prescription controlled substance on the original prescription or through an oral refill authorization transmitted to the pharmacist provided that the following conditions are met:
- (a) The total quantity authorized, including the amount of the original prescription, does not exceed five (5) refills or extend beyond six (6) months from the date of issue of the original prescription;

- (b) The pharmacist obtaining the oral authorization shall record the date, quantity of refill, and number of additional refills authorized, on the reverse of the original prescription and initial the prescription documenting that he or she received the authorization from the prescribing practitioner who issued the original prescription; and
- (c) The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

Section 1310.7 is amended to read as follows:

- 1310.7 Additional quantities of prescription controlled substances listed in Schedule III, IV or V, beyond the five (5) refill, six (6) month limitation, shall only be authorized by a prescribing practitioner through the issuance of a new and separate prescription.

A new section 1310.8 is added to read as follows:

- 1310.8 As an alternative to the procedures provided under § 1310.3 of this chapter, an automated data processing system may be used for the storage and retrieval of refill information for prescription drug orders for controlled substances in Schedule III, IV, or V, subject to the conditions outlined under 21 CFR § 1306.22(b).

Section 1315.2 is amended to read as follows:

- 1315.2 The prescription shall contain all requirements specified for prescriptions of Schedules II, III, IV, or V respectively, as listed within this chapter and shall be packaged and mailed in conformance with the applicable federal laws and regulations of the U.S. Department of Justice, Drug Enforcement Administration 21 CFR §§1300 *et seq.*, and the U.S. Postal Service 18 U.S.C. §1716.

Section 1316 is amended to read as follows:

1316 TRANSFER BETWEEN PHARMACIES OF PRESCRIPTION INFORMATION FOR REFILL PURPOSES

- 1316.1 The transfer of original prescription information for a controlled substance listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible, subject to the requirements of § 1316.3 of this chapter, between pharmacies on a one-time basis only. However, pharmacies utilizing a linked pharmacy system may transfer up to the maximum number of refills permitted by law.

- 1316.2 The transfer of original prescription information for a non-controlled substance for the purpose of refill dispensing is permissible subject to the requirements of §1316.3 of this chapter.
- 1316.3 Any authorized transfer of original prescription information between non-linked pharmacy systems for the purpose of refill dispensing shall be subject to the following requirements:
- (a) The transfer shall be communicated directly between two licensed Pharmacists;
 - (b) The transferring pharmacist shall record on the invalidated prescription, in hardcopy or electronically, the following information:
 - (1) The words "VOID" and "TRANSFER";
 - (2) The name, address, and telephone number of the pharmacy to which it was transferred;
 - (3) The name of the pharmacist receiving the prescription information;
 - (4) For controlled substances, the DEA registration number of the prescriber and of the pharmacy to which the prescription is being transferred and the District of Columbia Controlled Substances registration number, if applicable, of the prescriber and of the pharmacy to which the prescription is being transferred; and
 - (5) The date of the transfer and the name of the pharmacist transferring the information;
 - (c) The pharmacist receiving the transferred prescription information shall reduce to writing the following information:
 - (1) Write the word "TRANSFER" on the face of the transferred prescription;
 - (2) All information required to be on a prescription pursuant to 21 CFR§1306.05 and this chapter;
 - (3) Date of issuance of original prescription;
 - (4) Original number of refills authorized on original prescription;
 - (5) Date of original dispensing;
 - (6) Number of valid refills remaining ;

- (7) The transferring pharmacy's name, address, and telephone number;
 - (8) Name of pharmacist who transferred the prescription; and
 - (9) For controlled substances, the DEA registration number of the prescriber and the pharmacy from which the prescription was transferred, and the District of Columbia Controlled Substances registration number, if applicable, of the prescriber and of the pharmacy from which the prescription information was transferred;
- 1316.4 Direct pharmacist to pharmacist communication is not required between pharmacies utilizing a linked pharmacy system to transfer prescription drug orders or information for dispensing purposes. However, the common electronic file shall contain a complete record of each prescription drug order and refill dispensed, and a hard copy record of each prescription drug order accessed for purposes of refilling shall be generated and maintained at the pharmacy refilling the prescription drug order.
- 1316.5 The original and transferred prescription(s) shall be maintained for a period of two (2) years from the date of initial filling in accordance with District of Columbia regulations.
- 1316.6 Pharmacies electronically accessing the same prescription record shall satisfy all information requirements as required of a manual prescription transferral.
- 1316.7 A pharmacist at the transferring pharmacy may not refill a prescription that has been transferred to another pharmacy.
- 1316.8 The use of unified prescription records by more than one pharmacy through a computerized prescription database does not constitute a permanent transfer of a prescription order.

A new section 1317 is added to read as follows:

1317 ADMINISTERING OR DISPENSING OF CONTROLLED SUBSTANCES

1317.1 The administering or dispensing directly (but not prescribing) of controlled substances listed in any schedule to a controlled substance dependent person for the purpose of detoxification or for continuing his or her dependence upon these drugs in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program shall be permissible; provided, that the following conditions are met:

- (a) Approval is obtained before the initiation of this program by submission of a "Notice of Claimed Investigation Exemption for a New Drug" to the Food

and Drug Administration [which will be reviewed concurrently by FDA for scientific merit and by the Pharmaceutical Control Division, for drug control requirements]; and

- (b) That the clinical investigation thereafter accords with this approval, as required by the Federal Act and Federal regulations.

- 1317.2 Any practitioner who violates any of the provisions of the federal law or regulations shall be in violation of this chapter.
- 1317.3 Nothing in this chapter shall prohibit a physician who is not specifically registered to conduct a narcotic treatment program from administering (but not prescribing) controlled substances to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one (1) day's medication may be administered to the person or issued for the person's use at one time. The emergency treatment may be carried out for not more than three (3) days and may not be renewed or extended.
- 1317.4 The rules of this chapter are not intended to impose any limitations on a physician or authorized hospital staff to administer or dispense controlled substances in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or to administer or dispense controlled substances to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

Section 1323.2 is amended to read as follows:

- 1323.2 A registrant desiring to discontinue business activities with respect to controlled substances (by transferring those business activities to another person), shall submit in person or by registered or certified mail, return receipt requested, to the Department of Health, Health Care Regulation and Licensing Administration, Pharmaceutical Control Division, at least fourteen (14) days before the date of the proposed transfer (unless the Director waives this time limitation in individual instances), the following information:
- (a) The name, address, registration number, and authorized business activity, of the registrant discontinuing the business (registrant-transferor);
- (b) The name, address, registration number, and authorized business activity of the person acquiring the business (registrant-transferee);
- (c) Whether the business activities will be continued at the location registered by the person discontinuing the business, or moved to another location (if the latter, the address of the new location should be listed); and

(d) The date on which the transfer of controlled substances will occur.

The section heading for 1330 is amended to read as follows:

1330 GENERICALLY EQUIVALENT PRESCRIPTION DRUGS

The section heading for 1332 is amended to read as follows:

1332 DRUG MANUFACTURERS AND DISTRIBUTORS FEES

Section 1399.1 is amended to read as follows:

1399.1 As used in this chapter, the following words and phrases shall have the meanings ascribed:

Act--District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code §48-901.01).

Administer--the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other means.

Adulterated drug or medical device--as defined in § 501 of the Federal Food, Drug and Cosmetic Act, (Pub. L. 96-354, 21 USC §351) as amended.

Automated data processing system--a system utilizing computer software and hardware for the purpose of recordkeeping.

Community/Retail pharmacy--a pharmacy that provides services to the public or general community on an outpatient bases, whether at retail, through third party payment, or other measure of no or minimum cost to the consumer.

Compounding--the preparation or mixing, of a drug or device as the result of a practitioner's prescription drug order or for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

Computer generated facsimile--a computer to facsimile transmission sent by a computer that has a facsimile modem through which documents can be sent.

Controlled premises-- (1) places where original or other records or documents required under the Act are kept or requested to be kept, and (2) places or establishments, where persons registered under the Act or exempted from registration under the Act may lawfully hold, manufacture, distribute, dispense, conduct research with, or otherwise dispose of controlled substances.

Controlled substances--those drug items or chemicals regulated under the Federal Controlled Substances Act of 1970, (Pub.L. 91-513, 21 USC§801 et seq.) as amended; and the District of Columbia Uniform Controlled Substances Act of 1981, (D.C. Law 4-29, D.C. Official Code§48-901 et seq.) as amended.

Department--The District of Columbia Department of Health.

Director--The Director of the District of Columbia Department of Health.

Dispense--the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or medical device to a patient or patient's agent.

Distribute--the actual, constructive, or attempted transfer from one person to another, other than by administering or dispensing, of a drug or medical device whether or not there is an agency relationship.

Drug--

- (a) Any substance recognized as a drug, medicine, or medicinal chemical in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, or official Veterinary Medicine Compendium or other official drug compendium or any supplement to any of them;
- (b) Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal;
- (c) Any chemical substance (other than food) intended to affect the structure or any function of the body of man or other animal; and
- (d) Any substance intended for use as a component of any items specified in subparagraph (a), (b), or (c) of this paragraph, but not including medical devices or their components, parts, or accessories.

Electronic--relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Electronic prescription--a prescription drug order which is transmitted by an electronic device to the receiver (pharmacy), or which is transmitted computer to computer between a practitioner's office and a pharmacy, and which contains an electronic signature. An electronic prescription includes computer generated facsimile prescription drug orders but does not include telephone facsimile prescription drug orders.

Electronic record-- a record created, generated, sent, communicated, received, or stored by electronic means.

Electronic signature-- a confidential, unique, personalized electronic security code, key, number or other identifier attached to or logically associated with a record that is used for secure electronic data transmissions which identifies and authenticates the signatory and is executed or adopted by the signatory with the intent to sign the record.

Generically equivalent drugs-- drugs that are:

- (a) Pharmaceutical equivalents in that they contain identical amounts of the same active drug ingredients in the same dosage form and meet compendial or other applicable standards of identity strength, quality, and purity;
- (b) Bioequivalents in that they do not present a known or potential bioequivalence problem or if they do present such a known or potential problem they are shown to meet an appropriate bioequivalence standard; and
- (c) Adequately labeled and are manufacture under conditions which, at a minimum, comply with FDA Current Good Manufacturing Practice Regulations.

HIPAA-- The Federal Health Insurance Portability and Accountability Act of 1996.

Individual Practitioner-- an individual who is licensed or registered in the District of Columbia to prescribe a prescription drug or medical device in the course of his or her professional practice, including a physician, dentist, veterinarian, podiatrist, optometrist, or advanced practice nurse. It does not include a pharmacist, pharmacy, or an institutional practitioner.

Institutional practitioner-- an intern, resident physician, fellow, or person in an equivalent professional position who:

- (a) Is not yet licensed under District of Columbia law to administer, dispense, or prescribe controlled substances;
- (b) Is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration and District of Columbia; and
- (c) Is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

Linked pharmacy system-- pharmacies within the same retail name chain utilizing a common electronic file or database to transfer prescription drug orders

or information for dispensing purposes between or among pharmacies within the same retail chain which also participates in the same common prescription file.

Mayor-- the Mayor of the District of Columbia or the Mayor's designated agent.

Medical device-- an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is:

- (a) Recognized in the official National Formulary, the official United States Pharmacopoeia, or any supplement thereto;
- (b) Intended for use in the diagnosis of disease or any other condition, or in the cure, mitigation, treatment, or prevention disease in man or other animal; or
- (c) Intended to affect the structure of any function of the body of man or other animal, and which does achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which does not depend upon being metabolized for the achievement of any of its principal intended purposes.

Misbranded drug or medical device-- as defined in section 501 of the Federal Food, Drug and Cosmetic Act, (Pub. L. 96-354, 21 USC§352) as amended.

Narcotic Drug-- any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

- (a) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium;
- (b) Poppy straw and concentrate of poppy straw;
- (c) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed;
- (d) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (e) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or
- (f) Any compound, mixture, or preparation which contains any quantity of these substances.

Narcotic treatment program-- a program engaged in maintenance or detoxification treatment with narcotic drugs.

Original prescription-- the original written prescription drug order; the original oral drug order that has been reduced to writing by the pharmacist; the original telephone facsimile prescription, or the original electronic prescription.

Over-the-counter drug-- drugs which may be sold without a prescription and which are packaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of the District of Columbia and the federal government.

Patient-practitioner relationship-- means that at a minimum the practitioner has met face to face with the patient, has obtained a patient history, and conducted a physical examination or evaluation adequate to establish a diagnosis, identify underlying conditions and contraindications to the treatment recommended.

Pharmacist-- a person who is licensed in the District of Columbia to engage in the practice of pharmacy.

Pharmacy-- any establishment or institution, or any part thereof, where the practice of pharmacy is conducted; drugs are compounded or dispensed, offered for sale, given away, or displayed for sale at retail; or prescriptions are compounded or dispensed.

Practice of pharmacy-- the interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices, and the maintenance of proper records therefore; the responsibility of advising, where regulated or otherwise necessary, of therapeutic values and content, hazards, and use of drugs and devices; and the offering of performance of those acts, services, operations, and transactions necessary in the conduct, operation, management, and control of a pharmacy.

Practitioner-- an individual licensed, registered, certified, or otherwise permitted by law to prescribe, dispense, and to administer drugs or medical devices, or to conduct research with respect thereto, within the course of such persons' professional practice or research.

Prescriber-- the practitioner who issues a prescription.

Prescription-- any order for a drug, medicinal chemical, or combination or mixtures thereof, or for a medically prescribed medical device, in writing, dated and signed by an authorized health professional or given orally to a pharmacist by an authorized health professional or the person's authorized agent and immediately reduced to writing by the pharmacist or pharmacy intern, specifying the address of the person for whom the drug or device is ordered and directions for use to be placed on the label.

Prescription drug-- any of the following:

- (a) a drug which is required under federal law to be labeled with either of the following statements prior to being dispensed or delivered:
 - (1) "Caution: Federal law prohibits dispensing without prescription";
or
 - (2) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian.
- (b) a drug which is required by any applicable federal, or District of Columbia law or regulation to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only; or
- (c) a drug which is restricted to use by health professionals and allied practitioners for research.

Proprietor of a pharmacy-- a person designated as proprietor in an application for a pharmacy license. The proprietor may be an individual, a corporation, a partnership, or an unincorporated association, and shall at all times own a controlling interest in the pharmacy.

Provider pharmacy-- the community pharmacy or the institutional pharmacy providing remote pharmacy services.

Registrant-- a person who is registered under the District of Columbia Uniformed Controlled Substances Act of 1981 effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code §48-901.01).

Remote automated medication system-- an automated medication system that is located in a health care facility that does not have an on-site pharmacy and in which medication is stored in a manner that may be, but need not be, patient specific.

Remote pharmacy services-- the provision of pharmacy services, including the storage and dispensing of prescription drugs, in a facility that is not at the same location as the provider pharmacy.

Remote site-- a facility not located at the same location as the pharmacy at which remote pharmacy services are provided using an automated medication dispensing system.

Reverse distributor-- a duly authorized party who receives drugs, including controlled substances, acquired from another duly authorized party for the purpose of:

- (a) returning unwanted, unusable, or outdated controlled substances to the manufacturer or the manufacturer's agent; or
- (b) where necessary, processing such substances or arranging for processing such substances for disposal.

Starter dose-- a dose of medication removed from a remote or decentralized automated medication system within the first 24 hours after it is ordered.

Security procedure-- a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

Telepharmacy system-- a system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method which shall include the use of the following types of technology:

- (a) audio and video;
- (b) still image capture; and
- (c) store and forward.

Telephone Facsimile prescription-- a prescription drug order which is transmitted by a telephone electronic device which sends an exact image to the receiver (pharmacy).

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under Section 7a of the Health Care Privatization Amendment Act of 2001 ("Act"), effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code § 7-1405.01), as amended, and Mayor's Order 2004-127, dated August 2, 2004, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 33 of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of this publication of this notice in the D.C. Register and after affirmative approval of the regulations by the Council of the District of Columbia.

The Department of Health proposes changes in the existing rulemaking to allow an alien eligible for limited Emergency Medicaid services pursuant to Section 1903(v) of the Social Security Act of 1935, 42 U.S.C. § 1396b(v), to receive health care services from the D.C. HealthCare Alliance. This rule change will allow a qualifying alien eligible for Emergency Medicaid (as that term is defined in these proposed rules) to receive other health care services through the D.C. HealthCare Alliance, thus ending the bar on their participation in the D.C. HealthCare Alliance. However, persons who are eligible for Medicaid (as that term is defined in these proposed rules) will continue to be ineligible to receive services from the D.C. HealthCare Alliance as they may receive comprehensive health care services through the Medicaid program.

Chapter 33 (Health Care Safety Net Administration) of Title 22 of the DCMR (Public Health and Medicine) shall be amended as follows:

Delete Section 3304.2 and replace it with the following text:

- 3304.2 Eligibility for the D.C. HealthCare Alliance is limited to residents of the District of Columbia who are not eligible for Medicaid (excluding Emergency Medicaid) and who live in households:
- (a) With a countable income of less than 200 percent of the Federal Poverty Level; and
 - (b) With countable resources of less than \$4,000 (or \$6,000 if the individual lives with a spouse or cares for a child who is residing in the home).

Add new Subsections 3305.10 and 3305.11 providing as follows:

- 3305.10 The Health Care Safety Net Administration will review documentation from a provider indicating that a person qualifying for Emergency Medicaid requires health care services not covered by Emergency Medicaid.
- 3305.11 If the Health Care Safety Net Administration determines that a person qualifying for Emergency Medicaid has a need for health care services not covered by Emergency

Medicaid, the Health Care Safety Net Administration will notify the Income Maintenance Administration to enroll such person in the D.C. HealthCare Alliance for services not covered by Emergency Medicaid.

Add the following definition to Section 3399

Emergency Medicaid – a federally funded program that pays for medical care and health services for certain aliens. The program was established by and funded pursuant to Title XIX of the Social Security Code of 1935, 42 U.S.C. § 1396b(v) (2005). The term “Emergency Medicaid” is defined to exclude the term “Medicaid” from its definition.

Delete the definition of Medicaid in Section 3399 and replace it with the following text:

Medicaid – a federally funded program that pays for medical care and health services for certain low-income persons. The program was established by and funded pursuant to Title XIX and Title XXI of the Social Security Act of 1935, 42 U.S.C. §§ 1396 to 1396b(u) and 42 U.S.C. § 1396(w) to 1396u-3 (2005). The term “Medicaid” is defined to exclude the term “Emergency Medicaid” from its definition.

All persons interested in commenting on the subject matter of this 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. Comments should be sent to the Office of the Deputy Director, Health Care Safety Net Administration, District of Columbia Department of Health, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of this notice are available, at no cost, by writing to the above address.

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
AND
DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES**

NOTICE OF PROPOSED RULEMAKING

The Directors of the Department of Health and the Department of Human Services, pursuant to the authority set forth in section 7 of the Child Development Facilities Regulation Act of 1998 (hereinafter "the Act"), effective April 13, 1999, D.C. Law 12-215, D.C. Official Code § 7-2036, and in accordance with Mayor's Order 2000-124, dated August 3, 2000, hereby give notice of their intent to adopt the following licensure and operating standards for child development facilities in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purposes of this rulemaking are to protect the health, safety and well-being of children in licensed Child Development Facilities and to ensure the provision of developmentally appropriate programs to those children. These rules were developed by a community task force under the auspices of the Department of Human Services, and were then refined by the Department of Health. They were previously published as proposed rules on January 14, 2005, at 52 DCR 326; in response to that publication, a significant number of comments were received. As a result of those comments, the Department of Health, with the assistance of the Department of Human Services, engaged in a lengthy period of consultation and collaboration with stakeholders. This revised proposed rulemaking is the result of that consultation and collaboration; it reflects the Executive's review of the previously submitted comments and includes a large number of amendments and revisions as suggested.

In accordance with section 20 of the Act, D.C. Official Code § 7-2049, the existing Chapter 3 of Title 29 of the District of Columbia Municipal Regulations (DCMR) is repealed upon the effective date of these proposed rules, and replaced thereby. The following proposed rulemaking is a new 29 DCMR Chapter 3.

300 GENERAL PROVISIONS

- 300.1 This Chapter is promulgated pursuant to the Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215, D.C. Official Code §§ 7-2031 *et seq.*) (hereinafter "the Act").
- 300.2 The purpose of this Chapter is to protect the health, safety and well-being of children in licensed Child Development Facilities and to ensure the provision of developmentally appropriate programs to those children.
- 300.3 Unless specifically exempted, the provisions of the Act and of this Chapter shall apply to every Caregiver and Child Development Facility, regardless of the name by which the Facility is designated.

OCT 06 2006

300.4 A listing of licensed Facilities shall be maintained by the Department of Health and shall be made available to the public upon request.

300.5 Except as otherwise specified herein, each Child Development Facility that is licensed on the effective date of these rules shall have a period of one (1) year from the effective date of these rules to comply with any requirement contained within this Chapter.

