

## DEPARTMENT OF HEALTH

## NOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia (the District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 946 to Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for residential habilitation services provided by qualified professionals to participants with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement for residential habilitation services for persons with mental retardation and developmental disabilities.

A notice of emergency and proposed rules were published in the *D.C. Register* on August 13, 2004 (51 DCR 7984). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

**Title 29 (Public Welfare)(May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 946 to read as follows:**

**SECTION 946 RESIDENTIAL HABILITATION SERVICES**

- 946.1 Residential habilitation services shall be reimbursed by the Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a group home for mentally retarded persons (GHMRP), that has at least four (4) but no more than six (6) clients.
- 946.3 Each GHMRP shall be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §44-501 *et seq.*) and comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations, except as set forth in these rules.

- 946.4 Residential habilitation services shall only be available to clients with a demonstrated need for continuous training, assistance and supervision, and shall be authorized and provided in accordance with the client's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care..
- 946.5 Each provider of residential habilitation services shall assist with the acquisition, retention and improvement in skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the client to reside in the community.
- 946.6 Consistent with the requirements set forth in section 3521 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client of the GHMRP receive training and habilitation, when appropriate, which shall include but not be limited to the following areas:
- (a) Eating and drinking;
  - (b) Toileting;
  - (c) Personal hygiene;
  - (d) Dressing;
  - (e) Grooming;
  - (f) Health care;
  - (g) Communication;
  - (h) Interpersonal and social skills;
  - (i) Home management;
  - (j) Employment and work adjustment;
  - (k) Mobility;
  - (l) Time management;
  - (m) Financial management;
  - (n) Academic and pre-academic skills;
  - (o) Motor and perceptual skills;
  - (p) Problem-solving and decision-making;
  - (q) Human sexuality;
  - (r) Aesthetic appreciation; and
  - (s) Opportunity for social, recreational and religious activities utilizing community resources.
- 946.7 Consistent with the requirements set forth in section 3520 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client receives the professional services required to meet his or her goals as identified in the client's IHP or ISP. Professional services shall be provided by programs operated by the GHMRP or personnel employed by the GHMRP or by arrangements between the GHMRP and other service providers, including both

public and private agencies and individual practitioners. Professional services may include, but are not limited to the following disciplines or services:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational Therapy;
- (g) Physical Therapy;
- (h) Psychology;
- (i) Social Work;
- (j) Speech and language therapy; and
- (k) Recreation.

- 946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable the clients to gain access to Waiver and other community services and activities. Each provider of transportation services shall have a current District of Columbia Medicaid Provider Agreement that authorizes the provision of transportation services under the Waiver.
- 946.9 The minimum daily ratio of on-duty, direct care staff to clients in each GHMRP that serves severely physically handicapped clients, clients who are aggressive, assaultive or security risks, clients who manifest severely hyperactive or psychotic-like behavior, and other clients who require considerable adult guidance and supervision shall be not less than the following:
- (a) 1:4 during the waking hours of the day, approximately 6:00 a.m. to 10:00 p.m., when clients remain in the GHMRP during the day; and
  - (b) 1:6 during sleeping, approximately 10:00 p.m. to 6:00 a.m.
- 946.10 The minimum daily ratio of on-duty, direct care staff to clients present in each GHMRP that serves clients who require training in basic independent-living skills shall be not less than the following:
- (a) 1:6 during the waking hours, approximately 6:00 a.m. to 2:00 p.m., when clients remain in the GHMRP during the day;
  - (b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m., and
  - (c) 1:6 during sleeping hours, approximately 10:00 p.m. to 6:00 a.m.
- 946.11 The minimum daily ratio of on-duty direct care staff to clients in each GHMRP that serves clients who are in day programs such as sheltered

workshops, vocational training, supported or competitive employment programs, and who have acquired basic independent-living and survival skills shall not be less than 1:6 at all times that clients are in the GHMRP.

- 946.12 The minimum daily staffing levels set forth in sections 946.9 through 946.11 in each GHMRP shall be increased if required by the client, as indicated in the client's IHP or ISP.
- 946.13 Each provider of residential habilitation services shall:
- (a) Be a non-profit or other business entity;
  - (b) Be a member of the interdisciplinary team;
  - (c) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation services under the Waiver;
  - (d) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) for each client;
  - (e) Have a current Human Care Agreement with MRDDA for the provision of residential services;
  - (f) Ensure that all residential habilitation services staff are qualified and properly supervised;
  - (g) Ensure that the services provided are consistent with the client's IHP or ISP;
  - (h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
  - (i) Provide staff training in infection control procedures consistent with the standards established by the federal Centers for Disease Control and Prevention (CDC);
  - (j) Ensure that each staff member or employee has been screened for communicable disease six months prior to providing services to any client, in accordance with the guidelines issued by the CDC, and that each employee or staff member is certified to be free of communicable disease; and
  - (k) Ensure compliance with all of MRDDA's policies governing reporting of unusual incidents, human rights, behavior management and protection of clients' funds.
- 946.14 Each person providing residential habilitation services for a provider under section 946.13 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;

