

DEPARTMENT OF HEALTH

NOTICE OF FINAL 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 the adoption of the following amendments to Chapter 13 of Title 22 of the District of Columbia Municipal Regulations (DCMR). 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.

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. These rules were republished as proposed rulemaking on October 6, 2006 at 53 DCR 7983. One comment was received from Schering-Plough concerning sections: 1301.7, 1302.6, 1303.12 and 1304.10 concerning a pharmacist's requirement to document authorization to substitute a drug on the prescription order. No changes were made to the proposed rulemaking.

This final rulemaking will be effective upon publication of this notice in the D.C. Register.

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.

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- 1304.6 The Director of Pharmacy or Pharmacist in Charge shall create and maintain a 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

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 other 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).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

TELEPHONE TARIFF 06-5, IN THE MATTER OF THE APPLICATION OF VERIZON
WASHINGTON, D.C., INC., FOR AUTHORITY TO AMEND THE GENERAL SERVICES
TARIFF P.S.C. - D.C. -NO. 203

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action, taken in Order No. 14144 (December 12, 2006), to approve the tariff application of Verizon Washington, D.C. Inc. ("Verizon DC")¹ to amend the following tariff pages:

GENERAL SERVICES TARIFF P.S.C.-D.C.-NO. 203
Section 31, 1st Revised Page 6
1st Revised Page 8

2. Through this tariff filing, Verizon DC proposes to increase rates for Regional Essentials and Regional Value bundled services.² Verizon DC proposes a \$30.04 monthly rate for its Regional Essentials services and \$25.04 monthly rate for its Regional Value services.³ Verizon DC asserts that the proposed revisions are filed pursuant to Price Cap Plan 2004, although they are not classified under the Plan.⁴

3. The Commission issued a Notice of Proposed Rulemaking, published in the *D.C. Register* on October 20, 2006, inviting the public to submit comments on the proposed tariff amendment.⁵ No comments were filed. The Commission subsequently approved Verizon DC's Application in Order No. 14144, finding that the proposed tariff revision was consistent with the requirements of Section 3(a) of Price Cap Plan 2004. This tariff revision becomes effective upon the publication date of this Notice of Final Rulemaking in the *D.C. Register*.

¹ *Telephone Tariff 06-5, In the Matter of the Application of Verizon Washington, DC, Inc. for Authority to Amend the General Services Tariff, P.S.C.-D.C.-No. 203*, Letter from J. Henry Ambrose, Verizon DC Vice President for State Public Policy to Dorothy Wideman, Commission Secretary (September 29, 2006) ("Application").

² See Application at 1.

³ *Id.* at 2-3.

⁴ See *id.* See also *Formal Case No. 1005, In the Matter of Verizon Washington, D.C. Inc.'s Price Cap Plan 2004 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 13370, rel. September 9, 2004. ("Price Cap Plan 2004").

⁵ 53 *D.C. Reg.* 8518 (2006).

DISTRICT OF COLUMBIA TAXICAB COMMISSION

PANEL ON RATES AND RULES

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under §§ 8 (b) (1) (A), 9(b) and 18 (a) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307 (b) (1) (A), 50-308 (b), 50-317 (a) (2001)), hereby gives notice of its final rulemaking action taken on November 8, 2006 to add §§ 802.12 and 802.13 to Chapter 8 of Title 31 of the District of Columbia Municipal Regulations (DCMR) governing taxicab rates and charges to ensure that wait time charges reflected in Chapter 8 conform to Appendix 8-2 (Taxicab Zone Map and Charges).

On Wednesday, December 14, 2005, the Commission took emergency/proposed rulemaking action, published in the *D.C. Register* on January 6, 2006 amending the wait time charges for taxicab rides. At that time, the Commission proposed to no longer charge wait time for the initial first three (3) minutes, but instead require passengers to be charged one dollar (\$1.00) for every two (2) minutes or any fraction thereof.