301 EXEMPTIONS FROM LICENSURE

301.1 The provisions of this Chapter shall not apply to the following:

- (a) Occasional babysitting in a babysitter's home for the children of one family;
- (b) Informal parent-supervised neighborhood play groups;
- (c) Care provided in places of worship during religious services;
- (d) Care by a related person, as defined in section 399 of this Chapter; and
- (e) Facilities operated by the federal government on federal government property; except that a private entity utilizing space in or on federal government property is not exempt unless federal law specifically exempts the Facility from District of Columbia regulatory authority.

302 LICENSING

302.1 Except as otherwise provided in this Chapter, no person shall either directly or indirectly operate a Child Development Facility without first obtaining a license from the Director authorizing that operation.

302.2 A separate license shall be required for each Child Development Facility. When a Child Development Facility is located in separate buildings on the same grounds or premises and operated by only one licensee, separate licenses for each building shall not be required.

302.3 Each license shall be issued only for the premises and person(s) or entity(ies) named as applicants in the application, and shall not be valid for use by any other person(s) or entity(ies), or at any place other than that designated in the license.

302.4 Each license shall state: the name of the Facility; the license number and type; the address of the Facility; the name of the program; the license capacity for each age category of children; and the limitations, if any, on services authorized. Each Facility is required to comply with the provisions stated on its license unless otherwise authorized under this Chapter.

303 RIGHT OF ENTRY AND SUBPOENA POWERS

303.1 The Director and any other duly authorized official of the Department of Health, or of another agency of the District of Columbia having jurisdiction over, or responsibilities pertaining to, Child Development Facilities, after presenting official credentials of identification and authority issued by the District of Columbia, shall have the right, either with or without prior notice, to enter upon and into the premises of any Child Development Facility licensed under this Chapter, or for which an application for license has been made, in order to determine compliance with the Act and with this Chapter, and/or to facilitate verification of information submitted on or in connection with an application for licensure pursuant to provisions of the Act or of this Chapter. The conduct of the authorized official shall be such that entry and inspection shall take place with the least possible disruption to the child development program.

303.2 The right of entry and inspection shall also extend to any premises that the Director, or other duly authorized official of an agency of the District of Columbia having jurisdiction over, or responsibilities pertaining to, Child Development Facilities, has reason to believe are being operated or maintained as a Child Development Facility without a valid license, provided that no entry or inspection of any unlicensed premises shall be made without the permission of the individual in charge of the premises or unless a warrant is first obtained from the D.C. Superior Court, pursuant to D.C. Official Code § 11-941, authorizing the entry or inspection for the purpose of determining compliance with the Act or with this Chapter.

303.3 The Director is authorized to utilize subpoena power pursuant to D.C. Official Code §§ 1-301.21 and 7-2036 to supervise, inspect, and investigate Child Development Facilities in order to determine compliance with the provisions of the Act or of this Chapter.

303.4 Authorized District of Columbia officials shall have access to all records of the Facility, including but not limited to: child, staff and administrative records; financial, tax and inspection records; policies and procedures; and any other information or documentation necessary to determine the Facility's compliance with applicable federal and District of Columbia laws and regulations.

304 CERTIFICATE OF OCCUPANCY AND HOME OCCUPATION PERMIT

- 304.1 Before applying for a license, each Child Development Facility shall secure a Certificate of Occupancy or Home Occupation Permit for the premises, or equivalent proof that the premises comply with all applicable federal and District of Columbia fire, safety, building, and zoning regulations and codes. The Certificate, Permit, or other proof shall include certification that the premises are fit and suitable for the operation of a Child Development Facility.
- 304.2 A new or revised Certificate of Occupancy, Home Occupation permit, or equivalent proof as noted in subsection 304.1 shall be required:
- (a) Upon initial application for a license;
 - (b) At the time of any major modification or alteration of any existing premises or structure used by the Facility, but prior to the continued use of the modified or altered portions of the premises or structure for child development purposes; and
 - (c) Prior to the use of any portion of the premises or structure that was not previously inspected and approved for use as a Child Development Facility.
- 304.3 In the case of a Facility providing out-of-school-time care only, located in a District of Columbia government building exempt from Certificate of Occupancy requirements, the requirements of this section may be met by providing, in lieu of the Certificate of Occupancy, a Building Use Agreement executed by the Facility and the District of Columbia government agency with responsibility for that building, including a certification from said government agency that it assumes responsibility for the maintenance and safety of the premises in which the Facility is located.

305 APPROVAL FOR FIRE SAFETY

- 305.1 Each Child Development Center shall undergo a fire safety inspection and shall obtain certification that the premises conform to all applicable fire safety and related codes, from the Department of Fire and Emergency Medical Services or from the Department of Consumer and Regulatory Affairs, under the following circumstances:
- (a) Upon initial application for a license;
 - (b) Upon each annual application for license renewal;

OCT 06 2006

- (c) At the time of any major modification or alteration of the existing premises or structure used by the Facility, but prior to the continued use of modified or altered portions of the premises or structure for child development purposes; and
- (d) Prior to the use of any portion of the premises or structure not previously inspected and certified as conforming to the applicable fire safety and related codes for use as a Child Development Facility.

305.2 Each Child Development Home shall undergo a fire safety inspection and shall obtain certification that the premises conform to all applicable fire safety and related codes, from the Department of Fire and Emergency Medical Services or from the Department of Consumer and Regulatory Affairs, under the following circumstances:

- (a) Upon initial application for a license;
- (b) At the time of any major modification or alteration of the existing premises or structure used by the Facility, but prior to the continued use of modified or altered portions of the premises or structure for child development purposes; and
- (c) Prior to the use of any portion of the premises or structure not previously inspected and certified as conforming to the applicable fire safety and related codes for use as a Child Development Facility.

306 APPLICATION FOR AN INITIAL LICENSE

306.1 Each applicant, or person(s) designated by the applicant to represent the proposed Facility, shall attend an orientation program sponsored by the Director.

306.2 Each application, accompanied by the appropriate fee(s), if any, shall be submitted on a form approved by the Director at least ninety (90) days prior to the date of proposed initiation of operations.

306.3 Each application shall contain the following:

- (a) Certificate of Occupancy, Home Occupation Permit, or other proof pursuant to subsection 304.1;
- (b) The name(s) and address(es) of the person or persons making the application; or, in the case of a corporation or association, the tax identification number of the entity and the names and addresses of at least three primary officers, directors, or partners;

- (c) The name and address of the individual designated by the applicant to be the Caregiver or Center Director of the Facility;
- (d) The qualifications of the individual designated by the applicant to be the Caregiver or Center Director of the Facility, as described in sections 332 and 352 of this Chapter;
- (e) Proof that the applicant, or in the case of an entity, all principal owners or operators thereof, and that the person designated by the applicant to be the Caregiver or Center Director of the Facility, have undergone the required background checks and obtained the required clearances pursuant to section 328 of this Chapter;
- (f) The address of the premises to be used as the licensed Facility, plus a description of all structures and facilities making up the premises;
- (g) The name by which the Facility will be known;
- (h) The name(s) and address(es) of the owner(s) of the building(s) that will house the Facility;
- (i) The proposed capacity, hours of operation, ages of children served and services to be provided;
- (j) A program statement, which shall include the following:
 - (1) A description of the educational and developmental philosophy to be followed at the Facility;
 - (2) A description of the curriculum to be implemented;
 - (3) A description of the policy regarding discipline, including the policy regarding withdrawal and termination of children for disciplinary reasons;
 - (4) A typical daily schedule of activities for each age group of children to be served;
 - (5) A statement describing the provision of meals and snacks;
 - (6) A general contingency plan for emergencies; and
 - (7) Proof of compliance with the Clean Hands Before Receiving a License or Permit Act of 1996, effective May 11, 1996 (D.C. Law 11-118, D.C. Official Code §§ 47-2861 *et seq.*);

- (k) Certification that the Facility is free of lead-based paint hazards;
- (l) Proof of liability insurance, with additional coverage if the Facility provides transportation services to the enrolled children; and
- (m) Such other reasonable information that the Director may require in order to determine whether the applicant is qualified to operate a Child Development Facility that conforms to the provisions of the Act and of this Chapter.

307 FEES

- 307.1 License fees for Child Development Facilities shall vary in accordance with the Facility's license capacity.
- 307.2 Each applicant for a license to operate a Child Development Center shall pay an initial application/pre-licensure inspection fee, in the amount of \$75.00.
- 307.3 The initial license fee, annual renewal license fee, and license replacement fee for each Child Development Facility shall be as follows:
 - (a) Child Development Homes \$ 75.00
 - (b) Child Development Centers, 1 - 50 Children \$200.00
 - (c) Child Development Centers, 51 - 100 Children \$300.00
 - (d) Child Development Centers, 101 - 175 Children \$400.00
 - (e) Child Development Centers, Over 175 Children \$500.00
 - (f) Replacement of License (all facilities) \$ 25.00
- 307.4 Facilities operated by the District of Columbia Government shall not be required to pay a fee.
- 307.5 The Director may make reasonable adjustment to license fees, as appropriate; a new fee schedule shall be published by the Director at least thirty (30) days before any new fee is implemented.
- 307.6 A fee shall be paid whenever there is a required amendment to a license, including a change of ownership or a change of address.
- 307.7 A fee payment submitted with an application shall not be transferred to any other application.

- 307.8 Fee payment is non-refundable.
- 307.9 A late fee, in the amount of \$25.00 for Child Development Homes and \$50.00 for Child Development Centers, shall be imposed if a license renewal application is not timely filed as specified in subsection 308.1 of this Chapter.

308 LICENSE RENEWAL

- 308.1 Application for renewal of a Child Development Facility license shall be submitted on a form provided by the Director, with the appropriate documentation and fee, no later than ninety (90) days prior to the expiration date of the existing license.
- 308.2 When a licensee makes timely and complete application for license renewal, the existing license shall remain in effect until the Director makes a determination whether the license will be renewed.
- 308.3 The Director shall issue a license renewal for a period not to exceed one (1) year, when a Facility is in substantial compliance with the Act and with this Chapter.
- 308.4 The Director shall issue the renewal license no later than ten (10) business days after the Director determines that substantial compliance has been achieved.

309 INSPECTIONS AND LICENSE ISSUANCE

- 309.1 Upon receipt of a complete application for an initial license or a license renewal, and prior to the issuance of the license, the Director may conduct an on-site inspection to determine compliance with the Act and with this Chapter.
- 309.2 In the case of an initial license or a license renewal, if the Director determines that a Facility does not comply with the Act or with this Chapter, the Director shall provide a written statement of deficiencies to the applicant no later than five (5) business days from the conclusion of the inspection or other determination.
- 309.3 In the case of an initial license, an applicant Facility shall have no less than forty-five (45) days after receipt of the statement of deficiencies within which to achieve compliance before adverse action may be taken on the application.

- 309.4 In the case of an initial license wherein the applicant has been given a statement of deficiencies, the Director shall conduct a follow-up inspection to determine compliance within ten (10) business days following the forty-five (45) day correction period, or within ten (10) business days after earlier notification from the Facility that compliance has been achieved.
- 309.5 In the case of a license renewal, the Director shall include in the statement of deficiencies a recommended plan of correction, including the designation of a time within which each cited deficiency must be corrected.
- 309.6 In the case of a license renewal wherein the Facility has been given a statement of deficiencies, the Director may conduct one or more additional on-site inspections, as needed, to verify compliance before a renewal license is issued. With respect to each cited deficiency, the on-site inspection shall take place after the completion of the recommended compliance period contained in the statement of deficiencies, as provided by this section.
- 310 LICENSE CAPACITY**
- 310.1 The Director shall determine limitations on the license capacity using the following criteria:
- (a) Occupancy limits established by the Department of Consumer and Regulatory Affairs and/or by the Department of Fire and Emergency Medical Services;
 - (b) Program space requirements, as provided in sections 340, 341, 342, 350, 353 and 355 of this Chapter;
 - (c) Lavatory requirements, as provided in section 361 of this Chapter; and
 - (d) Maximum adult/child ratios and group size requirements, as established in section 343 of this Chapter.
- 310.2 Any Facility desiring a change in its license capacity shall submit a written request to the Director, accompanied by written documentation verifying that the Facility can maintain compliance with the requirements of this Chapter if the change is granted.

311 VARIANCES

- 311.1 The Director may grant a variance from compliance with one or more physical or structural requirements of this Chapter if the Director determines that compliance with the requirement(s) would result in exceptional or undue hardship.
- 311.2 A Facility may apply for a variance by submitting a written request to the Director setting forth the following:
- (a) The specific requirement(s) from which the Facility seeks relief;
 - (b) The exceptional or undue hardship that would result from compliance with the requirement(s);
 - (c) The extent to which the Facility seeks to be exempt from the requirement(s); and
 - (d) The Facility's proffer as to why granting the variance would not jeopardize the health, safety or welfare of any person and would be consistent with the intent of the Act and of this Chapter.
- 311.3 The Director shall respond to a request for a variance, in writing, within thirty (30) days of receipt of the request.
- 311.4 If a variance is granted, it shall be set forth in writing by the Director.
- 311.5 Any variance obtained by a Facility shall be posted in the Facility in the vicinity of the posted license.
- 311.6 Noncompliance with the terms of a variance may invalidate the variance and may be the basis of additional enforcement action.

312 COMPLAINT INVESTIGATIONS

- 312.1 Upon receipt of a complaint alleging violation(s) of the provisions of the Act or this Chapter, the Director may conduct an on-site investigation, announced or unannounced, to determine the validity of the complaint.
- 312.2 The Director shall investigate an allegation of activity that is life-threatening or imminently dangerous within (24) twenty-four hours of receipt of the complaint.
- 312.3 The Director shall investigate complaints that do not allege life-threatening or imminently dangerous activity no later than thirty (30) days after receipt of the complaint.

- 312.4 Upon completion of a complaint investigation, the Director shall provide a written statement to the Facility no later than ten (10) business days after the conclusion of the investigation. The statement shall include the specific provision(s) of law or regulation alleged in the complaint to have been violated, as well as whether the Facility was found to be in compliance. If the Facility is found not to be in compliance with one or more provisions, the Director shall provide the Facility with a written statement of deficiencies.
- 312.5 If a Facility is provided with a statement of deficiencies as a result of a complaint investigation, the Director shall include in the statement of deficiencies a recommended plan of correction, including the designation of a time within which each cited deficiency must be corrected.
- 312.6 If a Facility is provided with a statement of deficiencies as a result of a complaint investigation, the Director may conduct one or more additional on-site inspections, as needed, to verify compliance. With respect to each cited deficiency, the on-site inspection shall take place after the completion of the recommended compliance period contained in the statement of deficiencies.

313 REVOCATION, DENIAL AND SUSPENSION

- 313.1 The Director may deny, refuse to renew, revoke, or suspend a license on the basis of any of the following:
- (a) Failure to comply with the Act or with this Chapter;
 - (b) Providing false or misleading information in an application for an initial license or for a license renewal;
 - (c) Failure to allow entry to authorized officials to conduct an inspection or investigation, or to otherwise determine whether the applicant or licensee is in substantial compliance with the Act or with this Chapter;
 - (d) Employing any method of discipline prohibited by this Chapter;
 - (e) A determination that an applicant or licensee has been convicted of, or has admitted to committing, either in the District of Columbia or in another jurisdiction, any criminal offense which constitutes a bar to employment in an agency or entity that provides direct services to children and youth, as provided in the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code §§ 4-1501.01 *et seq.*), or in any superseding District of Columbia or federal law, including the following felony offenses:

- (1) Murder, attempted murder, manslaughter, or arson;
 - (2) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
 - (3) Burglary;
 - (4) Robbery;
 - (5) Kidnapping;
 - (6) Theft, fraud, forgery, extortion, or blackmail;
 - (7) Illegal use or possession of a firearm;
 - (8) Trespass or injury to property;
 - (9) Rape, sexual assault, sexual battery, or sexual abuse;
 - (10) Child abuse or cruelty to children; or
 - (11) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;
- (f) A determination that any employee or volunteer who is reasonably expected to come into contact with one or more children has been convicted of, or has admitted to committing, any of the above-listed criminal offenses in the District of Columbia or its equivalent in another jurisdiction;
- (g) In the case of a Child Development Home, a determination that any person living in the home that houses the Facility has been convicted of, or has admitted to committing, any one of the above-listed criminal offenses involving a child or children, in the District of Columbia, or its equivalent in another jurisdiction; or
- (h) A determination that an applicant or licensee, or any employee or volunteer who is reasonably expected to come into contact with one or more children, has admitted to or has been found to have abused or neglected a child in the District of Columbia or in any other jurisdiction.
- 313.2 A license suspension, other than a summary suspension, may be for a period not to exceed sixty (60) calendar days.
- 313.3 At or before the end of the suspension period, the Director shall either reinstate the license or initiate procedures for the revocation of the license.

- 313.4 Procedures for revocations, suspensions and denials of licenses shall be in accordance with sections 314, 317 and 318 of this Chapter.
- 314 SUMMARY SUSPENSION**
- 314.1 The Director may summarily and immediately suspend a license, for a period of not more than forty-five (45) calendar days, upon finding that the health, safety, or welfare of children, adults, or of the general public is in immediate danger.
- 314.2 A summary suspension of a license is effective upon the delivery to the Facility of a Notice of Summary Suspension, which Notice shall be hand-delivered to the licensee, or to an adult employee or family member of the licensee, at the licensed premises.
- 314.3 The Notice of Summary suspension shall state that the Facility may request an expedited hearing within five (5) business days of receipt of the Notice. The notice shall also comply with section 317 of this Chapter.
- 314.4 When a Facility's license is summarily suspended, the Director shall immediately repossess the license, and the Facility shall immediately cease providing child care.
- 314.5 When a Facility's license is summarily suspended, the Facility shall be responsible for providing parents with written notification of the suspension and for informing them of the need to make alternative child care arrangements. The Facility shall also provide the Director with a copy of the written notification.
- 314.6 Upon a timely request for an expedited hearing pursuant to this section, the Office of Administrative Hearings shall conduct the hearing within five (5) business days of the request, and the Office of Administrative Hearings shall issue a decision within five (5) business days after the hearing record is closed.
- 314.7 Upon completion of a hearing conducted pursuant to this section and closure of the hearing record, the Office of Administrative Hearings shall determine either that the summary suspension was warranted, in which case the suspension shall continue for a period not to exceed forty-five (45) days from the date of the decision, or that the summary suspension was unwarranted, in which case the suspension shall immediately cease and the license shall be immediately returned to the Facility.
- 314.8 At or before the end of the suspension period, the Director shall either reinstate the license or initiate procedures for the revocation of the license.

314.9 A license that has been summarily suspended may be reinstated before the end of the suspension period if the Director determines that the Facility is in substantial compliance with the Act and with this Chapter.

315 PROVISIONAL AND RESTRICTED LICENSES

315.1 As an alternative to denial, suspension or revocation of a license, when a Facility has one or more deficiencies that jeopardize the health, safety or welfare of children, staff or the general public, the Director may:

- (a) Issue a provisional license if the Facility is taking appropriate ameliorative action in accordance with a timetable established by the Director; or
- (b) Issue a restricted license that prohibits the Facility from accepting new children or from delivering certain specified services that it would otherwise be authorized to deliver.

315.2 A provisional license may be issued to a new Facility in order to afford the Director sufficient time and evidence to evaluate whether a new Facility is capable of complying with the provisions of the Act, this Chapter, or any other applicable federal or District of Columbia law.

315.3 A provisional license may be granted for a period not to exceed ninety (90) days, and may be renewed no more than once.

315.4 The issuance of provisional and restricted licenses may be:

- (a) Summary actions implemented in accordance with procedures set out in section 314 of this Chapter; or
- (b) Non-summary enforcement actions implemented in accordance with procedures set out in sections 317 and 318 of this Chapter.

316 CEASE AND DESIST

316.1 If the Director determines that a Facility, an entity, or a person has violated any provision of the Act or of this Chapter, and that the violation presents an imminent danger to children, adults, or to the general public, the Director may issue a written Order directing the Facility, entity or person to cease and desist from the violation.

- 316.2 The written Order to cease and desist shall be delivered in accordance with the procedures set forth in section 317 of this Chapter. The Order shall state that the Facility, entity or person may request an expedited hearing within five (5) business days of receipt of the Order. If no request for a hearing is made, the Order shall be final.
- 316.3 Upon a timely request for an expedited hearing pursuant to this section, the Office of Administrative Hearings shall conduct the hearing within five (5) business days of the request, and the Office of Administrative Hearings shall issue a decision within five (5) business days after the hearing record is closed.
- 316.4 Upon completion of a hearing conducted pursuant to this section and closure of the hearing record, the Office of Administrative Hearings shall determine whether the Order to cease and desist was warranted, and shall issue an Order to that effect.