- (b) Be screened annually for communicable disease, according to the guidelines issued by the CDC and demonstrate that he or she is free of communicable disease;
  - (c) Be able to read and write the English language;
  - (d) Agree to carry out the responsibilities to provide residential habilitation services consistent with the client's IHP or ISP and Plan of Care;
  - (e) Have a high school diploma or general educational development (GED) certificate;
  - (f) Have a minimum of one year work experience; and
  - (g) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 et seq.).
- 946.15 Each client's case manager shall monitor the delivery of services by conducting visits at least eight (8) times per calendar year to ensure that services are delivered in accordance with the IHP and ISP and Plan of Care.
- 946.16 Each provider of residential habilitation services shall maintain progress notes monthly or more frequently if indicated, conduct periodic reviews of progress and maintain financial records of expenditures of public funds for each client.
- 946.17 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the client's date of discharge.
- 946.18 Residential habilitation services shall not be reimbursed when provided by a member of the client's family.
- 946.19 Reimbursement for residential habilitation services shall not include:
- (a) The cost of room and board;
  - (b) The cost of facility maintenance, upkeep and improvement; or
  - (c) Activities or supervision for which a payment is made by a source other than Medicaid.
- 946.20 The reimbursement rate for residential habilitation services shall be \$120.00 per day, per client.

- 946.21 The provision of skilled nursing services and preventative, consultative and crisis support services while residing in a GHMRP shall be subject to the following limitations:
- (a) Skilled nursing services shall not be billed in excess of the initial assessment and one (1) visit per month; and
  - (b) Preventative, consultative and crisis support services shall not be billed in excess of the initial assessment and one (1) visit per month.
- 946.22 Residential habilitation services shall not be billed concurrently with the following Waiver services:
- (a) Environmental Accessibility Adaptation;
  - (b) Homemaker;
  - (c) Attendant care;
  - (d) Independent Habilitation;
  - (e) Personal Care Services;
  - (f) Respite;
  - (g) Chore;
  - (h) Adult Companion; or
  - (i) Personal Emergency Response System (PERS).
- 946.23 Residential habilitation services shall not be billed when the client is hospitalized, on vacation or for any other period in which the client is not residing at the GHMRP.
- 946.24 MRDDA shall be responsible for payment of nursing services for the administration of medication to clients when the client is unable to self-administer or take medication independently. Nursing services attributable to the administration of medication shall not be billed as Waiver services.

**946.99 DEFINITIONS**

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

**Client**-an individual who has mental retardation and a developmentally disability and has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

**Communicable Disease**-that term as set forth in Section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

**Direct Care Staff-** individuals employed to work in the GHMRP who render the day-to-day personal assistance clients require in order to meet the goals of their IHP or ISP.

**Group Home for Mentally Retarded Persons or GHMRP-** a community residence facility, other than an intermediate care facility for persons with mental retardation, that provides a home-like environment for at least four (4) but no more than six (6) related or unrelated mentally retarded individuals who require specialized living arrangements and maintains necessary staff, programs, support services and equipment for their care and habilitation.

**Individual Habilitation Plan or IHP-** that term as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.3).

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

**Interdisciplinary team-** a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons which has the responsibility of performing a comprehensive evaluation of each client and participating in the development, implementation, and monitoring of the client's IHP or ISP.

**Plan of Care-** A written document prepared by the MRDDA Waiver unit which describes medical and other services to be furnished to the client, the frequency of the services and the type of provider to furnish the services. The Plan of Care shall be consistent with the IHP and ISP.

**D.C. OFFICE OF PERSONNEL**  
**NOTICE OF FINAL RULEMAKING**

The Interim Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01 *et seq.*) (2001), hereby gives notice that final rulemaking action was taken to adopt the rules. These rules amend Chapter 8 of the *D.C. Personnel Regulations*, Career Service, to: rescind § 811, on suitability, because Chapter 4 of the *D.C. Personnel Regulations*, Organization for Personnel Management, has been amended simultaneously to this notice to include suitability provisions applicable to all Services; rescind § 848 on medical qualifications requirements, because Chapter 20 of the *D.C. Personnel Regulations*, Health, is being amended simultaneously to this notice to include provisions on pre-employment and other physical examinations, including fitness-for-duty examinations, applicable to all Services; and add the definition of the term "break in service" to § 899. No comments were received and no changes were made under the notice of proposed rulemaking published at 51 DCR 8367 (August 27, 2004). Final rulemaking action was taken on September 29, 2004.

**CHAPTER 8**

**CAREER SERVICE**

*Sections 811 and 848 are rescinded.*

*Section 899 is amended to add the definition of the term "break in service:"*

**Break in service** – a period of one (1) workday or more between separation and reemployment that may cause a loss of rights or privileges.