Subsequently, on January 18, 2006, the Commission voted to amend its prior rulemaking action and reinstated the wait time charges that applied to taxicab rides prior to January 6, 2006. The notice of proposed rulemaking was published in the *D.C. Register* on February 24, 2006 and a public hearing was held on April 12, 2006. The Commission on July 26, 2006 subsequently determined that the February 24, 2006 proposed rulemaking as published in the *D.C. Register* incorrectly stated the "quarter hour charge" as \$5.50. This proposed rulemaking was published in the *D.C. Register* on October 13, 2006 at 53 DCR 8348-8349. The final rulemaking spells out what is considered wait time and changes the "quarter-hour charge" to \$6.25, which accurately reflects quarter hour increments of the \$25 per hour charge reflected in Appendix 8-2 (Taxicab Zone Map and Charges). No comments were received by the Commission. No changes were made to the rulemaking.

31 DCMR Chapter 8 (OPERATION OF TAXICABS), Section 802 (CHARGES) is amended along with Appendix 8-2 (TAXICAB ZONE MAP AND CHARGES) by adding the following new sections as follows:

802 OTHER CHARGES

802.12 Passengers may be charged for waiting time which is defined as time spent by the driver waiting for a passenger to enter the taxicab on a dispatch call or time spent by the driver waiting for a passenger to return to the taxicab on a round trip fare.

802.13 Wait time charges shall apply as follows:

- a. There shall be no charge for wait time up to four (4) minutes and fifty-nine (59) seconds;
- b. From five (5) minutes up to nine (9) minutes and fifty-nine (59) seconds, the charge is two dollars (\$2.00);
- c. From ten (10) minutes up to fourteen (14) minutes and fifty-nine (59) seconds, there is an additional charge of one dollar and fifty cents (\$1.50); and
- d. If the wait time reaches fifteen (15) minutes, the entire charge shall convert to the twenty-five dollar (\$25.00) hourly rate, reflected in Appendix 8-2, Taxicab Zone Map, pro-rated as six dollars and twenty-five cents (\$6.25) for each fifteen (15) minutes or quarter hour. Fractions of a quarter hour after the first fifteen (15) minutes shall be charged the full quarter hour charge of six dollars and twenty-five cents (\$6.25).

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 05-01

Z.C. Case No. 05-01

(Text Amendments – 11 DCMR)

(Adult day treatment Facilities)

March 13, 2006

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of amendments to §§ 199, 205, 330, 350, 501, 601, 901, 2101, and 3104 of the Zoning Regulations (Title 11 DCMR). The rules recognize an "adult day treatment facility" as a use separate and distinct from the existing use known as "child/elderly development center," but treats all three types of facilities the same in terms of where they may be located.

A notice of proposed rulemaking was published in the December 23, 2005 edition of the *D.C. Register* at 51 DCR 11117. The proposed rules would have placed greater restrictions on the location of adult treatment facilities than on child/elderly development centers. Such facilities would have been disallowed in all Residence zones and in Neighborhood Shopping (C-1) districts. In addition, the proposed rules would have imposed a proximity limitation for this use in Mixed Use Commercial Residential (CR) Districts and subjected the use to special exception review in Commercial-Light Manufacturing (C-M) Districts. The Commission's subsequent decision to treat the three types of facilities in the same manner was based upon the advice of the Office of the Attorney General as will be discussed under the heading "Office of the Attorney General." Although this text differs from that proposed, it will have the same effect as the rule originally advertised for public hearing. Therefore, no republication of a proposed notice of rulemaking is required.

The Commission took final action to adopt the amendments at a public meeting held on March 13, 2006.

This final rulemaking is effective upon publication in the *D.C. Register*.

Set Down Proceeding

The Zoning Commission of the District of Columbia initiated this text amendment to address an issue that arose in Board of Zoning Adjustment (BZA) Appeal No. 16839. In that case, the BZA upheld the Zoning Administrator's (ZA) approval of a proposed "adult development center" (ADC) use, even though the use category did not appear in the Zoning Regulations. The Zoning Administrator concluded that the proposed ADC use was similar in function to a "child/elderly center" use and therefore could be issued a certificate of occupancy under that use category, notwithstanding the fact that a child/elderly development center was defined to include only the elderly and children of 15 years of age or less. The Board concurred with the ZA's analysis and denied the appeal.