317 SERVICE OF NOTICE FOR ENFORCEMENT ACTIONS

- 317.1 A Notice shall be provided by the Director to the Facility or applicant before the Director may take any of the following enforcement actions:
 - (a) Denial of issuance of a license;
 - (b) Denial of renewal of a license;
 - (c) Suspension of a license;
 - (d) Revocation of a license; or
 - (e) Issuance of a provisional or restricted license.
- 317.2 A Notice required by this section may be served personally, or by certified mail, return receipt requested, directed to the applicant or Facility at the last known address as shown in the Department's records, or at the address of the Facility premises.
- 317.3 A copy of the Notice shall be delivered to the Office of Administrative Hearings within one day of service of the Notice.
- 317.4 A Notice served personally is deemed served when it is delivered to the applicant or licensee, or to an adult employee or family member of the applicant or licensee, at the licensed premises or at the last known address.

- 317.5 A Notice served by certified mail is deemed served on the date written or stamped upon the return receipt, indicating delivery of the Notice to the applicant or licensee or refusal of the applicant or licensee to accept delivery of the Notice.
- 317.6 In the event that the applicant or licensee is not found at the address of the Facility nor at the last known address as shown in the records of the Department, and no forwarding address is available, the Notice shall be deemed served on the date that the return receipt bearing such notification is returned to the Director.
- 317.7 A Notice of a proposed enforcement action shall include the following:
- (a) The nature of the proposed enforcement action;
 - (b) The effective date of the proposed action;
 - (c) A description of, and citation for, each violation alleged;
 - (d) In the case of a license suspension, the time period of the proposed suspension;
 - (e) A statement informing the applicant or Facility that it may make a request for a hearing by submitting a written request to the Office of Administrative Hearings within ten (10) days of receipt of the Notice, or, in a matter in which a different time period is prescribed by law, within the applicable time period;
 - (f) A statement informing the applicant or Facility that the proposed action may become final without a hearing if the applicant or Facility fails to request a hearing within the time and in the manner specified; and
 - (g) In the case of a license suspension, revocation, or conversion, a statement informing the Facility that it will be required to surrender its license upon final action to suspend, revoke, or convert the license to provisional or restricted status.

318 HEARINGS

- 318.1 Hearings shall be conducted by the Office of Administrative Hearings in accordance with this Chapter and pursuant to rules and procedures established by that Office.

- 318.2 Parties may participate in settlement negotiations prior to a hearing, and may enter into a negotiated settlement agreement or consent decree in lieu of a hearing.
- 318.3 In each matter in which a hearing is requested, the Office of Administrative Hearings shall maintain an official record, and shall render its final decision in writing to all parties, accompanied by findings of fact and conclusions of law.
- 318.4 Each hearing shall be conducted in accordance with the requirements of section 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509), unless otherwise provided in this Chapter or in rules established by the Office of Administrative Hearings.

319 JUDICIAL REVIEW

- 319.1 Any person aggrieved by a final decision of the Director or of the Office of Administrative Hearings may appeal the decision to the District of Columbia Court of Appeals pursuant to section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

320 CIVIL FINES, CRIMINAL PROSECUTION AND INJUNCTIONS

- 320.1 Civil fines and penalties may be imposed for any violation of the Act or of this Chapter, pursuant to the District of Columbia Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code §§ 2-1801.01 *et seq.*) (hereinafter "Civil Infractions Act"). Adjudication of all charged infractions shall be conducted pursuant to Titles I through III of the Civil Infractions Act. Hearings shall be conducted in accordance with section 318 of this Chapter.
- 320.2 Any violation of the Act may result in criminal prosecution, whereupon the violator shall, upon conviction, be subject to imprisonment not to exceed six (6) months, or a fine not to exceed \$300.00, or both. Each unlawful act shall constitute a separate violation of this Chapter. Prosecutions shall be brought by the Attorney General for the District of Columbia in the Superior Court of the District of Columbia.
- 320.3 Any person who has been previously convicted of an offense in violation of the Act shall, upon a subsequent conviction for the same offense, be subject to imprisonment not to exceed one (1) year, or a fine not to exceed \$5,000.00, or both.

320.4 In any prosecution conducted for violation of the Act, a Child Development Facility claiming an exemption from a licensing requirement shall have the burden of proving entitlement to the exemption.

320.5 The Attorney General may bring a civil action in the Superior Court of the District of Columbia to enjoin any violation of the Act.

321 NOTICE REQUIREMENTS FOR CHANGES IN OPERATION

321.1 Each Facility shall inform the Director, in writing, of any of the following planned changes in operation no less than ten (10) days before implementation of the change(s):

- (a) Change of ownership;
- (b) Change in location, name and/or telephone number of the Facility;
- (c) Renovation or alteration of the premises that substantially changes the indoor or outdoor space of the Facility;
- (d) In the case of a Child Development Home, the inclusion of an additional member in the household, including the new member's criminal history, if any;
- (e) In the case of a Child Development Home, a change in primary Caregiver(s);
- (f) In the case of a Child Development Center, a change in Center Director;
or
- (g) A significant change in the operation of the program, including, but not limited to, hours of operation, services provided, and capacity load.

321.2 If a Facility undergoes any of the changes in operation listed in subsection 321.1 without the change being planned in advance, the Facility shall notify the Director immediately.

321.3 Upon notification of the proposed change(s), the Director may inspect the Facility to evaluate the impact of the change(s) on the provision of child development services.

321.4 The Director shall issue an amended license, consistent with the approved change(s), as required by and subject to the provisions of this Chapter.

322 REPORTING UNUSUAL INCIDENTS

322.1 Each Facility shall immediately report, to the Director, to the Department of Human Services for those providers that participate in the Child Care Subsidy Program, and to the parent(s)/guardian(s) of each affected child, any unusual incident that may adversely affect the health, safety or well-being of any child or children in the Facility. Unusual incidents include, but are not limited to, the following:

- (a) Death of a person occurring within the Facility;
- (b) Injury to, or illness of, any child that occurs during the hours the child is enrolled in care and that requires hospitalization or emergency medical treatment;
- (c) Damage to the Facility, or to any Facility vehicle or equipment, that interferes with the capability of the Facility to protect the health, safety and well-being of the children and adults in the Facility;
- (d) The presence of any individual in the Facility who has, or is suspected of having, a communicable disease that must be reported to the District of Columbia Department of Health in accordance with Title 22 of the District of Columbia Municipal Regulations;
- (e) The elopement of an enrolled child or any circumstances under which a child is deemed missing or unaccounted for;
- (f) A traffic accident involving a vehicle owned, maintained, or contracted for by the Facility and in which children are being transported at the time of the accident; and
- (g) Any other occurrence at the Facility that involves a response by police, fire, ambulance, or any other emergency service.

322.2 The Facility shall also submit to the Director, on a form approved by him or her, and to the Department of Human Services for those providers that participate in the Child Care Subsidy Program, a written report of the unusual incident, within seventy-two (72) hours of the incident.

322.3 In the case of a traffic accident or an incident involving actual or suspected criminal activity, the Facility shall also file a report with the appropriate law enforcement authorities.

- 322.4 Any Facility staff member who knows or has reasonable cause to suspect that an enrolled child is, has been, or is in immediate danger of being an abused or neglected child shall, as required by the District of Columbia Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22, D.C. Official Code §§ 4-1321.01 *et seq.*), make or cause to be made an immediate oral report to:
- (a) The Child Protective Services Division of the Child and Family Services Agency, via the CFSA twenty-four (24) hour Child Abuse and Neglect Hotline (202-671-SAFE); or
 - (b) The Metropolitan Police Department.
- 322.5 The Facility staff member making an oral report pursuant to subsection 322.4 shall also make a written report if:
- (a) A written report is requested by the Child and Family Services Agency or the Metropolitan Police Department;
 - (b) The case is one of abuse involving drug-related activity; or
 - (c) As otherwise required by law.
- 322.6 In the reports required by subsections 322.4 and 322.5, the staff member shall include:
- (a) The name, age, sex and address of the child who is the subject of the report;
 - (b) That the child who is the subject of the report is enrolled at the Facility;
 - (c) The name, address and telephone number of the Facility;
 - (d) To the extent known, the name, age, and sex of each sibling or other child living in the same household;
 - (e) To the extent known, the name, age, and sex of each parent, guardian, or other caretaker of the child;
 - (f) The nature and extent of the abuse or neglect, and of any previous abuse or neglect, as known to the reporting staff member;
 - (g) Any other information which may be helpful in establishing the cause of the abuse or neglect and/or in establishing the identity of the person(s) responsible for it;

- (h) The name, title or occupation, and contact information of the staff member making the report;
- (i) Any actions taken by the staff member or the facility concerning the child in response to the situation; and
- (j) Any other information required by law.

322.7

Each Facility shall:

- (a) Provide training to all staff regarding the Facility's policies and procedures relating to child abuse, neglect, and risk to a child's health or safety, including how to report suspected abuse, neglect, or risk to a child's health or safety;
- (b) Require staff to immediately report, and to cooperate with officials investigating, alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health or safety;
- (c) If any Facility staff member is identified as allegedly responsible for the alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health or safety, place that staff member on administrative leave or reassignment to duties involving no contact with children until the investigation conducted by authorized government officials is complete; and
- (d) Ensure that staff may report incidents involving alleged or actual child abuse or neglect, or alleged or actual risk to an enrolled child's health or safety, without threat of discharge or other retaliation.

323**ADMINISTRATIVE RECORDS ON OPERATIONS**

323.1

Each Facility shall maintain all required licenses and permits, and shall post in a conspicuous place the Certificate of Occupancy or Home Occupation Permit, all current fire, health and safety inspection approvals, and any variances received.

323.2

Each Facility shall maintain on the facility premises at all times, and shall make immediately available for review by any person upon request, the report(s) of each inspection of the Facility by the Director occurring within the preceding one (1) year period, including the statement(s) of deficiencies, if any, subject to the limitations contained in subsection 324.8 of this Chapter. If a period of more than one (1) year has passed since the most recent inspection of the Facility, the Facility shall maintain and make available the report of the most recent inspection.

- 323.3 Records of complaint investigations and fire and emergency evacuation drills shall be immediately accessible and available for inspection by government officials, and shall be made available for inspection by the public subject to the limitations contained in subsection 324.8 of this Chapter.
- 323.4 The Facility shall maintain a log of unusual incidents reported in accordance with section 322 of this Chapter.
- 323.5 The Facility shall maintain records documenting any adverse action the Facility takes against an employee, volunteer or household member related to any substantiated crimes against children. The adverse action shall be reported as an unusual incident in accordance with section 322 of this Chapter.
- 323.6 The Facility shall maintain service and repair records, in a single location on the licensed premises, for all motor vehicles that are owned or leased for purposes of transporting enrolled children. The Facility shall maintain each record for at least twelve (12) months after the date of the inspection or repair.

324 ADMINISTRATIVE RECORDS ON CHILDREN

- 324.1 The Child Development Facility shall maintain a record for each enrolled child, and shall retain the record for three (3) years following the termination of that child's enrollment. All records required by this section shall be made available for inspection.
- 324.2 The Facility shall maintain current records and information on children, including:
 - (a) Roster of enrolled children by age group;
 - (b) Daily attendance records by names of children, including first name, last name and middle initial of each child;
 - (c) Daily menu plan for feeding the children indicating the foods actually served on a daily basis;
 - (d) Daily schedule of activities; and
 - (e) Health records on enrolled children pursuant to section 325 and as otherwise provided in this Chapter.

324.3 Each Facility shall maintain a register that shall include the following information for each child currently enrolled:

- (a) The child's full name;

- (b) The child's gender;
- (c) Date of birth;
- (d) Date of admission;
- (e) Home address and telephone number;
- (f) Full names of parents or guardians;
- (g) Business addresses and telephone numbers of parents or guardians;
- (h) Designation of individuals authorized to receive the child at the end of each session;
- (i) Name and telephone number of individual to be contacted in emergencies when the parents or guardians are not available;
- (j) Date and reasons for the child's withdrawal;
- (k) Health information on each child as required by section 325 of this Chapter;
- (l) Written authorization(s) for the administration of medication as required by section 377 of this Chapter, if applicable;
- (m) For children in out-of-school-time care:
 - (1) The name of the school the child attends;
 - (2) The name and number of a contact person from that school; and
 - (3) If the child arrives at and leaves the Facility alone, the days and times at which the child should arrive and leave the Facility and the mode(s) of transportation that the child uses to travel to and from the Facility; and
- (n) A record of the child's developmental progress.

324.4

The Facility shall have a current Emergency Medical Treatment Authorization form on file for each child, granting permission to the Facility to obtain medical treatment in case of an emergency that occurs while the child is in the care of the Facility. The form shall be approved by the Director and shall include:

- (a) Signatures of the parent(s) or guardian(s);

- (b) Information on the child's/family's health insurance coverage; and
- (c) A list of the child's known illnesses and allergies; and
- (d) In the event that any of this information changes, updated information and the date the updated information was added.

- 324.5 The Facility shall maintain on file a written, signed and dated statement from each child's parent(s) or guardian(s) authorizing the Facility to take the child on regularly scheduled trips from the Facility. The authorization shall include the child's name, and shall specify the mode of transportation, the frequency, and the destination of each such trip.
- 324.6 If the child is to be taken on a field trip that is not recorded as a routine trip, the Facility shall obtain a written authorization that includes the information required in subsection 324.5 in addition to the estimated time of departure and arrival.
- 324.7 Written permission shall be considered valid for all regularly scheduled trips as noted in the statement submitted pursuant to subsection 324.5 until withdrawn by the child's parent(s) or guardian(s).
- 324.8 The Facility shall not disclose information concerning an individual child or the child's parent(s) or guardian(s) to persons other than the Facility staff or government officials acting in the course of their duties, unless the parent(s) or guardian(s) grant written permission for the disclosure, or unless disclosure is necessary in an emergency situation.
- 324.9 The Facility shall inform the parent(s) or guardian(s) of all enrolled children, in writing, of the Facility's policy regarding disclosure of information.

325 CHILDREN'S HEALTH RECORDS

- 325.1 Each child attending a Child Development Facility shall, upon enrollment and prior to admission, submit to the Facility, on forms approved by the Mayor, complete documentation of a comprehensive physical health examination, including age-appropriate screenings and up-to-date immunizations, and, for each child three (3) years of age or older, complete documentation of an oral health examination, each examination having been performed by a licensed health care professional within one (1) year prior to the date of admission.

- 325.2 Each child attending a Child Development Facility shall, at least annually, submit to the Facility, on forms approved by the Mayor, complete documentation of a comprehensive physical health examination, including age-appropriate screenings and up-to-date immunizations, and, for each child three (3) years of age or older, complete documentation of an oral health examination, each examination having been performed by a licensed health care professional within the preceding one (1) year period.
- 325.3 The Facility shall maintain, for each enrolled child, the initial and annual health record documentation required under subsections 325.1 and 325.2, including:
- (a) The full name, gender, date of birth, and home address of the child;
 - (b) The dates of the physical and oral health examinations;
 - (c) The child's height and weight at the time of the physical health examination;
 - (d) Each licensed health care practitioner's clinical findings, concerns, and recommendations;
 - (e) The child's significant health history, including allergies, health conditions, communicable illness, and restrictions;
 - (f) Specific immunizations received by month, day and year;
 - (g) Results of tuberculosis exposure risk assessment, and of testing where indicated;
 - (h) Results of lead exposure risk assessment, and of testing in accordance with subsections 325.4 and 325.5;
 - (i) Identification of long-term medications and special health care requirements or accommodations; and
 - (j) The name, address, phone number and signature of the examining licensed health care practitioner.
- 325.4 In addition to the information otherwise required under this section, each child under six (6) years of age attending a Child Development Facility shall submit, and the Facility shall maintain, documentation of the following with respect to blood tests for lead poisoning:
- (a) Proof that the child was tested between the ages of six (6) months and nine (9) months, and again between the ages of twenty-two (22) months and twenty-six (26) months; or

- (b) Proof that, if the child was not tested before the age of twenty-six (26) months, the child was or will be tested two (2) times before the age of six (6) years, having been or intending to be tested at intervals at least twelve (12) months apart, or according to a schedule determined by the child's licensed health care practitioner; or
- (c) Proof that lead testing for the child complies with any applicable Federal or District of Columbia law or rule that requires lead testing for children under the age of six (6) years.

325.5 Blood tests for lead poisoning shall be conducted, and results shall be disseminated and maintained, in accordance with the Childhood Lead Poisoning Screening and Reporting Act of 2002, effective October 1, 2002 (D.C. Law 14-190, D.C. Official Code §§ 7-1031 *et seq.*)

326 EXCLUDING AND READMITTING CHILDREN WHO ARE ILL

326.1 A child who exhibits one or more symptoms of illness identified in subsection 326.6 shall not attend the Facility.

326.2 When the Facility staff observes one or more symptoms of illness identified in subsection 326.6, the child's parent(s) or guardian(s) shall be notified immediately. The Facility shall require that the parent(s) or guardian(s) remove the child from the Facility.

326.3 The Facility shall isolate a child who becomes ill or is suspected of being ill. The child shall remain within sight and hearing of a staff member.

326.4 Facility staff shall carefully observe a child in isolation for the presence of, or change in, any symptoms identified in subsection 326.6.

326.5 Facility staff shall ensure that a child who is ill or suspected of being ill does not share any personal hygiene or grooming items.

326.6 Symptoms of illness requiring exclusion from the Facility include, but are not limited to, the following:

- (a) Diarrhea, *i.e.*, runny, watery or bloody stools;
- (b) Vomiting two (2) or more times in a twenty-four (24) hour period;
- (c) Body rash with fever;
- (d) Sore throat with fever or swollen glands;

- (e) Eye drainage with thick mucus or pus draining from the eye;
- (f) Pink eye, *i.e.*, colored drainage, eye pain and/or redness of the eye;
- (g) Yellowish skin or eyes;
- (h) Fever accompanied by rash, vomiting, diarrhea, earache, irritability or confusion;
- (i) Continuous irritable crying that requires more attention than the Facility can provide without compromising the health and safety of other children; or
- (j) Any other symptom indicative of a reportable communicable disease, as such is defined in Chapter 2 of Title 22 of the District of Columbia Municipal Regulations or in any superseding document.

326.7

The Facility shall observe each child for the presence of symptoms that may indicate a medical problem, which problem may require exclusion from the Facility, isolation from other children, and/or consultation with the child's parent(s), guardian(s) or licensed health care practitioner(s). The following are examples of conditions that may indicate the existence of a medical problem:

- (a) Fever;
- (b) Lethargy or inability to walk;
- (c) Respiratory problems, including: increased respiratory rate; retractions in the chest; excessive nasal flaring; audible persistent wheezing; persistent coughing, either productive or nonproductive; severe coughing causing redness or blueness in the face; or difficulty in breathing;
- (d) Abdominal and urinary system problems including: intestinal parasites, dark urine, white spots in the stool, increased urgency or frequency of urination, or no urination for an entire day;
- (e) Cardiac problems, including: choking, change in color of the skin, chest pain, or persistent sweating;
- (f) Ear problems, including discharge from the ear and/or ear pain;
- (g) Throat and mouth problems, including: sores on the lips or in the mouth, white patches in the mouth, throat pain, or a dental problem that needs immediate attention; and

- (h) Injuries, including: persistent bleeding, oozing wounds, apparent fracture, complaint of persistent bone pain or stiffness, or difficulty with the movement of any extremity.

326.8 A child who exhibits one or more symptoms of illness identified in subsection 326.6, and who has been treated for said symptom(s) by a licensed health care practitioner, may be readmitted to the Facility only with written permission, and written instructions for continuing care if needed, from that licensed health care practitioner.

326.9 If a child exhibits mild symptoms of illness and/or discomfort, the Center Director or his/her designee, or the Caregiver, in consultation with the child's parent(s) or guardian(s), shall decide whether the child should be immediately discharged or discharged at the end of the day.

327 ADMINISTRATIVE RECORDS ON STAFF OF ALL FACILITIES AND ON PERSONS RESIDING IN HOME FACILITIES

327.1 Each Facility shall maintain, on the Facility premises, the following information for each employee:

- (a) The full name, gender, social security number, date of birth and home address;
- (b) Position title and job description;
- (c) Documentation and results of criminal and background history checks in accordance with this Chapter and with all other applicable federal and District of Columbia laws and rules;
- (d) A copy of the employee's resume, required degrees, certificates, transcripts, and letters of reference;
- (e) Verification of the employee's orientation to his/her duties and responsibilities and to the Facility's policies and procedures;
- (f) An ongoing record of continuing education;
- (g) First Aid and CPR Certification for children, as required;
- (h) Date of appointment to, or withdrawal from, any position in the Facility;
- (i) Reason for withdrawal from a position; and
- (j) A copy of the employee's signature.

- 327.2 The Facility shall maintain a health record for each staff member, including paid employees, volunteers, and interns, which shall include the following:
- (a) Results of a pre-employment physical examination of the staff member by a licensed health care practitioner, not more than twelve (12) months prior to the start of employment, volunteer work or internship;
 - (b) Results of an annual physical examination of the staff member by a licensed health care practitioner;
 - (c) Written and signed documentation from the examining licensed health care practitioner that the staff member, at the time of his or her examination, was free from tuberculosis and apparent communicable disease;
 - (d) Written and signed documentation from the examining licensed health care practitioner that the staff member, if noted to have an identified medical problem, is capable of caring for children in a licensed Child Development Facility;
 - (e) Health insurance information, if applicable; and
 - (f) The names and phone numbers of the staff member's primary licensed health care practitioner and of an emergency contact person.

- 327.3 Each Child Development Home shall obtain and maintain documentation establishing that each person living in the home that houses the Facility has been, within the preceding one (1) year period, examined by a licensed health care professional and certified by that professional to be free of communicable disease.

328 CRIMINAL AND BACKGROUND HISTORY CHECKS

- 328.1 The Child Development Facility shall inform every applicant for employment of the following requirements:
- (a) The applicant must satisfactorily complete a criminal background check, as required by the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code §§ 4-1501.01 *et seq.*), or by superseding District of Columbia or federal law, and a child protection register check, before he or she can be unconditionally employed;

- (b) The applicant must provide the Facility with the certified results of the criminal background and child protection register checks, both completed within the three (3) months preceding application, or, at the Facility's discretion, with all information that will enable the Facility to promptly obtain the results of the criminal background and child protection register checks of the applicant, including each state in which the applicant has resided or worked, the applicant's social security number, and all names the applicant has used;
- (c) The applicant has the right to obtain copies of the criminal background and child protection register check reports and to challenge the accuracy and completeness of the reports;
- (d) The Facility shall deny employment to any person who has been convicted of an offense listed in section 313 of this Chapter, or its equivalent, in the District of Columbia or in any other jurisdiction, and shall deny employment to any person who has been adjudicated as a child abuser or neglecter, or who has been determined, following a proceeding in which due process rights were afforded, by the applicable child protection agency or authority to have been a child abuser or neglecter, in the District of Columbia or in any other jurisdiction; and
- (e) The Facility may deny employment to the applicant until the results of the criminal background and child protection register checks are final.

328.2 All records of criminal background checks and child protection register checks of applicants and employees shall be confidential.

328.3 The Facility shall require the applicant to provide the names of and contact information for at least three (3) references, who shall be unrelated to the applicant. The Facility shall check at least three (3) references for each applicant, and shall ascertain that the applicant is suitable for employment in a position of close interaction with children, prior to employment of the applicant.

328.4 The Facility shall maintain a record of the reference checks performed for each applicant. The record shall include either: a signed and dated letter of reference received by the Facility; or documentation of a reference check conducted by telephone, including the name of the Facility licensee, Caregiver, Center Director, or designee conducting the check, the name and telephone number of the reference, the date of the check, and written comments regarding the check.

DISTRICT OF COLUMBIA REGISTER

- 328.5 The Facility may enter into a conditional employment agreement with an applicant pending the outcome of the criminal background and child protection register checks, provided that the applicant submits to the Facility a signed notarized statement affirming that he or she has not been convicted of any offense listed in section 313 of this Chapter nor has been placed on a child protection register, and that the reference checks indicate that the applicant is suitable for employment in a position of close interaction with children.
- 328.6 No Facility shall be subject to civil liability that, in good faith, relies on a criminal background check, a child protection register check, or a reference check to terminate, or to refuse to offer employment to, any individual.
- 328.7 Updated criminal background and child protection register checks shall be conducted as required by the Child and Youth, Safety and Health Omnibus Amendment Act or by superseding District of Columbia or federal law.

329 POLICIES AND PROCEDURES ON DISCIPLINE

- 329.1 The Facility shall have a written policy describing the philosophy of discipline and the specific methods of discipline that the Facility uses. Discipline shall be constructive and developmentally appropriate, and shall include child guidance and management techniques using redirection, separation from the problem situation, talking with the child about the situation, and praise for appropriate behavior.
- 329.2 The methods of discipline described in the policies and procedures shall be utilized by all Facility staff, including employees, volunteers, and interns.
- 329.3 The following methods of discipline shall not be employed:
- (a) Physical harm, including punching, pinching, shaking, spanking, biting, yanking and poking;
 - (b) Fear and/or humiliation;
 - (c) Derogatory remarks and/or profane language;
 - (d) Confinement in a locked room or enclosed area;
 - (e) Forced feeding, or withholding of food, rest, toilet use or outdoor activities or play; and
 - (f) Physical and/or chemical restraints.

- 325.2 Each child attending a Child Development Facility shall, at least annually, submit to the Facility, on forms approved by the Mayor, complete documentation of a comprehensive physical health examination, including age-appropriate screenings and up-to-date immunizations, and, for each child three (3) years of age or older, complete documentation of an oral health examination, each examination having been performed by a licensed health care professional within the preceding one (1) year period.
- 325.3 The Facility shall maintain, for each enrolled child, the initial and annual health record documentation required under subsections 325.1 and 325.2, including:
- (a) The full name, gender, date of birth, and home address of the child;
 - (b) The dates of the physical and oral health examinations;
 - (c) The child's height and weight at the time of the physical health examination;
 - (d) Each licensed health care practitioner's clinical findings, concerns, and recommendations;
 - (e) The child's significant health history, including allergies, health conditions, communicable illness, and restrictions;
 - (f) Specific immunizations received by month, day and year;
 - (g) Results of tuberculosis exposure risk assessment, and of testing where indicated;
 - (h) Results of lead exposure risk assessment, and of testing in accordance with subsections 325.4 and 325.5;
 - (i) Identification of long-term medications and special health care requirements or accommodations; and
 - (j) The name, address, phone number and signature of the examining licensed health care practitioner.
- 325.4 In addition to the information otherwise required under this section, each child under six (6) years of age attending a Child Development Facility shall submit, and the Facility shall maintain, documentation of the following with respect to blood tests for lead poisoning:
- (a) Proof that the child was tested between the ages of six (6) months and nine (9) months, and again between the ages of twenty-two (22) months and twenty-six (26) months; or

- (b) Proof that, if the child was not tested before the age of twenty-six (26) months, the child was or will be tested two (2) times before the age of six (6) years, having been or intending to be tested at intervals at least twelve (12) months apart, or according to a schedule determined by the child's licensed health care practitioner; or
- (c) Proof that lead testing for the child complies with any applicable Federal or District of Columbia law or rule that requires lead testing for children under the age of six (6) years.

325.5 Blood tests for lead poisoning shall be conducted, and results shall be disseminated and maintained, in accordance with the Childhood Lead Poisoning Screening and Reporting Act of 2002, effective October 1, 2002 (D.C. Law 14-190, D.C. Official Code §§ 7-1031 *et seq.*)

326 EXCLUDING AND READMITTING CHILDREN WHO ARE ILL

326.1 A child who exhibits one or more symptoms of illness identified in subsection 326.6 shall not attend the Facility.

326.2 When the Facility staff observes one or more symptoms of illness identified in subsection 326.6, the child's parent(s) or guardian(s) shall be notified immediately. The Facility shall require that the parent(s) or guardian(s) remove the child from the Facility.

326.3 The Facility shall isolate a child who becomes ill or is suspected of being ill. The child shall remain within sight and hearing of a staff member.

326.4 Facility staff shall carefully observe a child in isolation for the presence of, or change in, any symptoms identified in subsection 326.6.

326.5 Facility staff shall ensure that a child who is ill or suspected of being ill does not share any personal hygiene or grooming items.

326.6 Symptoms of illness requiring exclusion from the Facility include, but are not limited to, the following:

- (a) Diarrhea, *i.e.*, runny, watery or bloody stools;
- (b) Vomiting two (2) or more times in a twenty-four (24) hour period;
- (c) Body rash with fever;
- (d) Sore throat with fever or swollen glands;

- (e) Eye drainage with thick mucus or pus draining from the eye;
- (f) Pink eye, *i.e.*, colored drainage, eye pain and/or redness of the eye;
- (g) Yellowish skin or eyes;
- (h) Fever accompanied by rash, vomiting, diarrhea, earache, irritability or confusion;
- (i) Continuous irritable crying that requires more attention than the Facility can provide without compromising the health and safety of other children; or
- (j) Any other symptom indicative of a reportable communicable disease, as such is defined in Chapter 2 of Title 22 of the District of Columbia Municipal Regulations or in any superseding document.

326.7

The Facility shall observe each child for the presence of symptoms that may indicate a medical problem, which problem may require exclusion from the Facility, isolation from other children, and/or consultation with the child's parent(s), guardian(s) or licensed health care practitioner(s). The following are examples of conditions that may indicate the existence of a medical problem:

- (a) Fever;
- (b) Lethargy or inability to walk;
- (c) Respiratory problems, including: increased respiratory rate; retractions in the chest; excessive nasal flaring; audible persistent wheezing; persistent coughing, either productive or nonproductive; severe coughing causing redness or blueness in the face; or difficulty in breathing;
- (d) Abdominal and urinary system problems including: intestinal parasites, dark urine, white spots in the stool, increased urgency or frequency of urination, or no urination for an entire day;
- (e) Cardiac problems, including: choking, change in color of the skin, chest pain, or persistent sweating;
- (f) Ear problems, including discharge from the ear and/or ear pain;
- (g) Throat and mouth problems, including: sores on the lips or in the mouth, white patches in the mouth, throat pain, or a dental problem that needs immediate attention; and

- (h) Injuries, including: persistent bleeding, oozing wounds, apparent fracture, complaint of persistent bone pain or stiffness, or difficulty with the movement of any extremity.

326.8 A child who exhibits one or more symptoms of illness identified in subsection 326.6, and who has been treated for said symptom(s) by a licensed health care practitioner, may be readmitted to the Facility only with written permission, and written instructions for continuing care if needed, from that licensed health care practitioner.

326.9 If a child exhibits mild symptoms of illness and/or discomfort, the Center Director or his/her designee, or the Caregiver, in consultation with the child's parent(s) or guardian(s), shall decide whether the child should be immediately discharged or discharged at the end of the day.

327 ADMINISTRATIVE RECORDS ON STAFF OF ALL FACILITIES AND ON PERSONS RESIDING IN HOME FACILITIES

327.1 Each Facility shall maintain, on the Facility premises, the following information for each employee:

- (a) The full name, gender, social security number, date of birth and home address;
- (b) Position title and job description;
- (c) Documentation and results of criminal and background history checks in accordance with this Chapter and with all other applicable federal and District of Columbia laws and rules;
- (d) A copy of the employee's resume, required degrees, certificates, transcripts, and letters of reference;
- (e) Verification of the employee's orientation to his/her duties and responsibilities and to the Facility's policies and procedures;
- (f) An ongoing record of continuing education;
- (g) First Aid and CPR Certification for children, as required;
- (h) Date of appointment to, or withdrawal from, any position in the Facility;
- (i) Reason for withdrawal from a position; and
- (j) A copy of the employee's signature.

- 327.2 The Facility shall maintain a health record for each staff member, including paid employees, volunteers, and interns, which shall include the following:
- (a) Results of a pre-employment physical examination of the staff member by a licensed health care practitioner, not more than twelve (12) months prior to the start of employment, volunteer work or internship;
 - (b) Results of an annual physical examination of the staff member by a licensed health care practitioner;
 - (c) Written and signed documentation from the examining licensed health care practitioner that the staff member, at the time of his or her examination, was free from tuberculosis and apparent communicable disease;
 - (d) Written and signed documentation from the examining licensed health care practitioner that the staff member, if noted to have an identified medical problem, is capable of caring for children in a licensed Child Development Facility;
 - (e) Health insurance information, if applicable; and
 - (f) The names and phone numbers of the staff member's primary licensed health care practitioner and of an emergency contact person.

327.3 Each Child Development Home shall obtain and maintain documentation establishing that each person living in the home that houses the Facility has been, within the preceding one (1) year period, examined by a licensed health care professional and certified by that professional to be free of communicable disease.

328 CRIMINAL AND BACKGROUND HISTORY CHECKS

- 328.1 The Child Development Facility shall inform every applicant for employment of the following requirements:
- (a) The applicant must satisfactorily complete a criminal background check, as required by the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code §§ 4-1501.01 *et seq.*), or by superseding District of Columbia or federal law, and a child protection register check, before he or she can be unconditionally employed;

- (b) The applicant must provide the Facility with the certified results of the criminal background and child protection register checks, both completed within the three (3) months preceding application, or, at the Facility's discretion, with all information that will enable the Facility to promptly obtain the results of the criminal background and child protection register checks of the applicant, including each state in which the applicant has resided or worked, the applicant's social security number, and all names the applicant has used;
- (c) The applicant has the right to obtain copies of the criminal background and child protection register check reports and to challenge the accuracy and completeness of the reports;
- (d) The Facility shall deny employment to any person who has been convicted of an offense listed in section 313 of this Chapter, or its equivalent, in the District of Columbia or in any other jurisdiction, and shall deny employment to any person who has been adjudicated as a child abuser or neglecter, or who has been determined, following a proceeding in which due process rights were afforded, by the applicable child protection agency or authority to have been a child abuser or neglecter, in the District of Columbia or in any other jurisdiction; and
- (e) The Facility may deny employment to the applicant until the results of the criminal background and child protection register checks are final.

328.2 All records of criminal background checks and child protection register checks of applicants and employees shall be confidential.

328.3 The Facility shall require the applicant to provide the names of and contact information for at least three (3) references, who shall be unrelated to the applicant. The Facility shall check at least three (3) references for each applicant, and shall ascertain that the applicant is suitable for employment in a position of close interaction with children, prior to employment of the applicant.

328.4 The Facility shall maintain a record of the reference checks performed for each applicant. The record shall include either: a signed and dated letter of reference received by the Facility; or documentation of a reference check conducted by telephone, including the name of the Facility licensee, Caregiver, Center Director, or designee conducting the check, the name and telephone number of the reference, the date of the check, and written comments regarding the check.

DISTRICT OF COLUMBIA REGISTER

- 328.5 The Facility may enter into a conditional employment agreement with an applicant pending the outcome of the criminal background and child protection register checks, provided that the applicant submits to the Facility a signed notarized statement affirming that he or she has not been convicted of any offense listed in section 313 of this Chapter nor has been placed on a child protection register, and that the reference checks indicate that the applicant is suitable for employment in a position of close interaction with children.
- 328.6 No Facility shall be subject to civil liability that, in good faith, relies on a criminal background check, a child protection register check, or a reference check to terminate, or to refuse to offer employment to, any individual.
- 328.7 Updated criminal background and child protection register checks shall be conducted as required by the Child and Youth, Safety and Health Omnibus Amendment Act or by superseding District of Columbia or federal law.

329 POLICIES AND PROCEDURES ON DISCIPLINE

- 329.1 The Facility shall have a written policy describing the philosophy of discipline and the specific methods of discipline that the Facility uses. Discipline shall be constructive and developmentally appropriate, and shall include child guidance and management techniques using redirection, separation from the problem situation, talking with the child about the situation, and praise for appropriate behavior.
- 329.2 The methods of discipline described in the policies and procedures shall be utilized by all Facility staff, including employees, volunteers, and interns.
- 329.3 The following methods of discipline shall not be employed:
- (a) Physical harm, including punching, pinching, shaking, spanking, biting, yanking and poking;
 - (b) Fear and/or humiliation;
 - (c) Derogatory remarks and/or profane language;
 - (d) Confinement in a locked room or enclosed area;
 - (e) Forced feeding, or withholding of food, rest, toilet use or outdoor activities or play; and
 - (f) Physical and/or chemical restraints.

- 329.4 Separation, when used as discipline, shall be brief in duration and shall be appropriate to the child's age and developmental level and to the circumstances necessitating the discipline. Any child separated shall be placed in a safe, lighted, well-ventilated room, within the sight and hearing of an adult at all times.
- 329.5 Authority to discipline shall never be delegated to another child.
- 329.6 The parent or guardian of each child enrolled in the Facility shall receive a copy of the Facility's discipline policy.

330 POLICIES AND PROCEDURES ON FACILITY OPERATIONS

- 330.1 The Facility shall develop and implement policies and procedures in the following areas:
- (a) Admissions and enrollments, including policies related to children with disabilities, illness or other special needs;
 - (b) Ages of children accepted;
 - (c) Days, hours, and periods of operation;
 - (d) Type(s) of child care services provided;
 - (e) Provision of meals and snacks;
 - (f) Fees and payment plans, including fees for different types of services and/or specific services, and refund policy;
 - (g) Transportation arrangements;
 - (h) Provisions for children with special needs, including arrangements that must be made by parent(s) or guardian(s);
 - (i) Emergency evacuation;
 - (j) Emergency medical care;
 - (k) Administration of medication;
 - (l) Reporting unusual incidents;
 - (m) Reporting and responding to reportable communicable diseases;

- (n) Staff qualifications;
- (o) Procedures regarding sanitation practices;
- (p) Animals and pets in the Facility;
- (q) Grievance procedures;
- (r) Parents' and guardians' participation in and access to the Facility, including opportunities to communicate with teachers concerning their child's development, and information parents and guardians should share with the Facility regarding their child's health status;
- (s) Periodic reporting of the child's progress to the parent(s) or guardian(s); and
- (t) Any other policies or procedures that may be required by this Chapter.

331 GENERAL PERSONNEL REQUIREMENTS FOR CENTERS

- 331.1 In each Child Development Center, the program shall be managed by a Center Director. The Center Director shall be assisted by teachers, assistant teachers and aides, as further specified in this Chapter, in the case of a Center serving infants, toddlers, and preschoolers, and by group leaders and assistant group leaders, as further specified in this Chapter, in the case of a Center providing out-of-school-time care. In all Centers, the Center Director and staff may be assisted by volunteers and/or interns if desired.
- 331.2 Each employee, volunteer or intern shall be mentally and physically able to perform the duties assigned to him or her.
- 331.3 The Facility shall not permit a person with a reportable communicable disease to be on duty in program space, or in common indoor or outdoor spaces utilized by the children, or to have contact with a child in care, without the written approval of a licensed health care practitioner.
- 331.4 Staff and visitors to the Facility shall not smoke or use tobacco products in program areas while children are in care, and tobacco products shall be kept out of the reach of children in care.
- 331.5 When children are in the care of the Facility, either on the premises or off-site, no staff member shall be under the influence of, or consume, alcoholic beverages or illegal drugs.

331.6 All paid staff employed in a licensed Child Development Center on the effective date of these rules shall have two (2) years from that date within which to meet the specific qualification requirements, as provided by this Chapter, for their positions, unless otherwise specifically stated.

332 CENTER DIRECTOR QUALIFICATIONS

332.1 The Center Director in a Child Development Center that serves one or more infants, toddlers, and/or preschoolers shall meet one of the following qualification requirements:

- (a) A bachelor's or master's degree from an accredited college or university in early childhood education or early childhood development;
- (b) A bachelor's degree or higher from an accredited college or university, at least fifteen (15) credit hours from an accredited college or university in early childhood education or early childhood development, and at least one (1) year supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (c) An associate's degree from an accredited college or university in early childhood education or early childhood development, and at least three (3) years supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (d) At least forty-eight (48) credit hours from an accredited college or university, at least fifteen (15) credit hours from an accredited college or university in early childhood education or early childhood development, and at least four (4) years supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; or
- (e) Employment as a qualified Center Director in a licensed Child Development Center in the District of Columbia on the effective date of these rules, provided that the Center Director achieves compliance with (a), (b), (c), or (d) within no more than five (5) years following said date.

332.2 Any person who is employed as a qualified Center Director in a licensed Child Development Center in the District of Columbia on the effective date of these rules, and who has been so employed continuously since July 1, 1975, or earlier, may apply to the Director of the Department of Health for a waiver of one or more of the qualification requirements contained within this section.

- 332.3 For the purposes of this section, early childhood development or early childhood education includes the following subject areas:
- (a) Growth and development of infants, toddlers, and/or children;
 - (b) Care and education of children with special needs and/or exceptionality;
 - (c) Health and physical education of infants, toddlers, and/or children;
 - (d) Play therapy;
 - (e) Language development and/or early literacy;
 - (f) Children's literature;
 - (g) Arts education;
 - (h) Child, adolescent, educational and/or abnormal psychology;
 - (i) Nutrition for children;
 - (j) Family development;
 - (k) Methods of teaching;
 - (l) Classroom management;
 - (m) Curriculum programs and activities for infants, toddlers, and/or children;
 - (n) Educational evaluation and measurement;
 - (o) Early Childhood Development or Youth Development administration;
 - (p) Diversity; and
 - (q) Any other area as determined by the Director.

332.4 Each Center Director shall successfully complete, prior to or within one (1) year of employment as a Center Director, a total of no less than twelve (12) hours of training, from an accredited college or university or from another source approved by the District of Columbia government, in the following subject areas:

- (a) Human resources;
- (b) Management and administration;

- (c) Financial management;
- (d) Planning, development, and evaluation of child development programs;
- (e) Curriculum of child development programs; and
- (f) Evaluation and measurement of children.