The District of Columbia Court of Appeals (DCCA) rejected the BZA's reasoning and held that the ZA may not "interpret defined uses in the Zoning Regulations to encompass other uses that are functionally comparable ... if they are outside the definition," *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 348 (D.C. 2004). Nevertheless, the DCCA indicated that the Board could, on remand, explore whether an adult development center might "be eligible for a certificate of occupancy under a different use classification," *id.* at 349. As the BZA began to work its way through this process, the Zoning Commission representative on the panel concluded that a better approach would be for the Commission, through a rulemaking proceeding, to simply add the word "adult" to the child/elderly development center use and revise the definition of the use to include all ages. The Zoning Commission setdown such an amendment for hearing at its public meeting on January 13, 2005.

Existing Regulations

As a result of the DCCA ruling, it was unclear where adult day treatment facilities could be permitted. It is the intent of this rule to remove the uncertainty.

Relationship to the Comprehensive Plan

The Human Services Elements and several ward objectives of the Comprehensive Plan refer directly or indirectly to the need for development facilities to provide a variety of health and social services for the District's diverse population, including residents with disabilities. The Comprehensive Plan clearly expresses the need for these comparable services, which are independent of the client populations' ages. A main highlight of the objectives in support of the Human Services and the Ward Elements of the Comprehensive Plan is to promote the de-institutionalization of clients in a setting that will allow participants to reintegrate and fully participate in community life.

Public Hearing

As noted, the text set down by the Commission and advertised in a notice of public hearing expanded the child/elderly development center use to include adult day treatment facilities. Thus, all three uses would be treated alike.

The Commission held a public hearing on the advertised text on March 31, 2005. During the hearing, the Commission requested the Office of Planning to address the issues expressed by the community representatives who testified, including:

- How these facilities are currently regulated,
- Definition of adult day treatment facility,
- Distinction of the various populations for adult facilities,
- Inclusion of language to prohibit them as residential facilities,
- Proximity to other residential facilities, and
- Parking requirements.

The Commission also heard citizen testimony expressing concern over the impact of another non-residential use in predominantly residential areas.

Proposed Action

At the July 11, 2005 public meeting of the Zoning Commission, the Commission reviewed OP's June 27, 2005 supplemental report. The report analyzed the location of existing facilities in the District and determined that the majority of these facilities were located in the C-2-A and higher density zone districts. Although initially thought to be essentially similar to child or elderly development centers, the Commission learned that adult day treatment facilities are licensed by the District of Columbia government to provide medically-supervised day treatment services for adults with developmental disabilities or mental disorders. In contrast, persons attending child and elderly development centers receive "care, education, counseling, or training." 11 DCMR § 199.1. Nevertheless, the external impacts of all three uses are essentially the same. The OP report recommended:

- A separate definition of an adult day treatment center as an adult day treatment facility;
- Prohibition of these facilities in the Residential and C-1 Zone Districts, as well as the W-0 and W-1 Zone Districts, with a proximity requirement in the CR Zone District; and
- The inclusion of definitions for adult treatment facility, mental disorder, and mental retardation.

The Commission discussed the amendments and concluded that the text should be modified in the manner recommended by OP. In addition, the Commission decided to require special exception approval for facilities proposed for the CM and M Zone Districts.

Following discussion, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised text, with the modification discussed above.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on December 23, 2005, at 51 DCR 11117, for a 30-day notice and comment period.

National Capital Planning Commission Referral

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC's report found that the proposed text amendments would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Office of the Attorney General

The Office of the Attorney General for the District of Columbia advised the Commission, through a written memorandum, that because adult day treatment facilities provide services to persons with disabilities, the proposed radius restrictions and other location-related restrictions might violate the Americans with Disabilities Act. OAG noted that the record reflected no difference between the external impact of adult day treatment facilities and child/elderly development centers. OAG, therefore, recommended against disallowing or restricting adult day treatment facilities where no similar prohibition or restriction applied to child/elderly development centers.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on March 13, 2006 with the revisions suggested by OAG. Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 2, 3, 5, 6, 9, 21, and 31 of the Zoning Regulations, Title 11 DCMR.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

A. Section 199, DEFINITIONS, is amended as follows (new text is shown in **bold** and underline and deleted text is shown with ~~strikethrough~~):

1. By amending the definition of "Child/Elderly development center" to read as follows:

Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care, education, counseling, or training of individuals **two (2) years old or older but under the age of** fifteen (15) years of age ~~or less~~ and/or for the non-residential care of elderly

individuals age 65 or older, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling; education, training, and health and social services for the ~~parents or principal guardians of children~~ person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.