332.5 Each Center Director shall attend, upon the request of the Department of Health, periodic regulatory compliance review sessions presented by or under the auspices of the Department.

333 DUTIES AND RESPONSIBILITIES OF CENTER DIRECTORS

333.1 The Center Director shall be physically present in the Facility at least one-half (1/2) of the time during the Center's hours of operation. No less than one-half (1/2) of that time shall be during peak hours of operation.

333.2 The Center Director shall be responsible for the supervision, program planning and administration of the Child Development Center and its staff, consistent with the written operational policies and philosophy, and shall assume the following responsibilities:

- (a) Ensuring compliance with the requirements of this Chapter, and with all applicable federal and District of Columbia laws;
- (b) Selecting and supervising qualified staff;
- (c) Providing orientation and training to each staff member as required;
- (d) Designating a teacher or group leader to assume responsibility for the Facility's operation in the absence of the Center Director;
- (e) Ensuring that adult/child ratios are maintained in compliance with section 343 of this Chapter;
- (f) Ensuring parent involvement in the program and in the activities of the Center;
- (g) Reporting unusual incidents as defined in section 399 and in accordance with section 322 of this Chapter;
- (h) Ensuring that at least one (1) staff member with a current CPR and First Aid certification for children is present on the Facility premises at all times;

- (i) Attending in-service training programs and completing continuing education requirements as specified; and
- (j) Reporting evidence of child abuse and neglect that comes to the Facility staff's attention, in accordance with section 322 of this Chapter.

334 TEACHER QUALIFICATIONS

334.1 A teacher shall be at least twenty (20) years of age and meet one of the following requirements:

- (a) An associate's degree or higher from an accredited college or university in early childhood education or early childhood development;
- (b) An associate's degree or higher from an accredited college or university, at least fifteen (15) credit hours from an accredited college or university in early childhood education or early childhood development, and at least one (1) year supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction;
- (c) At least forty-eight (48) credit hours from an accredited college or university, at least fifteen (15) credit hours from an accredited college or university in early childhood education or early childhood development, and at least two (2) years supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction; or
- (d) A valid Child Development Associate (CDA) credential, specifying that the individual is qualified for the assigned age classification.

334.2 For the purposes of this section, early childhood development and early childhood education shall include the courses listed in subsection 332.3 of this Chapter.

335 DUTIES AND RESPONSIBILITIES OF TEACHERS

335.1 The duties of each teacher in a Child Development Center shall include the following:

- (a) Assisting the Center Director in ensuring compliance with this Chapter,

- (b) Providing, and/or overseeing the provision of, adequate supervision and appropriate care for all of the children in his or her class or group at all times;
- (c) Planning and initiating daily activities based on the assessed strengths, interests and needs of all of the children in his or her class or group;
- (d) Assisting the Center Director in implementing the Facility's policies and procedures;
- (e) Supervising subordinate staff;
- (f) Attending in-service training programs and completing continuing education requirements, as required;
- (g) Communicating regularly with the parent(s) or guardian(s) of each child in his or her class or group about the development of their children;
- (h) Assuming responsibility for the program of the Facility in the absence of the Center Director, if and when so designated; and
- (i) Performing other appropriate duties as requested by the Center Director.

336**ASSISTANT TEACHER QUALIFICATIONS****336.1**

An assistant teacher in a Child Development Center shall be at least eighteen (18) years of age and shall meet one of the following qualification requirements:

- (a) At least twenty-four (24) credit hours from an accredited college or university, plus demonstrated skill and competence with young children as satisfactorily determined by the Center Director;
- (b) A high school diploma or General Education Development certificate, plus certification of training and competence in the field of early childhood education or early childhood development from an accredited vocational high school; or
- (c) A high school diploma or General Education Development certificate, plus one (1) year of supervised experience working with children in a licensed District of Columbia Child Development Center or its equivalent in another jurisdiction.

336.2

For the purposes of this section, early childhood development and early childhood education shall include the courses listed in subsection 332.3 of this Chapter.

337 DUTIES AND RESPONSIBILITIES OF ASSISTANT TEACHERS

337.1 The duties of each assistant teacher in a Child Development Center shall include the following:

- (a) Providing supervision and appropriate care to the children in his or her class or group, under the direct supervision of a teacher or the Center Director;
- (b) Assisting the teacher in planning the daily program of activities;
- (c) Assisting the teacher in regular communication with the parent(s) or guardian(s) of each child in his or her class or group about their children's development; and
- (d) Attending in-service training programs and completing continuing education requirements, as required.

338 CONTINUING EDUCATION REQUIREMENTS FOR STAFF IN CENTERS

338.1 Each paid employee of a Child Development Center serving infants, toddlers, and/or preschoolers whose duties and/or responsibilities include the care of enrolled children shall participate in at least eighteen (18) hours of training annually in the fields of child and youth development and/or early childhood education.

338.2 The required annual training shall include the following subject areas:

- (a) Child health, including standard health care precautions, and communicable diseases and appropriate responsive action thereto;
- (b) Child abuse and neglect prevention, detection and reporting, including mandatory reporting requirements;
- (c) Developmentally appropriate programming for infants, toddlers, preschool and/or school-age children, as applicable;
- (d) Permissible and developmentally appropriate methods of child discipline;
- (e) Inclusion of children with special needs, including the Americans With Disabilities Act; and
- (f) Precautions against Sudden Infant Death Syndrome; and

(g) Any other area as determined by the Director.

338.3

Acceptable subject areas for continuing education and training, as required by this section, include the following:

- (a) Any area listed in subsection 332.3 of this Chapter;
- (b) Child abuse and neglect recognition, prevention, and mandatory reporting;
- (c) First aid and CPR for children;
- (d) Prevention, recognition, and management of communicable diseases;
- (e) Medication administration;
- (f) Use of physical space and play equipment;
- (g) Communication and collaboration with parents and families;
- (h) Community health and social services resources for children and families;
- (i) Planning programs and activities for children and families;
- (j) Enhancing self-control and self-esteem in children;
- (k) Developmentally appropriate discipline methods and techniques for infants, toddlers, and/or children; and
- (l) Any other area as determined by the Director.

338.4

In-service training that meets the requirements of this Chapter may occur in a variety of settings, including, but not limited to: seminars; courses held by colleges, universities or technical schools; workshops, conferences, and association meetings; and accredited distance education, including training via the Internet.

338.5

Each Facility shall obtain and maintain adequate documentation of each staff member's participation in continuing education. Acceptable documentation shall include one or more of the following:

- (a) Transcript from an accredited college, university or technical school;

- (b) Certification of participation from a training source approved by the Distance Education Training Council;
- (c) Written documentation verifying completion of training in First Aid for children, CPR for children, and/or common childhood illnesses, from acceptable sponsoring entities, including the American Red Cross, the American Heart Association, the National Safety Council, and other similarly recognized and accredited organizations; and
- (d) A signed and dated statement from the trainer, on a form approved by the Director, verifying the staff member's participation in a training program conducted by a trainer licensed, certified, or otherwise approved by the District of Columbia government.

338.6 Each volunteer or intern serving a Child Development Center shall participate, at least annually, in a training seminar, which shall include a review of the subject areas listed in subsection 338.2.

339 AIDES, VOLUNTEERS AND INTERNS

339.1 Each aide, volunteer or intern in a Child Development Center shall work under the direct supervision of a teacher, assistant teacher, group leader, assistant group leader, or Center Director at all times.

339.2 The duties of each aide, volunteer or intern in a center shall include the following:

- (a) Assisting the teacher, assistant teacher, group leader, assistant group leader, and/or Center Director as directed;
- (b) Providing supervision and appropriate care to the children in his or her assigned class or group, under the direct supervision of a teacher, assistant teacher, group leader, assistant group leader, or Center Director; and
- (c) Attending in-service training programs and completing continuing education requirements, as required.

339.3 The Facility shall ensure that no aide, volunteer or intern has sole responsibility for a group or classroom, or for the Center, at any time.

INDOOR PROGRAM SPACE IN CENTERS

For the purposes of this Chapter, "Program Space" is defined as space within the Facility, exclusive of: food preparation areas, kitchens, bathrooms, toilets, offices, staff rooms, corridors, hallways, stairways, closets, lockers, laundry rooms, furnace rooms, file cabinets, storage spaces, and non-movable furniture that is not designed for the use of enrolled children.

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Each Facility shall provide adequate indoor space for the daily program of the Facility. The Director shall determine the licensed capacity of each Facility serving infants, toddlers, and/or preschoolers so that there is a minimum of thirty-five square feet (35 ft²) of program space per child. Each such Facility shall maintain a minimum of thirty-five square feet (35 ft²) of program space per child at all times.

0.3 The temperature within each room of program space shall be maintained at between sixty-five degrees Fahrenheit (65°F) and seventy-five degrees Fahrenheit (75°F) during the winter months, and between sixty-eight degrees Fahrenheit (68°F) and eighty-two degrees Fahrenheit (82°F) during the summer months.

340.4 Each Facility shall provide a separate room, or a separate designated area within a room, for the temporary or ongoing care of a child who needs to be separated from the group due to injury or illness. This room or area shall be located so that any child placed within it is within sight and hearing of the Facility staff at all times, and so that toilet and lavatory facilities are readily accessible. This room or area may be used for other purposes when not needed for such separation of a child.

340.5 If a Child Development Center is located in a building that also houses other entities or persons, the portion of the building to which the children from the Facility have access shall be for the exclusive use of children and staff of the Facility during the Facility's hours of operation, with the exception of entryways, hallways, and other common areas in the building normally available for use by the public.

341 ADDITIONAL INDOOR PROGRAM SPACE REQUIREMENTS FOR INFANTS, TODDLERS, AND YOUNG CHILDREN IN CENTERS

341.1 The indoor program space for infant and toddler activities shall contain a minimum of thirty-five square feet (35 ft²) per child of unencumbered instructional and/or play space, or a minimum of forty-five square feet (45 ft²) per child of encumbered instructional or play space measured on the inside wall-to-wall dimensions.

- 344.6 The Facility shall develop a written activity plan for each group of children that implements the elements of the program of activities.
- 344.7 The Facility shall ensure that the daily activities for each group of children include both structured and unstructured times, and both staff-directed and child-initiated experiences.
- 344.8 The Facility shall ensure that its program of activities provides periods of rest, the duration and scheduling of which are appropriate to prevent fatigue and to meet the physical needs of the children enrolled at the Facility, taking into account the ages and developmental levels of the children. Each child in a full-day program shall have specific times designated for rest each day.
- 344.9 The Facility shall ensure that each child has a supply of clean, dry clothing in case of an emergency, and that staff promptly remove all wet or soiled clothing from a child and replace it with this clean and dry clothing.

345 CENTER DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES FOR OUT-OF-SCHOOL-TIME PROGRAMS

- 345.1 Each Child Development Center that provides out-of-school-time care, either alone or in conjunction with infant, toddler, and/or preschool care, shall have a Center Director.
- 345.2 The Center Director for a Center that provides both out-of-school-time care and care for infants, toddlers, and/or preschoolers shall meet the qualification requirements for a Center Director in accordance with section 332 of this Chapter.
- 345.3 The Center Director in a Child Development Center that provides out-of-school-time care only shall be at least twenty-one (21) years of age and shall meet one of the following qualification requirements:
- (a) A bachelor's degree or higher from an accredited college or university in education or child and youth development;
 - (b) A bachelor's degree or higher from an accredited college or university, plus at least one (1) year supervised experience working with children of legal school age and under the age of fifteen (15) years, in an accredited school or camp, a licensed Child Development Center, or the equivalent;

- (c) An associate's degree from an accredited college or university in education or child and youth development, plus at least one (1) year supervised experience working with children of legal school age and under the age of fifteen (15) years, in an accredited school or camp, a licensed Child Development Center, or the equivalent;
- (d) At least forty-eight (48) credit hours from an accredited college or university, at least fifteen (15) credit hours from an accredited college or university in education or child and youth development, plus at least eighteen (18) months supervised experience working with children of legal school age and under the age of fifteen (15) years, in an accredited school or camp, a licensed Child Development Center, or the equivalent;
or
- (e) Employment as a qualified Center Director in a licensed Child Development Center providing out-of-school-time care in the District of Columbia on the effective date of these rules, provided that the Center Director achieves compliance with (a), (b), (c), or (d) within no more than five (5) years following said date.

345.4 In order to qualify for the purpose of this section, a period of supervised work experience must include an average of no less than twenty (20) hours per week. One (1) year experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

345.5 The duties and responsibilities of the Center Director in a Center that provides out-of-school-time care shall include those contained in section 333 of this Chapter.

346 GROUP LEADER QUALIFICATIONS AND RESPONSIBILITIES FOR OUT-OF-SCHOOL-TIME PROGRAMS

346.1 In a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, and/or preschoolers, a qualified teacher shall be deemed to meet the qualification requirements for a group leader.

346.2 A group leader in a Child Development Center that provides out-of-school-time care only shall be at least eighteen (18) years of age and shall meet one of the following qualification requirements:

- (a) An associate's degree or higher from an accredited college or university in education or child and youth development;

- (b) At least forty-eight (48) credit hours from an accredited college or university, at least nine (9) credit hours from an accredited college or university in education or child and youth development, plus at least six (6) months supervised experience working with children of legal school age and under the age of fifteen (15) years, in an accredited school or camp, a licensed Child Development Center, or the equivalent; or
- (c) A high school diploma or its equivalent, plus at least one (1) year supervised experience working with children of legal school age and under the age of fifteen (15) years, in an accredited school or camp, a licensed Child Development Center, or the equivalent.

346.3 In order to qualify for the purpose of this section, a period of supervised work experience must include an average of no less than twenty (20) hours per week. One (1) year experience is equal to one thousand (1,000) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.

346.4 The duties and responsibilities of each group leader shall include the following:

- (a) Supervising, assisting, and guiding the children in his or her assigned group;
- (b) Assisting the Center Director in planning the program of care;
- (c) Supervising subordinate staff; and
- (d) Communicating regularly with the parent(s) or guardian(s) of each child in his or her group concerning their children.

347 ASSISTANT GROUP LEADER QUALIFICATIONS AND RESPONSIBILITIES FOR OUT-OF-SCHOOL-TIME PROGRAMS

347.1 In a Child Development Center that provides both out-of-school-time care and care for infants, toddlers, and/or preschoolers, a qualified assistant teacher shall be deemed to meet the qualification requirements for an assistant group leader.

347.2 An assistant group leader in a Child Development Center that provides out-of-school-time care only shall be at least eighteen (18) years of age, shall have at least a high school diploma or its equivalent, and shall have at least six (6) months supervised experience working with children of legal school age and under the age of fifteen (15) years, in an accredited school or camp, a licensed Child Development Center, or the equivalent.

DISTRICT OF COLUMBIA REGISTER

- 347.3 In order to qualify for the purpose of this section, a period of supervised work experience must include an average of no less than twenty (20) hours per week. Six (6) months experience is equal to five hundred (500) hours. Multiple qualifying periods may be aggregated in order to achieve the required total.
- 347.4 Each assistant group leader shall work under the direct supervision of a group leader.
- 347.5 The duties and responsibilities of an assistant group leader shall be to aid the group leader in guiding the activities of the children.

348 STAFFING AND GROUP SIZE FOR OUT-OF-SCHOOL-TIME PROGRAMS

- 348.1 Each group in a Child Development Center that provides out-of-school-time care shall be supervised by at least two (2) adults at all times.
- 348.2 Each group containing one or more children eleven (11) years of age or younger shall be supervised by, at a minimum, a group leader and an assistant group leader. A group containing children all of whom are twelve (12) years of age and older may be occasionally supervised by a volunteer or intern in addition to the group leader.
- 348.3 The group sizes and adult/child ratios specified in section 343 of this Chapter shall apply to out-of-school-time care programs, except as specified further in this section. For the purpose of achieving the required ratio for any group, the Facility may count all staff members, including those who meet the qualifications of Center Director, group leader and assistant group leader, provided that each such staff member is so counted only for the time that he or she is directly caring for that group of children.
- 348.4 The Director may approve reasonable variations to the prescribed group size limitations for a facility, including flexible groupings and sub-groupings, taking into consideration the following areas:
- (a) Qualifications and numbers of staff and volunteers;
 - (b) Program structure and focus;
 - (c) Ages and developmental levels of children served;
 - (d) Usable space; and
 - (e) The Facility's past history of compliance.

348.5 The Facility shall have a written staffing plan to ensure the supervision of all enrolled children at all times. If written approval is obtained from the Director, the staffing plan may permit different levels of supervision at different times, consistent with the level of risk involved in each activity.

348.6 The Facility shall ensure that its staff members keep each enrolled child within continuous visual and hearing range at all times when the child is in the care of the facility, both on the facility premises and elsewhere. When a child uses the toilet, the staff shall supervise with appropriate respect for the child's privacy.

349 TRAINING FOR STAFF IN OUT-OF-SCHOOL-TIME PROGRAMS

349.1 Each paid employee of a Child Development Center providing out-of-school-time care whose duties and/or responsibilities include the care of enrolled children shall participate in at least ten (10) hours of training annually in the fields of child and youth development and/or education.

349.2 The required annual training shall include the subject areas specified in subsection 338.2 of this Chapter, as applicable to school-age children.

349.3 Acceptable subject areas for continuing education and training include the subject areas specified in subsection 338.3 of this Chapter, as applicable to school-age-children, plus the following additional areas as applicable to the age range of the children served by the Facility:

- (a) Recreation;
- (b) Science and technology;
- (c) Music, visual, and performing arts; and
- (d) Guidance.

350 INDOOR SPACE AND PROGRAMMING REQUIREMENTS FOR OUT-OF-SCHOOL-TIME PROGRAMS

350.1 Each Child Development Center that provides out-of-school-time care shall comply with the program space requirements for Centers contained in section 340 of this Chapter, with the exception of subsection 340.2.

350.2 The Facility shall ensure that adequate room is provided for all program activities, and shall:

- (a) Arrange the space to permit the easy accommodation of the entire range of activities offered by the program;
- (b) Arrange the space so that various activities can occur simultaneously without disruption of one by another; and
- (c) Ensure that there is adequate and convenient storage space for equipment, materials, and the personal possessions of enrolled children and Facility staff.

350.3 Each Facility shall provide the enrolled children with an activity program which:

- (a) Is appropriate to the ages, developmental levels, abilities, and interests of the children enrolled;
- (b) Provides a balance among self-initiated, group-initiated, and staff-initiated activities;
- (c) Provides opportunities for learning, self-expression, and participation in a variety of stimulating activities;
- (d) Provides opportunities for civic engagement and community service; and
- (e) Fosters self-reliance, social responsibility, growth and development.

350.4 Each Facility shall develop a written activity plan for each group of children that implements the elements of the activity program. The plan shall include a daily schedule of activities and routines which offers reasonable regularity, and shall include snack and meal periods as applicable, quiet and active activities, and opportunities for learning and self-expression.

351 CHILD DEVELOPMENT HOMES

351.1 A Child Development Home may be licensed to provide care for up to six (6) children, with no more than two (2) children being non-ambulatory or under two (2) years of age. For the purposes of this Chapter, the number of children in the Child Development Home, and the number of children under two (2) years of age, shall include all children age four (4) and younger who reside in the home of the Caregiver.

351.2 The Caregiver shall be responsible for compliance with all District of Columbia laws and regulations applicable to a Facility, including all sections in this Chapter unless specified to be applicable only to Child Development Centers.

352 CAREGIVER QUALIFICATIONS AND RESPONSIBILITIES

352.1 Each Child Development Home Caregiver shall meet the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Have a high school diploma or a General Education Development certificate, with the exception that all Caregivers licensed on the effective date of these rules shall have four (4) years from that date within which to obtain the diploma or certificate;
- (c) Attend an annual regulatory compliance review seminar presented by the Department of Health;
- (d) Attend at least three (3) child development-related training courses, approved by the District of Columbia government, per year, for a total of no less than nine (9) hours of training per year;
- (e) Successfully complete training, as approved by the District of Columbia government, on precautions against Sudden Infant Death Syndrome;
- (f) Undergo a physical examination by a licensed health care practitioner at least annually, and obtain written and signed documentation, from the examining practitioner, that the Caregiver, at the time of the examination, is free of tuberculosis and other diseases in communicable form, and is physically capable of caring for children; and
- (g) Undergo training and obtain certification in First Aid and CPR for children, and maintain documentation of current certification in both.

352.2 The duties of a Child Development Home Caregiver shall include, but shall not be limited to, the following:

- (a) Orienting each member of the Facility household to the standards and rules governing Child Development Homes;
- (b) Operating the home in compliance with all applicable laws and rules;
- (c) Supervising each enrolled child;

- (d) Ensuring that any other duties or activities performed on behalf of the household do not interfere with the supervision and care given to the enrolled children;
- (e) Ensuring that each person residing in the home has a physical examination by a licensed health care practitioner at least annually and that each is certified by the examining practitioner to be free of communicable disease;
- (f) Supervising and accompanying all visitors who are present in the home or on the grounds during the Facility's hours of operation;
- (g) Reporting to the Director, and to the parent(s) or guardian(s) of each affected child, any unusual incident or accident that occurs in the home, in accordance with the section 322 of this Chapter.
- (h) Ensuring that an adequate number of back-up personnel, qualified in accordance with the requirements set forth in this Chapter and registered with the Director, are engaged by the Facility and are available to be present at the Facility when needed, in accordance with this Chapter, at all times during the Facility's hours of operation;
- (i) Developing and implementing written contingency plans, including written instructions for all Facility personnel and for all responsible household members, for use in case of emergencies, both medical and non-medical; and
- (j) Being responsible for the overall supervision and administration of the program of care provided to the enrolled children.

353**CHILD DEVELOPMENT HOME INDOOR SPACE REQUIREMENTS AND EQUIPMENT**

- 353.1 Each Child Development Home must obtain approval from the Director for the use of all program space, and may only offer child care in approved space.
- 353.2 The Caregiver and/or Facility staff shall arrange the play space and the furniture in the approved program space within the Child Development Home so as to allow adequate room for active and quiet play and for individual and group activities.
- 353.3 Program space does not include: the food preparation areas within the kitchen, bathrooms, hallways, stairways, closets, laundry rooms or areas, furnace rooms, and storage spaces.

353.4 Each Child Development Home shall provide a sufficient amount, as determined by the Director or his or her designee, of developmentally appropriate toys, games, equipment, materials, and books to meet the needs of the children enrolled at the Facility.

354 CHILD DEVELOPMENT HOME GENERAL DAILY PROGRAM ACTIVITIES

354.1 Each Child Development Home Caregiver shall establish a planned program of activities for the Facility, based on the stage of development of each enrolled child. The Facility must ensure that its daily program shall:

- (a) Motivate and stimulate each child's cognitive, physical, social, emotional and creative development;
- (b) Contain sufficient continuity and flexibility to meet the needs of each individual child as well as the needs of the group;
- (c) Provide a balance of active and quiet learning through play;
- (d) Provide both structured and unstructured times, and both Caregiver-directed and child-initiated experiences;
- (e) Provide periods of rest, appropriate to the age and developmental needs of each child, including specific designated times for rest each day; and
- (f) Provide a balance of indoor and outdoor activities, including a minimum of one (1) hour of outdoor play or outdoor activity each day for each infant, toddler, and preschool-age child in a full-day program.

354.2 If a Child Development Home provides out-of-school-time care to school-age children, the Facility shall develop a program of supervised activities that is designed for school-age children, and that includes, for each child:

- (a) Free choice of play;
- (b) Opportunities to run, jump and climb;
- (c) Opportunities for concentration, alone or in a group;
- (d) Time to read or to do homework;
- (e) Opportunities for creative activities; and

- (f) Opportunities for developing supportive relationships with the Caregiver and with peers.

355 CHILD DEVELOPMENT HOME OUTDOOR SPACE, EQUIPMENT AND SAFETY

- 355.1 In the absence of suitable outdoor space on the premises of the Child Development Home, such as a fenced yard, the Caregiver shall ensure that all enrolled children are given regular opportunities for safe play at one or more nearby parks or playgrounds.
- 355.2 Each outdoor play area in use by one or more enrolled children shall be visible to the Caregiver or other approved Facility staff at all times.
- 355.3 The Caregiver or other approved Facility staff shall supervise all children during all periods of outdoor play.
- 355.4 Each Child Development Home shall ensure that all outdoor play areas and equipment on the Facility premises are maintained in compliance with the applicable safety requirements of this Chapter, and that all play equipment conforms to the standards established by the U.S. Consumer Product Safety Commission and by the American Society for Testing and Materials.
- 355.5 If one or more enrolled children swim in a pool, lake or river while under the care of a Child Development Home, the Facility must adhere to the adult/child ratio requirements contained in section 343 of this Chapter, and to the requirements contained in section 368 of this Chapter concerning "Swimming and Water Safety."

356 HEALTH AND SANITATION REQUIREMENTS FOR CHILD DEVELOPMENT HOMES

- 356.1 Each Child Development Home shall comply with the health and sanitation requirements as set out in sections 370 and 371 of this Chapter, concerning "Handling Diapers, Training Pants and Toys" and "Hand Washing Practices".
- 356.2 The Facility shall maintain at all times, in a designated location that is readily available to staff and out of reach of children, an adequate quantity of first aid supplies for the number of children enrolled in the Facility.
- 356.3 The Facility shall ensure that no person, including the Caregiver, staff, residents, and visitors to the home, smokes or uses tobacco products within the program space when one or more children is in the care of the Facility.

- 356.4 The Facility shall ensure that all tobacco products that may be present in the Facility remain out of the reach of enrolled children at all times.
- 356.5 When children are in the care of the Facility, either on the premises or off-site, no Caregiver or other staff member shall be under the influence of, or consume, alcoholic beverages or illegal drugs.
- 356.6 Each Child Development Home shall comply with the infant sleep position requirements (precautions against Sudden Infant Death Syndrome) as set out in section 376 of this Chapter.

357 EXPANDED CHILD DEVELOPMENT HOMES

- 357.1 Each Expanded Child Development Home may be licensed to provide care for more than six (6) children, up to a maximum of twelve (12) children.
- 357.2 Each Expanded Child Development Home shall comply with all of the requirements of this Chapter pertaining to Child Development Homes, and with the following additional requirements:
- (a) Each Expanded Child Development Home shall have at least two Caregivers; and
 - (b) Each Expanded Child Development Home shall provide a minimum of thirty-five square feet (35 ft²) of program space per child.
- 357.3 No Caregiver in an Expanded Child Development Home is permitted to provide foster care, for either children or adults, on the same premises, without the prior written approval of the Director.
- 357.4 No Caregiver in an Expanded Child Development Home is permitted to provide care, on the same premises, for convalescents, persons requiring nursing care, or persons requiring significant assistance with activities of daily living.

358 QUALIFICATIONS OF CAREGIVERS IN EXPANDED CHILD DEVELOPMENT HOMES

- 358.1 Each Caregiver in an Expanded Child Development Home shall comply with the qualification requirements for Caregivers in Child Development Homes contained in this Chapter, except as specifically provided herein.
- 358.2 Each Primary Caregiver in an Expanded Child Development Home shall:
- (a) Be at least twenty-one (21) years of age;

- (b) Have obtained one of the following:
 - (1) An associate's degree or higher from an accredited college or university in early childhood education or early childhood development;
 - (2) At least forty-eight (48) credit hours from an accredited college or university, including at least fifteen (15) credit hours from an accredited college or university in early childhood education or early childhood development;
 - (3) A current and valid Child Development Associate credential;
 - (4) A current and valid accreditation credential from the National Association for Family Child Care; or
 - (5) Subject to the approval of the Director, a current and valid family child care credential from another jurisdiction, obtained by successfully completing a state-approved course of training of at least ninety (90) hours in length; and
- (c) Have successfully completed one of the following:
 - (1) At least one (1) year of operation as the Caregiver in a licensed Child Development Home, or its equivalent in another jurisdiction; or
 - (2) At least one (1) year of employment in a licensed Child Development Center, or its equivalent in another jurisdiction, as a Center Director, Teacher or Assistant Teacher.

358.3 For the purposes of this section, early childhood development and early childhood education shall include the courses listed in subsection 332.3 of this Chapter.

358.4 Each Associate Caregiver in an Expanded Child Development Home shall:

- (a) Be at least eighteen (18) years of age;
- (b) Have a high school diploma or a General Education Development certificate, with the exception that all Caregivers licensed on the effective date of these rules shall have four (4) years from that date within which to obtain the diploma or certificate; and
- (c) Have successfully completed one of the following:

- (1) At least one (1) year of operation as the Caregiver in a licensed Child Development Home, or its equivalent in another jurisdiction; or
- (2) At least one (1) year of employment in a licensed Child Development Center, or its equivalent in another jurisdiction, as a Center Director, Teacher or Assistant Teacher.

358.5 Each Caregiver shall be responsible for the performance of all duties listed in subsection 352.2 of this Chapter, concerning "Caregiver Responsibilities".

358.6 The enrolled children shall be supervised at all times by one or both of the Caregivers, or by a substitute Caregiver who is certified in First Aid and CPR for children and has been previously approved by the Director.

359 ADULT/CHILD RATIOS IN EXPANDED CHILD DEVELOPMENT HOMES

359.1 Each Expanded Child Development Home shall comply with the adult/child ratio requirements contained within section 343 of this Chapter.

359.2 An Expanded Child Development Home may provide care for more than two (2) children who are non-ambulatory or under two (2) years of age, provided that the number of such children does not exceed the following:

- (a) Four (4) children if there are two (2) Caregivers present; or
- (b) Six (6) children if there are three (3) or more Caregivers present.

360 24-HOUR FACILITIES

360.1 Each Child Development Facility that offers twenty-four (24) hour care shall comply with all applicable requirements contained in this Chapter, in addition to the specific requirements listed in this section.

360.2 The Facility shall ensure that each activity is appropriate both for the period of the day and for the age of each participating child.

360.3 The Facility shall obtain written consent from a child's parent(s) or guardian(s) before Facility staff bathe and/or shower that child, with the exception that, in emergency situations such as regurgitation or bedwetting, Facility staff may take appropriate measures to clean an affected child.

360.4 Each Facility shall meet the following requirements for rest and sleep:

- (a) If a child is in the care of the Facility after 6:00 p.m. on a regular basis, the Facility shall establish a bedtime routine, in consultation with that child's parent(s) or guardian(s) and taking into account the age and developmental needs of the child and the time of the child's scheduled pick-up from the Facility, on the first day of enrollment, and the Facility shall document the routine in that child's record;
- (b) If a child is in the care of the Facility after 6:00 p.m. on an occasional basis, the Facility shall establish a bedtime routine, in consultation with that child's parent(s) or guardian(s) and taking into account the age and developmental needs of the child and the time of the child's scheduled pick-up from the Facility, on each such occasion;
- (c) The Facility shall provide each enrolled child with an individual bed, cot, or crib that is appropriate for the child's age and size;
- (d) The Facility shall ensure that bed linens are changed before the bed, cot, or crib is used by a different child;
- (e) The Facility shall provide, or shall ensure that each enrolled child's parent(s) or guardian(s) provide, appropriate clothing for the child to wear while sleeping;
- (f) The Facility shall ensure that all cribs, cots, and beds are maintained in a clean and sanitary condition;
- (g) If a Facility provides one or more bunk beds for the use of enrolled children, the Facility shall ensure that no child under seven (7) years of age is placed in a top bunk;
- (h) The Facility shall ensure that all beds, cots, cribs and mattresses have firm surfaces and meet the standards established by the Consumer Product Safety Commission;
- (i) The Facility shall ensure that all beds, cots, and cribs, when in use, are placed at least two (2) feet apart, and that each is at least two (2) feet away from any radiator and/or window;
- (j) The Facility shall ensure that no bed, cot or crib blocks or impedes access to any exit;
- (k) The Facility shall ensure that no other person shares a bed, cot or crib with an enrolled child;
- (l) The Facility shall ensure that no enrolled child five (5) years of age or older shares a sleeping room with an adult;

- (m) The Facility shall ensure that staff monitor sleeping children at least once every three (3) hours, and maintain a written record of this monitoring; and
- (n) The Facility shall provide night-lights near the exit of each sleeping room, along each hallway adjacent to a sleeping room, and near each bathroom to be used by enrolled children during the overnight hours.

360.5

Each Facility that provides twenty-four (24) hour care to school-age children shall comply with the following additional requirements:

- (a) The Facility shall establish a homework routine for each school-age child, in consultation with the parent(s) or guardian(s) of that child, on the first day of enrollment, and shall document the routine in that child's record;
- (b) The Facility shall ensure that each school-age child is afforded quiet time and is provided with a quiet area for doing homework, as needed;
- (c) The Facility staff shall provide assistance with homework, when needed; and
- (d) If an enrolled child is to go to school directly from the Facility, the Facility shall enter into a written agreement with that child's parent(s) or guardian(s), on or before the first day of enrollment, that specifies the means by which the child shall get to school and the person(s) responsible for accompanying the child to school, and the Facility shall maintain a copy of this agreement in the child's record.

360.6

Each Facility shall comply with all applicable requirements concerning nutrition that are contained elsewhere within this Chapter, in addition to the following special requirements:

- (a) The Facility shall provide or serve dinner and a snack to each child scheduled to remain in care overnight, unless the Facility and the child's parent(s) or guardian(s) enter into a written agreement specifying that the child will eat dinner before arriving at the Facility; and
- (b) The Facility shall provide breakfast to each child who has been in care overnight at the Facility and is going directly from the Facility to school.

360.7

Each Facility providing twenty-four (24) hour care shall comply, at all times, with the adult/child ratio and staff qualifications requirements contained in this Chapter.

DISTRICT OF COLUMBIA REGISTER

360.8 The Facility shall ensure that staff members are available at all times to attend to the needs of the children, and that at least one (1) adult staff member is awake and within sight and hearing range of the children at all times.

360.9 The Facility shall establish and implement emergency contingency plans, to address both medical and non-medical emergencies at all hours of the day during which care may be provided, including during natural and/or man-made emergencies that necessitate evacuation from the Facility, temporary displacement from the Facility, or confinement to the Facility.

361 TOILETS AND SINKS

361.1 Each Child Development Center serving preschoolers shall provide at least one (1) flush toilet and one (1) sink for every ten (10) occupants of the Facility, including staff.

361.2 Each Center providing out-of-school-time care to school-age children shall provide at least one (1) flush toilet and one (1) sink for every twenty (20) occupants of the Facility, including staff.

361.3 Urinals may be substituted for flush toilets in Centers in a ratio of two (2) urinals to (1) flush toilet, provided that at least two-thirds (2/3) of the required number of flush toilets are maintained.

361.4 Each Center shall provide bathroom facilities for use by adults separately from those for use by children and/or infants.

361.5 If any toilet or sink in a Child Development Facility is too high to be used by one or more enrolled children without assistance, the Facility shall provide a block or step for the child or children's use.

361.6 Each Facility shall provide toilet training chairs for use by any child or children who require them. Training chairs shall be emptied promptly and sanitized after each use.

361.7 Each Facility shall provide soap and single-use paper towels in each bathroom.

362 GENERAL FURNISHINGS, EQUIPMENT AND SUPPLIES

362.1 Each Child Development Facility shall provide a variety and sufficient quantities of materials, equipment and supplies for indoor and outdoor activities, consistent with the numbers, ages and needs of the infants, toddlers, preschool and school-age children enrolled.

- 362.2 Materials, equipment and supplies accessible to children shall be age appropriate, safe, in good repair, clean, and non-toxic, and shall be accessible to and appropriate for children with special needs if the Facility provides care to such children.
- 362.3 The Facility shall ensure that there are sufficient quantities of materials and equipment to:
- (a) Avoid excessive competition among the children and long waits for use of the materials and equipment; and
 - (b) Provide for a variety of experiences and appeal to the individual interests of the children.
- 362.4 The Facility shall ensure that materials provided are culturally relevant and designed to promote:
- (a) Social development;
 - (b) Communication skills;
 - (c) Self-help skills;
 - (d) Large and small muscle development; and
 - (e) Creative expression.
- 362.5 Each Facility shall have available a sufficient number of strollers, or carriages with appropriate restraints, for the infants and non-ambulatory children enrolled.

363 GENERAL SAFETY AND MAINTENANCE

- 363.1 All playthings, equipment, materials, and furnishings provided by a Child Development Facility for use by children shall meet the standards of the Consumer Product Safety Commission and the American Society for Testing and Materials, and shall:
- (a) Be sturdy enough that they will not splinter;
 - (b) Not have sharp points or rough edges;
 - (c) Have lead-free, non-toxic paint or finishes;
 - (d) Be easily washable;

- (e) Be maintained in good repair; and
 - (f) Comply with federal standards regarding small toys and objects for use by children.
- 363.2 In addition to the requirements contained within subsection 363.1, above, all playthings, equipment, materials, and furnishings provided by a Facility for use by children under the age of three (3) years shall:
- (a) Be large enough that they cannot be swallowed;
 - (b) Not have small parts that may loosen and fall off, such as buttons on stuffed animals; and
 - (c) Comply with federal standards regarding small toys and objects for use by young children.
- 363.3 All play equipment shall be constructed and installed to ensure its safe use by all enrolled children (*e.g.*, height shall not be excessive for infants and toddlers; the equipment shall not be a potential source of entrapment). There shall be no pinch, crush, or shear points on or underneath such equipment that may be accessible by children.
- 363.4 The Facility shall remove, repair, or discard all furniture, equipment, and materials that are not usable due to breakage or to hazardous conditions.
- 363.5 Projectile toys shall be prohibited.
- 363.6 Tricycles and other riding toys provided by a Facility shall be steerable, appropriate for the ages and sizes of the children enrolled, and shall not contain spokes.
- 363.7 The Facility shall maintain tricycles and other riding toys in good condition, free of sharp edges or protrusions that may injure children. When not in use, such toys shall be stored in a place where they will not present physical obstacles to the children and staff.
- 363.8 The Facility shall use only non-toxic arts and crafts materials.
- 363.9 Electrical outlets which are not in use and are within the reach of children shall be fitted with appropriate child-proof protective receptacle closures that meet the Underwriters Laboratories, Inc., standard for Safety of Receptacle Closures (UL 2255).

- 363.10 The Facility shall not use space heaters unless it has received explicit approval in writing from an official of the Department of Consumer and Regulatory Affairs and/or the Department of Fire and Emergency Medical Services.
- 363.11 The Facility shall ensure that no firearms or other weapons are on the Facility premises, with the exception of those in the possession and control of armed security guards authorized to protect the Facility premises.
- 363.12 The Facility shall maintain adequate storage space for play and teaching equipment, supplies, records, and children's possessions and clothing.
- 363.13 The Facility shall ensure that all toys and other objects or surfaces that are likely to be mouthed by children are sanitized daily with a bacterial disinfectant solution.
- 363.14 All cleaning and sanitizing supplies, toxic substances, paint, poisons, aerosol containers, and other items bearing warning labels shall be safely stored by the Facility and shall be kept inaccessible to the children at all times.
- 363.15 The Facility shall ensure that all appliances, sharp utensils, and other dangerous devices are kept inaccessible to the children at all times. To the extent that any firearm or other weapon may be lawfully permitted on the Facility premises, the Facility shall ensure that all such weapons are kept inaccessible to the children at all times.
- 363.16 The Facility shall keep protective coverings on all electrical fans, and shall ensure that fans are placed so that they will not easily topple or tip over. The Facility shall ensure that fans are kept out of reach of the children when in use.
- 363.17 The use of infant walkers, crib gyms, stacked cribs and playpens shall be prohibited.

364 PETS AND ANIMALS

- 364.1 In the event that a Child Development Facility permits animals on the premises, it shall comply with the following requirements:
- (a) The Facility shall adhere to all local ordinances governing the keeping and maintenance of animals;
 - (b) The Facility shall advise the parent(s) or guardian(s) of the enrolled children of the presence of animals;

- (c) The Facility shall ensure that all pets or animals permitted on the premises are in good health, show no evidence of carrying disease, are friendly toward children, and do not present a threat to the health, safety and well-being of children;
- (d) The Facility shall maintain all animals or pets in a visibly clean manner;
- (e) The Facility shall isolate any pet or animal showing evidence of disease, *e.g.*, diarrhea, skin infection, severe loss of appetite, weight loss, lethargy or any unusual behavior or symptoms. The Facility shall ensure that any animal suspected of being ill is promptly examined by a licensed veterinarian;
- (f) The Facility shall maintain, on the Facility premises, proof of current compliance with all applicable vaccination requirements;
- (g) The Facility shall prohibit the presence of any animal or pet whose species is a common carrier of rabies, without specific proof that the animal has been vaccinated against that disease;
- (h) All pet reptiles shall be kept inaccessible to children;
- (i) The Facility shall ensure that no animal, animal litter box, animal pen or cage is permitted in any area where food is stored, prepared or served, and
- (j) In the event that an animal bites a child and the child's skin is broken, the Facility shall immediately notify the child's parent(s) or guardian(s) and the Department of Health, and shall report it as an unusual incident pursuant to section 322 of this Chapter.

365**COTS, CRIBS, AND INFANT PLAY**

- 365.1 Each child enrolled in a full-day program at a Child Development Facility child development program shall be provided by the Facility with an individual crib or cot, along with a blanket provided either by the child's family or by the Facility.
- 365.2 The Facility shall place cribs and cots at least two (2) feet apart from each other, and at least two (2) feet from all windows and radiators, when in use. This space shall be measured on all sides of each crib or cot.
- 365.3 The Facility shall label each crib or cot with the name of the child to whom it is assigned.