2. By inserting the following new definitions in alphabetical order:

Adult day treatment facility – a building or part of a building used for non-residential programs operated for the purpose of providing medically-supervised day treatment services for adults with a developmental disability or mental disorder, totaling six (6) or more persons who are present for fewer than twenty-four (24) hours per day. An adult day treatment facility includes the following accessory uses: counseling, education, training, health, and social services for the person or persons with legal charge of individuals attending the center, including but not limited to any parent, spouse, sibling, child, or legal guardian of such individuals. This definition does not encompass facilities that offer drug or alcohol abuse rehabilitation services. For the purposes of this definition, the following sub-definitions apply:

Mental disorder - an abnormal mental condition in an individual, who requires a comprehensive and relatively intensive range of mental health services in a therapeutic and structured environment, if he or she is to remain in the community or if he or she is to move from twenty-four (24) hour institutional care to the community.

Developmental disability – a severe, chronic disability of a person that is attributable to a mental or physical impairment, or both, that is manifested before the person attains the age of twenty-two (22) years and is likely to continue indefinitely. The person causes substantial functional limitations in three (3) or more areas of major life activity:

- (a) Self-care;
- (b) Receptive and expressive language;
- (c) Learning;
- (d) Mobility;
- (e) Self-direction;
- (f) Capacity for independent living; or
- (g) Economic sufficiency.

A developmental disability reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment, or other service, which are life-long or of extended duration, and are individually planned and coordinated.

B. Chapter 2, § 205; Child/Elderly Development Centers (R-1), is amended by:

1. Changing the section's title to: Child/Elderly Development Centers and Adult Day Treatment Facilities;

2. Striking the phrase "child/elderly development center" wherever it appears and inserting the phrase "child/elderly development center or adult day treatment facility" in its place;

3. Striking the phrase "the center" wherever it appears and inserting the phrase "center or facility" in its place; and

4. Subsection 205.3 is amended by striking the phrase "children or elderly persons" and inserting the phrase "persons in attendance" in its place.

C. Subsections 330.5(d), 350.4(g), 501.1(g), 601.2(c), and 901.1(t) are amended by inserting the phrase "or adult day treatment facility" after the phrase "Child/Elderly development center."

D. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended by inserting, alphabetically, the following use and parking requirement in the parking schedule included in § 2101.1, under the general use category "Commercial Building."

Adult Day Treatment Facility

All Districts 1 for each employee.

E. Chapter 31, § 3104, Special Exceptions, is amended by inserting alphabetically, the following special exception in the table included in § 3104.1:

<u>Type of Special Exception</u>	<u>Zone District</u>	<u>Sections in Which the Conditions Are Specified</u>
Adult day treatment facility	R-1, R-2, and R-3 District	§ 205

Vote of the Zoning Commission taken at its public meeting on March 13, 2006 to **APPROVE** the proposed rulemaking: 3-1-1 (John G. Parsons, Michael G. Turnbull, and Carol J. Mitten to approve; Anthony J. Hood, opposed; and Gregory N. Jeffries not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on March 13, 2006 by a vote of 3-1-1 (John G. Parsons, Michael G. Turnbull, and Carol J. Mitten to adopt; Anthony J. Hood, opposed; and Gregory N. Jeffries not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on _____.

DISTRICT OF COLUMBIA REGISTER

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 05-01

Z.C. Case No. 05-01

(Text Amendments – 11 DCMR)

(Adult day treatment Facilities)

March 13, 2006

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.