- 365.4 The Facility may only use cribs and cots that meet the standards established by the Consumer Product Safety Commission.
- 365.5 The Facility shall ensure that children do not share bedding.
- 365.6 The Facility shall provide each crib with a firm, fitted mattress, covered with a fitted sheet.
- 365.7 All cots shall have coverings that are easy to clean and nonabsorbent.
- 365.8 The Facility shall ensure that no child sleeps on a bare, uncovered surface.
- 365.9 The Facility shall ensure that seasonally appropriate coverings, such as sheets or blankets that are sufficient to maintain adequate warmth, are available and provided to children as needed.
- 365.10 The Facility shall ensure that pillows are not provided to or used by infants.
- 365.11 The Facility shall ensure that cribs, cots and bedding are kept clean and sanitary at all times.
- 365.12 The Facility shall ensure that a Facility staff member removes each infant from his or her crib for all feedings, and that no infant is fed by means of a propped bottle.
- 365.13 The Facility shall ensure that each infant is allowed to safely and comfortably sit, crawl, toddle, or walk, and to play according to his or her stage of development, in a designated play space apart from the infant's sleeping quarters, during each day.
- 365.14 The Facility shall sufficiently separate cot and crib areas from play space so as to prevent access to sleeping areas by children at play.

366 ROOFTOP PLAY SPACE

- 366.1 If a Child Development Facility chooses to utilize a rooftop play space, the Facility shall enclose the rooftop play space with a sturdy fence at least six (6) feet high and designed to discourage climbing.
- 366.2 The Facility shall provide a fire escape, which leads from the rooftop play space to an open space at the ground level of the Facility premises, and for which the Facility has received written approval from the Department of Consumer and Regulatory Affairs or the Department of Fire and Emergency Services.

- 366.3 Before a Facility may utilize a rooftop play space, the Facility shall obtain written certification from a licensed structural engineer that the additional load presented by the children, staff, and play equipment on the roof is within the load capacity of the building structure.
- 366.4 Before a Facility may utilize a rooftop play space, the Facility shall obtain written certification from a licensed industrial or civil engineer of the safety of the fence, and shall submit this certification to the Director.
- 366.5 Each Facility utilizing a rooftop play space shall, at least annually: (1) obtain an annual inspection of the fence around the play space by a licensed industrial or civil engineer; (2) obtain a written certification from the inspecting engineer of the safety of the fence; and (3) submit this certification to the Director.
- 366.6 Each Facility utilizing a rooftop play space shall undergo and pass an annual safety inspection of the space by the Department of Fire and Emergency Services.
- 366.7 Each Facility utilizing a rooftop play space shall post a copy of each current certification and/or safety report next to the Facility's license, in a conspicuous location on the Facility premises.

367 SAFETY REQUIREMENTS FOR OUTDOOR PLAY SPACE AND EQUIPMENT IN ENCLOSED YARDS ON FACILITY PREMISES

- 367.1 Each Child Development Facility utilizing an outdoor play space on the Facility premises shall enclose the outdoor play space with a fence or natural barrier, which shall be at least four (4) feet high, with a space no larger than 3-1/2 inches between its bottom edge and the ground, and designed to discourage climbing.
- 367.2 The Facility shall provide at least two exits from each outdoor play space; at least one of these exits shall be remote from the Facility building(s).
- 367.3 The Facility shall ensure that all outdoor gates have positive self-latching closure mechanisms, that shall be at least four and one-half (4-1/2) feet off the ground and/or constructed in a manner so that they cannot be opened by a preschool-age child.
- 367.4 The Facility shall ensure that the design, construction and installation of all outdoor play equipment is consistent with the guidelines published by the U.S. Consumer Product Safety Commission in its "Handbook for Public Playground Safety" and with the standards established by the American Society for Testing and Materials.

- 367.5 The Center Director, Caregiver, or designated Facility staff shall conduct a daily inspection of each outdoor play space. The inspection shall include, at a minimum, an inspection of the space itself, and of each piece of equipment, for obvious hazards, and the removal of all trash, debris, broken glass and other foreign or hazardous materials.
- 367.6 Each Facility serving both preschool and school-age children shall separate the outdoor play spaces used by infants, toddlers, and preschool children from the play spaces used by school-age children. The separation shall be accomplished so as not to limit the activities of either age group.
- 367.7 The Facility shall ensure that all surface areas beneath and in the fall zones of climbing equipment, slides, swings, and similar equipment are covered in resilient material that is designed to absorb falls.
- 367.8 The Facility shall ensure that all outdoor equipment is securely anchored and installed so as to prevent tipping or collapsing.
- 367.9 The Facility shall ensure that all outdoor play equipment is free of pinch, crush or shear points on all surfaces that are or may be accessible to children.
- 367.10 The Facility shall provide only swing seats constructed of durable, lightweight, relatively pliable material.
- 367.11 The Facility shall not provide trampolines, with the exception of small trampolines that have jumping surfaces no higher than twelve (12) inches off the ground. If a Facility chooses to provide such trampolines, the Facility shall ensure that all trampoline play is closely supervised and that children do not have unsupervised access to any trampoline.
- 367.12 The Facility shall maintain all outdoor sandboxes and play areas containing sand in a safe and sanitary condition.
- 367.13 In addition to the daily inspections required under subsection 367.5, the Center Director, Caregiver, or designated Facility staff shall thoroughly inspect each piece of playground equipment, at least monthly, for the following hazards:
- (a) Visible cracking, bending, warping, rusting or breaking;
 - (b) Deformation of open hooks, shackles, rings, links, and the like;
 - (c) Worn swing hangers and chains;
 - (d) Missing, damaged or loose swing seats;
 - (e) Broken supports or anchors;

OCT 06 2006

- (f) Exposed, cracked or loose cement support footings;
- (g) Exposed tubing ends that require plugs or cap covers;
- (h) Accessible sharp edges or points;
- (i) Protruding bolt ends that require caps or covers;
- (j) Loose bolts, nuts or screws that require tightening;
- (k) Splintered, cracked or otherwise deteriorating wood;
- (l) Moving parts in need of lubrication;
- (m) Worn bearings or other worn mechanical parts;
- (n) Broken or missing rails, steps, rungs or seats;
- (o) Worn or scattered surfacing materials;
- (p) Exposed hard surfaces, especially under swings and slides;
- (q) Chipped and/or peeling paint;
- (r) Pinch or crush points; and
- (s) Exposed mechanisms, junctures, and moving components.

367.14 The Facility shall record each monthly inspection of playground equipment, shall maintain this record, and shall present it to the Director upon request.

367.15 If any hazard listed in this section is noted or observed, the Facility shall immediately correct the hazardous condition or shall remove the piece of equipment from use until it is corrected.

367.16 The Facility shall ensure that no lawn mowers, hedge clippers, shears and other similar items are used or stored unlocked in any outdoor play space when children are present.

368 SWIMMING AND WATER SAFETY

- 368.1 Before an enrolled child may be permitted to swim or otherwise participate in any activity taking place in water two (2) or more feet in depth, the Child Development Facility shall obtain written permission from the child's parent(s) or guardian(s). The written permission shall be signed and dated, and shall include the following:
- (a) The child's name;
 - (b) A statement indicating whether the child is a swimmer or a non-swimmer; and
 - (c) A statement indicating that the parent(s) or guardian(s) grants permission for the child to participate in water activities.
- 368.2 If a Facility premises contains a swimming pool or other body of water two (2) or more feet in depth, the Facility shall enclose the pool or body of water behind a secure fence of at least four (4) feet in height, and shall ensure that the area containing the pool or body of water is inaccessible to children at all times unless qualified adults are present and supervising the children.
- 368.3 If a Facility chooses to utilize one or more wading pools, the Facility shall ensure that such pools are filtered, emptied, and drained daily, and that such pools are stored in a location that is inaccessible to the enrolled children.
- 368.4 If a Facility chooses to engage in a field trip to a swimming site, such as a public or private swimming pool, lake, or river, Facility staff shall accompany and supervise the children at all times, even when a lifeguard is present.
- 368.5 The Facility shall ensure that any swimming site utilized by the Facility that is at a location other than within the Facility premises is approved and supervised by the appropriate local authorities.
- 368.6 At least one adult certified in Emergency Water Safety and First Aid and CPR for children shall be in attendance at all times when children are swimming.
- 368.7 The Facility shall ensure that all activities of children taking place in water two (2) or more feet in depth are supervised by at least one adult currently certified as a lifeguard or water safety instructor by the American Red Cross or by an equivalent water safety instruction and testing program.
- 368.8 In addition to the requirements contained in this section, the Facility shall comply with the adult/child ratios and requirements for supervision of children contained in section 343 of this Chapter.

369 EMERGENCY PREPAREDNESS AND FIRST AID

- 369.1 Each Child Development Facility shall have, at all times, on the premises and readily available to administer aid, at least two (2) staff members who possess current certification in First Aid and CPR for children, and the prevention, recognition and management of communicable diseases, or who have satisfactorily completed courses, approved by the Director, in all of the above disciplines; except that in a Child Development Home wherein there are two (2) or fewer Caregivers, each Caregiver and his or her substitute shall possess the above-mentioned qualifications.
- 369.2 Each Facility shall obtain and shall maintain, on the Facility premises, a sufficient quantity of first aid supplies to meet the Facility's reasonably expected needs, based on the size of the Facility, the ages and developmental abilities of the enrolled children, and the Facility's program of activities. The Facility shall maintain these supplies in a designated location that is readily available to staff and inaccessible to the children.
- 369.3 Each Facility shall provide the following items among its first-aid supplies:
- (a) One (1) roll of one-half inch (1/2") non-allergenic adhesive tape;
 - (b) One (1) roll of two-inch (2") gauze roller bandage;
 - (c) Ten (10) individually wrapped sterile gauze squares in assorted sizes;
 - (d) Twenty-five (25) adhesive (*e.g.*, band-aid) compresses in assorted sizes;
 - (e) Three (3) clean cotton towels or sheeting pieces, approximately twenty-four by thirty-six inches (24" x 36") each;
 - (f) One (1) pair of scissors;
 - (g) Safety pins in assorted sizes;
 - (h) One (1) flashlight;
 - (i) One (1) thermometer;
 - (j) Two (2) dated one-ounce (1 oz.) bottles of syrup of ipecac;
 - (k) One (1) measuring tablespoon or dosing spoon;
 - (l) One (1) pair of tweezers;

- (m) One-third cup (1/3 c.) of powdered milk for dental first aid (for mixing to make a liquid solution);
- (n) A current First Aid text published by the American Academy of Pediatrics or the American Red Cross, or an equivalent community first aid guide;
- (o) The telephone number(s) of the local Poison Control Center;
- (p) Rubbing alcohol and alcohol swabs;
- (q) Cotton balls;
- (r) One (1) ice pack or gel pack;
- (s) Liquid sanitizer;
- (t) Disposable, nonabsorbent gloves;
- (u) All items needed for disposal of blood-borne pathogens;
- (v) Written Facility protocol for standard precautions and treatment of injuries; and
- (w) One-way valves for infants (if served), young children and adults.

369.4 The Facility shall inspect and take inventory of its first-aid supplies at least weekly, and shall:

- (a) Remove and replace sterile supplies if the package has been opened or damaged, or if the expiration date on the package has been reached;
- (b) Replace syrup of ipecac if the expiration date on the bottle has been reached; and
- (c) Replace all supplies as they are used up or if they become damaged.

369.5 Each Facility shall maintain at least one portable and complete first-aid kit, and shall ensure that such a kit is taken along by Facility staff on each outing, and when children under the care and supervision of the Facility are being transported.

369.6 The Facility shall ensure that at least one person currently certified in First Aid and CPR for children is present whenever one or more children are taken on an outing or otherwise transported away from the Facility.

- 369.7 Each Facility shall conduct practice evacuation drills, in accordance with guidelines and/or regulations adopted by the Department of Fire and Emergency Medical Services. The drills shall include all groups of children and all Facility staff, and shall be conducted at least every two (2) months, at varying times during the program day. The Facility shall document, on a form approved by the Director, the date, time and duration of each such evacuation drill, the number of children and staff participating, and the weather conditions.
- 369.8 Each Facility shall develop and implement specific procedures for the safe and prompt evacuation of infants, toddlers and non-ambulatory children.
- 369.9 Each Facility shall develop written emergency contingency plans and procedures to be followed in case of fire, natural or man-made disaster, loss of power, heat or water service, unsafe indoor temperatures, and any other dangerous environmental condition.
- 369.10 Each Facility shall provide, in each Facility building, at least one working, non-pay, stationary telephone accessible to staff.

370 HANDLING DIAPERS, TRAINING PANTS AND TOYS

- 370.1 Each Child Development Facility shall locate its diaper-changing area so that it is in close proximity to a source of warm running water and soap, and so that it is not in or near the Facility's kitchen and eating areas.
- 370.2 Each Facility shall store soiled diapers and training pants in designated and labeled containers, separate from all other waste, including soiled clothes and linens. The Facility shall provide a washable, plastic lined, tightly covered receptacle, which can be operated by a foot pedal, within arm's reach of each diaper changing table, for the disposal of soiled diapers.
- 370.3 No Facility may use cloth diapers for any child unless it has obtained a written statement, with supporting documentation, from a particular child's parent(s) or guardian(s) that cloth diapers are required by the special medical circumstances of that child.
- 370.4 The Facility shall provide one or more diaper-changing areas that have surfaces made of non-porous material.
- 370.5 The Facility shall ensure that, for each diaper-changing area, the diaper-changing surface is cleaned and sanitized with a bleach solution or other appropriate germicide after each diaper change.

- 370.6 The Facility shall ensure that the bleach solution or germicide used for cleaning and sanitizing the diaper-changing surface is kept inaccessible to the enrolled children at all times.
- 370.7 The Facility shall provide an area for the storage of clean diapers and training pants which is clean and designated exclusively for that use, with the exception that the clean diaper and training pants storage area and the storage area for enrolled children's clean clothes may be combined.
- 370.8 The Facility shall store and/or dispose of soiled diapers, diapering materials and training pants as follows:
- (a) Cloth diapers, training pants or clothing that are soiled with fecal matter and are to be sent home with a child shall be rinsed at the Facility at a location where food preparation does not occur, or shall be placed directly into a plastic container that is sealed tightly, and shall be stored away from the rest of the child's belongings and out of reach of all children, until sent home with the child at the end of the day;
 - (b) Cloth diapers, training pants or clothing that are soiled with fecal matter and are to be laundered by the Facility shall be placed in a non-porous covered container, containing an appropriate germicidal solution, until laundered;
 - (c) Cloth diapers, training pants or clothing that are soiled with fecal matter and are to be either laundered by the Facility or sent home with a child for laundering may be held for laundering no longer than one day;
 - (d) Soiled disposable diapers and training pants shall be placed in a plastic-lined, covered container that shall be emptied, cleaned, and sanitized with an appropriate germicidal agent at least daily;
 - (e) Soiled disposable diapers and training pants shall be discarded at least daily;
 - (f) The Facility shall ensure that only disposable diapering materials, including wipes and changing pads, are used, except as provided further herein, and that each such disposable item is discarded, after one use, in the container used for the discard of soiled disposable diapers described in subsection (d);
 - (g) In the case of emergency, or if special medical circumstances are documented in accordance with this section, a Facility may use washable cloth diapering materials. If cloth materials are used, the Facility shall ensure that each such material is used only once and then stored in the manner required for cloth diapers described in this section; and

- (h) The Facility shall ensure that all staff wear disposable gloves when changing diapers and training pants or when assisting children to remove soiled clothing, and that a new pair of gloves is worn for the diapering of or assistance with each successive child.

370.9 The Facility shall ensure that any toy that is mouthed is promptly removed from the play area, sanitized with an appropriate germicide, and air dried, before it is returned to the play area.

370.10 The Facility shall ensure that any toy that becomes soiled with blood, stool, urine or vomit is immediately removed and sanitized with an appropriate germicide.

371 HAND WASHING PRACTICES

371.1 Each Child Development Facility shall establish and implement a written policy regarding hand washing, which addresses the following areas:

- (a) When hand washing is required for staff and for children;
- (b) Specific hand washing procedures; and
- (c) Ongoing monitoring by the Center Director or Caregiver to assure that proper hand washing procedures are followed.

371.2 Each Facility shall ensure that all staff wash their hands at the following times:

- (a) Before eating, drinking, or handling food;
- (b) Before handling clean utensils or equipment;
- (c) Before and after assisting or training a child in feeding or in toileting;
- (d) After personal toileting;
- (e) After contact with body secretions, *e.g.*, blood, urine, stool, mucus, saliva, or drainage from wounds;
- (f) After handling soiled diapers, clothes, equipment, menstrual pads or tampons;
- (g) After removing disposable gloves; and
- (h) After caring for a sick child.

371.3 Each Facility shall provide liquid soap, and cloth towels, disposable towels, or an air hand dryer, at each hand washing area at all times.

371.4 The Facility shall ensure that each child washes his or her hands:

- (a) Before the child eats;
- (b) Before the child participates in food-related activities; and
- (c) After the child's toileting.

372 FOOD AND NUTRITION REQUIREMENTS

372.1 Each Child Development Facility shall ensure that its planned menus, and the foods that are actually served by the Facility, are: varied, suitable to the ages and developmental levels of the children, and consistent with the meal pattern requirements specified by the United States Department of Agriculture's Child and Adult Food Program.

372.2 Each Child Development Center shall have at least one staff member present at all times when meals are being prepared or served who is certified as a Food Manager in accordance with the District of Columbia Food Code, Title 25 of the District of Columbia Municipal Regulations. In order to qualify under this section, the staff member must have a valid and current certification, including photographic identification.

372.3 Each Child Development Facility shall ensure that food is protected and stored as required by the District of Columbia Food Code, Title 25 of the District of Columbia Municipal Regulations.

372.4 Each Facility shall request, and shall obtain if applicable, all relevant information regarding dietary restrictions and food allergies for each enrolled child, upon the child's admission to the Facility, and the Facility shall record this information in the child's file.

372.5 At least annually, the Facility shall request, and shall obtain if applicable, updated information regarding each enrolled child's dietary restrictions and food allergies.

372.6 The Facility shall ensure that all staff responsible for food preparation and distribution are informed, in writing, of any dietary restrictions, food allergies, or other special dietary requirements that concern any children enrolled at the Facility.

- 372.7 If a Facility serves food provided by the parent(s) or guardian(s) of the enrolled children, the Facility shall establish and implement written policies and procedures to be followed if the food provided by the parent(s) or guardian(s) does not meet the requirements specified in this section.
- 372.8 Each Facility shall maintain a one (1) day supply of perishables and a three (3) day supply of staples at all times.
- 372.9 The Facility shall ensure that powdered milk or reconstituted evaporated milk is not served as a substitute for fluid milk for drinking. Powdered milk or reconstituted evaporated milk may be used for cooking.
- 372.10 The Facility shall ensure that staff responsibilities concerning food preparation and service do not reduce the adult/child ratios for staff actively supervising children below the levels specified in this Chapter or interfere with the implementation of the Facility's program of activities.
- 372.11 The Facility shall ensure that no person is involved in food preparation or service, or otherwise works in the food preparation and/or service area, if that person shows signs or symptoms of illness, including vomiting, diarrhea, or uncovered infectious skin sores, or if that person is actually or likely infected with any bacterium or virus that can be carried in food.
- 372.12 A Facility may only serve a special therapeutic diet to a child upon the written instruction of the child's licensed health care practitioner.
- 373 MENUS, MEALS AND SERVICE**
- 373.1 Each Child Development Facility shall ensure that its daily menus conform to the current United States Department of Agriculture dietary recommendations for sugar, salt and fat intake.
- 373.2 Each Facility shall plan and post menus for all foods served, including snacks, and shall modify the menus as necessary to reflect foods actually served. The Facility shall maintain the menus on file at the Facility premises for at least six (6) months.
- 373.3 The Facility shall ensure that appropriately timed meals and snacks that meet the nutritional requirements of the child are served to each child according to the following schedule, based on the number of hours a child is present at the Facility:

- (a) Two (2) to four (4) hours, child receives one (1) snack;
- (b) Four (4) to six (6) hours, child receives one (1) meal and one (1) snack;
- (c) Seven (7) to eleven (11) hours, child receives two (2) meals and one (1) snack or two (2) snacks and one (1) meal, depending on the time of arrival of the child; and
- (d) Twelve (12) hours or more, child receives three (3) meals and two (2) snacks.

374 REQUIREMENTS FOR INFANT FORMULA AND FEEDING

374.1 Each Child Development Facility shall comply with the following requirements concerning infant formula and feeding:

- (a) Each feeding bottle for an infant or toddler shall be labeled with the name of the child to whom it belongs;
- (b) Each bottle of milk or formula shall be labeled with the date of preparation, and refrigerated at thirty-five to forty degrees Fahrenheit (35° F - 40° F);
- (c) Each open container of ready-to-feed or concentrated formula shall be used for only one child, and shall be labeled with that child's first and last name and the date on which the container is opened;
- (d) All infant formula given to a child shall be prepared according to written instructions obtained from the parent(s) or guardian(s) of that child or from the child's licensed health care practitioner;
- (e) All bottles and formula preparation equipment shall be washed with hot water and detergent;
- (f) Each bottle of reconstituted concentrated or powdered formula shall be refrigerated immediately after its preparation, or immediately upon its arrival at the Facility if it is prepared and brought to the Facility by the child's parent or guardian, and may be held for feeding for no longer than twenty-four (24) hours;
- (g) Each bottle of commercially prepared ready-to-feed formula shall be refrigerated promptly after it is opened;
- (h) All unused formula shall be discarded;

- (i) Each bottle or container of breast milk provided for a child by the parent or guardian of that child shall be labeled with the child's first and last name and the date of receipt, and refrigerated immediately upon its arrival at the Facility;
- (j) Fluid breast milk may be held for feeding for no more than twenty-four (24) hours, and frozen breast milk may be held in a frozen state for no more than two (2) months;
- (k) The Facility shall provide, or require the parent(s) or guardian(s) of each infant to provide, a sufficient supply of commercially prepared formula so that the child will be adequately fed in case of emergency;
- (l) Each child who is too young or otherwise developmentally unable to use a feeding chair or other appropriate seating apparatus shall be held while being fed;
- (m) Each child who is too young, too small, or otherwise developmentally unable to hold his or her bottle while feeding shall be held while being fed;
- (n) No child may be placed in a crib with a bottle for feeding, nor may a bottle be propped up to feed a child; and
- (o) The Facility shall provide a comfortable and secluded location on-site in which mothers can breast-feed their children.

375**REQUIREMENTS FOR INFANT SOLID FOOD****375.1**

Each Child Development Facility shall comply with the following requirements concerning infant solid food:

- (a) Each solid food provided to an infant shall be served according to written instructions, which specify the amount(s) and type(s) of food and feeding times, that are requested and obtained by the Facility from the parent(s) or guardian(s) of that child or from the child's licensed health care practitioner.
- (b) Each container of infant food that is provided to the Facility by the parent(s) or guardian(s) of a child for feeding to that child shall be labeled with the child's first and last name and the date of receipt;

- (c) Each container of infant food shall be refrigerated immediately upon its arrival at the Facility, with the exception of unopened containers of commercially prepared bottled or canned food that may be stored at room temperature until opened;
- (d) The uneaten portion of any container of infant food shall be immediately refrigerated, and may not be held for further consumption for longer than two (2) days; and
- (e) If the Facility fails to obtain adequate written feeding instructions from the parent(s) or guardian(s) of a particular child, the Facility shall serve the infant breast milk, formula and/or food in sufficient amounts to meet the current Recommended Dietary Allowances ("RDA") or Dietary Reference Intakes ("DRI") as specified by the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences.

**376 REQUIREMENTS FOR INFANT SLEEP AND PLAY POSITIONS
(PRECAUTIONS AGAINST SIDS)**

376.1 Each Facility that provides care for one or more infants shall comply with the following requirements with regard to infant sleep and play positions:

- (a) Unless otherwise ordered by a physician or other qualified health care practitioner, each infant shall be placed on his or her back for sleeping;
- (b) Each infant shall be placed on his or her stomach for some part of the time during which he or she is awake and observed;
- (c) No positioning device shall be used to restrict the movement of an infant unless such device is ordered by a physician or other qualified health care practitioner;
- (d) No soft materials or objects, such as pillows, quilts, comforters, sheepskins, and stuffed toys, shall be permitted in an infant's sleep environment;
- (e) If bumper pads are used in an infant's crib, they shall be thin, firm, well-secured and not pillow-like, and they shall not be placed under a sleeping infant; and
- (f) No infant shall be put to sleep on a sofa, soft mattress, waterbed, chair, cushion or other soft surface.

376.2 Each Facility shall comply with the latest recommendations of the American Academy of Pediatrics with regard to reducing the risk of Sudden Infant Death Syndrome to the extent, if any, that such recommendations, made after the effective date of these rules, differ in significant part from the requirements contained in subsection 376.1.

377 ADMINISTRATION OF MEDICATION

377.1 No Child Development Facility may provide medicine or treatment, with the exception of emergency first aid, to any child, unless the Facility has obtained a written medical order or prescription from the child's licensed health care practitioner and the written consent of the child's parent(s) or guardian(s).

377.2 The Facility shall ensure that each medication ordered or prescribed is maintained by the Facility in its original container, and clearly labeled with the name of the child for whom it has been ordered or prescribed, the name of the medicine, the dosage, the method of administration, and the name and telephone number of the child's licensed health care practitioner.

377.3 The Facility may not administer any medication for any period beyond the date indicated on the medical order or prescription.

377.4 The Facility shall maintain a medication log, on a form approved by the Director, on which the Facility shall record the date, time of day, medication, medication dosage, method of administration, and the name of the person administering the medication, each time any medication is administered to a child.

377.5 The Facility shall maintain all records pertaining to the administration of each medication to each child on file for a period of at least three (3) years after the administration of said medication, including the written instructions and authorization of the licensed health care practitioner, the written instructions and authorization of the parent(s) or guardian(s), and the medication log entries completed by the Facility. The Facility shall make these records available for review by the Director upon request.

377.6 The Facility shall ensure that each medication requiring refrigeration is maintained at a temperature between thirty-five and forty degrees Fahrenheit (35° F - 40° F), and that all refrigerated medications are kept in a separate storage container within the Facility's refrigerator so as to prevent potential cross-contamination with foods.

- 377.7 For each child for whom medication is administered at the Facility, the Facility shall obtain from the parent or guardian of the child, in writing, each day, a statement indicating when the last dose was administered prior to the child's arrival at the Facility, and the Facility shall add this information to the medication log.
- 377.8 In case of an emergency involving actual or potential poisoning, the Facility may administer syrup of ipëcac to a child without previous written instruction, upon the verbal instruction of a poison control center or of a licensed health care practitioner;
- 377.9 The Facility may administer nonprescription topical ointments, including sun block, petroleum jelly, and diaper ointment, to a child, upon obtaining the permission of the child's parent(s) or guardian(s).
- 377.10 The Facility shall maintain each nonprescription topical ointment in its original container, and shall administer each such ointment in accordance with the manufacturer's instructions.
- 377.11 A Facility that provides out-of-school-time care to school-age children may permit a school-age child to administer his or her own medication, under the direct supervision of a staff member, upon receipt of written authorization for the child's self-administration of the medication from the child's parent(s) or guardian(s).
- 377.12 A Facility that provides out-of-school-time care to school-age children may permit a school-age child with asthma to carry his or her own inhaler and to self-administer medication from it as needed, upon receipt of written authorization from the child's licensed health care practitioner and written consent from the child's parent(s) or guardian(s). In each such case, the Facility shall ensure that all staff members are informed of the fact that the particular child is permitted to self-administer his or her asthma medication.

378 TRANSPORTATION REQUIREMENTS

- 378.1 Each Child Development Facility that owns, operates or maintains one or more motor vehicles used for transporting children shall comply with all applicable federal and District of Columbia laws and regulations governing the maintenance and operation of motor vehicles and the transportation of children.
- 378.2 Each Facility that enters into a contract with another entity for the provision of transportation services shall obtain a signed attestation from the contractor entity that the transportation service complies with the requirements of this section and with all other applicable laws and regulations pertaining to the provision of transportation services.

- 378.3 Each Facility shall establish and implement policies and procedures intended to ensure the safe transportation of children, including policies and procedures for the training and monitoring of all staff responsible for the transportation of enrolled children.
- 378.4 The Facility's transportation policies and procedures shall address alternative transportation means to be employed if the Facility's primary vehicle breaks down or is otherwise unavailable for use.
- 378.5 Before any child may be transported while under the care of the Facility, the Facility shall obtain written and signed permission from the child's parent(s) or guardian(s).
- 378.6 Each Facility that owns, operates or maintains one or more motor vehicles used for transporting children shall label each such vehicle with the name and phone number of the Facility.
- 378.7 Each Facility that owns, operates or maintains one or more motor vehicles used for transporting children shall maintain proof of current motor vehicle insurance coverage for each such vehicle, both on the Facility premises and inside the vehicle.
- 378.8 Each Facility that owns, operates or maintains one or more motor vehicles used for transporting children shall ensure that only licensed drivers who are covered by the Facility's insurance policy operate any such vehicle when transporting enrolled children.
- 378.9 Each Facility shall immediately notify the Director of any traffic accident involving children being transported while under the care of the Facility. The Facility shall also submit a written report to the Director within seventy-two (72) hours of the accident, on a form approved by the Director, and shall include a copy of the police report regarding the accident, if available.
- 378.10 Each Facility that owns, operates or maintains one or more motor vehicles used for transporting children shall ensure that each such vehicle is maintained in a clean and mechanically safe condition, as verified by a current inspection sticker from the District of Columbia Department of Motor Vehicles or the equivalent agency in another state and by the Facility's own maintenance records.
- 378.11 Each Child Development Facility that owns, operates or maintains one or more motor vehicles used for transporting children shall maintain inspection and repair records for each such vehicle on file for at least twelve (12) months from the date of each inspection or repair. A person or entity that operates multiple Child Development Facilities may maintain all such records in a single administrative office.

- 378.12 The Facility shall ensure that no staff member who has been convicted of Driving While Intoxicated (DWI), Driving Under the Influence of Alcohol or Drugs (DUI), or the equivalent, within the previous three (3) years, transports by motor vehicle any children enrolled at the Facility. The Facility shall also adopt and implement a policy prohibiting any other person, including a parent, guardian, and/or volunteer, who has been convicted of Driving While Intoxicated (DWI), Driving Under the Influence of Alcohol or Drugs (DUI), or the equivalent, within the previous three (3) years, from transporting by motor vehicle children enrolled at the facility, and shall advise all parents, guardians, and volunteers of this policy in writing.
- 378.13 If the primary driver identified by a Facility becomes unavailable, the Facility shall identify and utilize a substitute driver who meets the requirements of this section.
- 378.14 The Facility shall ensure that no driver smokes, wears headphones, uses a cellular phone or wears earphones while transporting enrolled children.
- 378.15 The Facility shall ensure that each child transported in a personal motor vehicle while under the care of the Facility is properly restrained in an approved child safety restraint system and/or a seat belt, as required by applicable District of Columbia laws and regulations. The Facility shall also ensure that: each child under three (3) years of age is properly restrained in a child restraint seat; each child under eight (8) years of age is properly seated in an installed infant, convertible (toddler) or booster child safety seat, according to the manufacturer's instructions; and each booster seat is used with both lap and shoulder belts.
- 378.16 The Facility shall ensure that no child or staff member stands or sits on the floor of a vehicle while the vehicle is in motion, and that no child is held on another person's lap while the vehicle is in motion.
- 378.17 The Facility shall ensure that all vehicle doors remain locked at all times except when staff and/or children are boarding or departing the vehicle.
- 378.18 The Facility shall ensure that no child is left unattended in a vehicle at any time.
- 378.19 The Facility shall maintain a safe vehicle loading and unloading area for children on or adjacent to the Facility premises.
- 378.20 The Facility shall ensure that identification is securely attached to the person of each child participating on a field trip, and that the identification contains the Facility name, address, telephone number, and emergency contact telephone number if applicable.
- 378.21 The Facility shall ensure that the following items are present in each vehicle when transporting children on field trips or other routine trips:

- (a) A first-aid kit that meets requirements specified in section 369 of this Chapter;
- (b) A working fire extinguisher;
- (c) A supply of drinking water sufficient for all of the children in the vehicle;
- (d) A minimum of two (2) large clean towels or blankets;
- (e) Emergency contact information, and telephone numbers of the parent(s) or guardian(s), for each child in the vehicle;
- (f) A copy of the signed Emergency Medical Treatment Authorization form, as required by section 324 of this Chapter, for each child in the vehicle;
- (g) A cellular phone or a two-way radio; and
- (h) A working flashlight.

378.22 The Facility shall ensure that at least one staff member trained and currently certified in First Aid and CPR for children is present in each vehicle when children are being transported.

378.23 When a child with special needs is being transported in a wheelchair while under the care of a Child Development Facility, the Facility shall comply with the following additional safety requirements:

- (a) The child's wheelchair shall be secured in the motor vehicle, using a minimum of four (4) anchorages attached to the floor of the vehicle, and four (4) securing devices, such as straps or webbing that have buckles and fasteners, which attach the wheelchair to the anchorages;
- (b) The child shall be secured in the wheelchair by means of a wheelchair restraint that contains a combination of pelvic and upper body belts; and
- (c) The child's wheelchair shall be placed in a position in the vehicle that neither prevents access to the child nor passage to the front and rear of the motor vehicle.

OCT 06 2006

379 CHILDREN WITH SPECIAL NEEDS

- 379.1 Each Child Development Facility that serves one or more children with special needs, including infants, toddlers, preschool-age children, and/or school-age children, shall comply with the specific additional requirements of this section.
- 379.2 Upon the admission of a child with a special need, or upon the identification of a special need in an enrolled child, the Facility shall promptly obtain consent, from the parent(s) or guardian(s) of the child, for the implementation of any treatment or protocol ordered by the child's licensed health care practitioner.
- 379.3 The Facility shall ensure that the care of each child with special needs who is thirty-six (36) months of age or over is consistent with that child's Individual Education Plan (IEP) and Individual Family Services Plan (IFSP).
- 379.4 The Facility shall maintain a written individualized care plan for each enrolled child with special needs. This plan shall include the following items as needed and appropriate for the child:
- (a) Administration of medication in accordance with this Chapter;
 - (b) Nutrition and feeding schedule;
 - (c) Special qualifications required of any staff member who may feed the child;
 - (d) Instructions on the maintenance and use of medical equipment or adaptive devices;
 - (e) Psychological needs of the child;
 - (f) Medical emergency instructions;
 - (g) Toileting and personal hygiene instructions;
 - (h) Specific child development services to be provided at the Facility;
 - (i) Special training required of one or more staff members to care for the child's special needs;
 - (j) Special procedures to be followed for participation in fire evacuation drills; and
 - (k) Transportation requirements.

- 379.5 The Center Director or Caregiver of the Facility, or his/her designee, in consultation with the child's parent(s) or guardian(s), shall review and update each child's individualized care plan at least every six (6) months.
- 379.6 Before disclosing any information concerning the child to any person, including a licensed health care practitioner, who is not employed by the Facility, the Facility shall obtain permission from the child's parent(s) or guardian(s).
- 379.7 The Facility shall provide each child with special needs with:
- (a) Developmentally appropriate toys and materials;
 - (b) Developmentally appropriate play equipment which meets the requirements of the Americans With Disabilities Act;
 - (c) Assistive attention from staff members; and
 - (d) Reasonable accommodations to enable the child to participate in the activities of the Facility, including field trips.
- 379.8 If health services or therapeutic services are provided at the Facility, the Facility shall ensure that these services are provided by practitioners who are authorized and licensed to provide the applicable services in the District of Columbia.
- 379.9 The maximum group size of any group containing one or more children with special needs shall not exceed ten (10) children. The adult/child ratio for any such group shall be no less than 1:5.

399 DEFINITIONS

For the purposes of this Chapter, the term:

"Act" means the Child Development Facilities Regulation Act of 1998, effective April 13, 1999, D.C. Law 12-215, D.C. Official Code §§ 7-2031 *et seq.*

"Abuse" means the physical or mental injury of a child by a parent, guardian or custodian, under circumstances that indicate that the child's health or welfare is significantly harmed or at risk of being significantly harmed. Abuse includes sexual abuse of a child, whether or not physical injuries are sustained.

"Adult" means a person who is eighteen (18) years of age or older.

"Americans with Disabilities Act" or "ADA" means the law that requires that persons with disabilities not be denied public accommodations that are designed to afford them the opportunity to participate in programs or activities that are not separate or different. (P.L. 101-336; 104 Stat. 327; 42 U.S.C. 12101 *et seq.*)

"Associate Caregiver" means an individual who provides care in an Expanded Child Development Home and who is subordinate to the Primary Caregiver; this person need not reside in the dwelling where the Facility is located.

"CDA" means Child Development Associate, a credential obtained under the award system of the Council for Professional Recognition.

"CPR" means cardiopulmonary resuscitation.

"Care by a Related Person" means care of a child by that child's parent, step-parent, grandparent, brother, sister, step-brother, step-sister, uncle, or aunt, said relationship having been established by blood, marriage, or adoption, or by that child's legal guardian.

"Caregiver" means an individual who is in charge of, and responsible for the direct care, supervision, and guidance of, children in a Child Development Home or Expanded Child Development Home.

"Center Director" means a Child Development Center staff member who is in charge of the day-to-day operations of the Center.

"Change in Ownership" means a transfer of controlling legal or equitable interest and authority resulting from a sale or merger.

"Child" or "Children" means an individual or individuals from birth to fifteen (15) years of age, except when "infant/s" and/or "toddler/s" are specified within the same provision, in which case "child" or "children" means an individual or individuals from two (2) to fifteen (15) years of age.

"Child Development Center" or "Center" means a Child Development Facility located in premises other than a dwelling occupied by the operator of the Facility.

"Child Development Facility" or "Facility" means a center, home, or other structure that provides care and other services, supervision and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. "Child Development Facility" includes "Child Development Home," "Expanded Child Development Home," and "Child Development Center." "Child Development Facility" does not include a public or private elementary or secondary school engaged in legally required educational and related functions.

"Child Development Home" means a Child Development Facility located in a private dwelling occupied by the operator of the Facility. "Child Development Home" also includes those Facilities classified as "Expanded Child Development Home".

DISTRICT OF COLUMBIA REGISTER

"Department", unless otherwise specified, means the Department of Health or its successor agency, acting by and through its Director or his or her designee.

"Director" means the Director of the Department of Health or of its successor agency.

"Expanded Child Development Home" means a Child Development Home in which child care is provided by two (2) or more Caregivers for up to twelve (12) children.

"Facility" means Child Development Facility.

"Fever" means a temperature of one hundred degrees Fahrenheit (100° F) or higher if taken under the arm, one hundred and one degrees Fahrenheit (101° F) if taken orally, or one hundred and two degrees Fahrenheit (102° F) if taken rectally. For children under the age of four (4) months, a fever is a temperature of one hundred and one degrees Fahrenheit (101°) or higher taken by any method.

"Guardian" means a person, other than the child's parent, who has been granted legal authority over and responsibility for a child.

"Hour" means, when used in the context of training and/or continuing education, "clock hour" as that term is defined and used in the academic and educational fields.

"Infant" means a child younger than twelve (12) months of age.

"Licensed Health Care Practitioner" means a Physician, a Nurse-Practitioner (also known as an Advanced Practice Registered Nurse), or a Physician's Assistant licensed to practice health care by the D.C. Board of Medicine or Board of Nursing, or by a comparable body in another state.

"Licensee" means a Child Development Facility licensed pursuant to this Chapter, or the operator of such a Facility.

"Neglect" means the failure to provide care, services and supervision necessary to avoid physical harm or mental anguish.

"Non-Ambulatory Child" means a child who is: (1) unable to leave a building under emergency conditions without assistance; (2) unable to walk forward or backward without assistance; (3) unable to go up or down steps without assistance; or (4) dependent upon mechanical aids such as crutches, walkers or wheelchairs.

"Non-peak hours" means: for programs operating during traditional daytime hours, before 9:00 a.m. and after 4:00 p.m.; and for programs operating outside of traditional daytime hours, time periods as specified in writing to, and accepted by, the Director.

"Out-of-school-time Care" means care and other services, supervision and guidance provided to one or more children of legal school age and under the age of fifteen (15) years, who are enrolled in public, private, or charter schools, before and after normal school hours.

"Parent" means the mother or father of a child, by blood, adoption, foster care placement, or appointment as legal guardian or custodian of that child by a court of competent jurisdiction.

"Preschool" or "Preschooler" refers to a child older than twenty-four (24) months of age but younger than compulsory school attendance age, and who is not enrolled in a public, charter, or private school.

"Primary Caregiver" means an individual who operates an Expanded Child Development Home and who is in charge of the day-to-day operations of the Home; this person must reside in the dwelling where the Facility is located.

"Special Needs" means conditions or characteristics of a person that reflect a need for particular care, services or treatment, most commonly physical and/or mental disabilities and/or delays.

"Staff" or "Staff Member" means an adult who renders child care or related services directly to a Child Development Facility, whether compensated or uncompensated. "Staff" includes paid employees, volunteers, and interns.

"Toddler" means an individual older than twelve (12) months but younger than twenty-four (24) months of age.

"Unusual Incident" means any accident, injury, or other extraordinary event that involves a child in care, a staff member, or the operation of a Child Development Facility, including suspected child maltreatment or abuse.

"Volunteer" means a person offering services to a Child Development Facility without compensation by the Facility.

Any person 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 publication of this notice in the *D.C. Register*. Comments should be submitted to Patricia W. VanBuren, Acting Administrator, Health Regulation Administration, Department of Health, 825 North Capitol Street, N.E., Second Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained by writing to the address shown above.