## D.C. OFFICE OF PERSONNEL

## NOTICE OF FINAL RULEMAKING

The Interim Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with §§ 951 through 958 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2001), hereby gives notice that final rulemaking action was taken to adopt the rules. These rules amend Chapter 38 of the *D.C. Personnel Regulations*, Management Supervisory Service, to delete the suitability provisions in § 3810, and renumber §§ 3811 through 3819 as §§ 3810 through 3818. The reason for this change is that Chapter 4 of the *D.C. Personnel Regulations*, Organization for Personnel Management, has been amended simultaneously to this notice to include suitability provisions applicable to all Services, including the Management Supervisory Service. No comments were received and no changes were made to the notice of proposed rulemaking published at 51 DCR 8368 (August 27, 2004). Final rulemaking action was taken on September 29, 2004.

## CHAPTER 38

## MANAGEMENT SUPERVISORY SERVICE

*Section 3810 is deleted; §§ 3811 through 3819 are renumbered as 3810 through 3818; and corresponding changes due to the deletion of § 3810 are made to §§ 3803.3, 3806.2, 3807.1(b), 3808.1(d), 3809.9, and renumbered 3811.5, 3811.7, 3811.8, 3814.5, 3818.4, and 3818.7:*

**3800      APPLICABILITY**

- 3800.1      This chapter applies to all appointments to the Management Supervisory Service under the authority of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2001).
- 3800.2      The Management Supervisory Service is established within the District government to ensure that each agency has the highest quality of managers and supervisors who are responsive to the needs of the government.
- 3800.3      The Management Supervisory Service consists of all employees who meet the definition of "management employee" pursuant to § 1411 (5) of the CMPA (D.C. Official Code § 1-614.11 (5)) (2001), that is, employees whose functions include responsibility for project management and supervision of staff and the achievement of the project's overall goals and objectives.
- 3800.4      The following employees are excluded from the Management Supervisory Service:

- (a) Employees appointed to the Career Service under the authority of § 801 of the CMPA (D.C. Official Code § 1-608.01) (2001);
- (b) Employees appointed to the Educational Service under the authority of § 801-A of the CMPA (D.C. Official Code § 1-608.01a) (2001);
- (c) Employees appointed to the Legal Service under the authority of § 851 of the CMPA (D.C. Official Code § 1-608.51 *et seq.*) (2001);
- (d) Employees appointed to the Excepted Service under the authority of §§ 901 through 908 of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.08) (2001);
- (e) Employees appointed to the Executive Service under the authority of § 1051 of the CMPA (D.C. Official Code § 1-610.51) (2001);
- (f) Employees of the Board of Education;
- (g) Employees of the Board of Trustees of the University of the District of Columbia;
- (h) Uniformed members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department;
- (i) Employees occupying positions included in recognized collective bargaining units; and
- (j) Employees with acting supervisory or managerial responsibilities only in the absence of the regular supervisor or manager.

3800.5 Positions that have some supervisory duties and responsibilities but less than those described in the appropriate classification guide shall be excluded from the Management Supervisory Service.

3800.6 Persons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Service.

### **3801 COMPENSATION SYSTEM AND PAY SCHEDULES**

3801.1 Until such time as the Mayor adopts a new compensation system, the compensation system that was in effect on December 31, 1979 is the system applicable to the compensation for positions in the Management Supervisory Service.

3801.2 Individuals appointed to the Management Supervisory Service shall be paid from the appropriate Management Supervisory Service Pay Schedule.

3801.3 The rates of pay on the Management Supervisory Service Pay Schedules shall not be used to set pay upon subsequent appointment to a position in the Career Service.

### **3802 INCUMBENT CLASSIFICATION SYSTEM**

3802.1 Until such time as the Mayor adopts a new classification system, the classification system that was in effect on December 31, 1979 is the system applicable to the classification of positions in the Management Supervisory Service.

### **3803 METHOD OF MAKING MANAGEMENT SUPERVISORY SERVICE APPOINTMENTS**

3803.1 Except as specifically limited in this chapter, all initial appointments and subsequent assignments and promotions to the Management Supervisory Service shall be by open competition, involving positive recruitment and examining procedures designed to achieve maximum objectivity, reliability, and validity. All such initial appointments and subsequent assignments and promotions shall be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements with appropriate regard for affirmative action goals as provided by law and as determined under this chapter.

3803.2 An appointment to the Management Supervisory Service may be for an indefinite period, or a time-limited appointment.

3803.3 As an appointment to the Management Supervisory Service is an at-will appointment, a date specifying the duration of a time-limited appointment shall not prevent termination of the employee occupying such a position prior to the date specified; provided that the termination is effected pursuant to § 3818.

### **3804 SUPERIOR QUALIFICATIONS APPOINTMENT**

3804.1 As provided in Chapter 11 of the District Personnel Manual, superior qualifications appointments may be made at such step of the appropriate grade as the personnel authority may authorize for this purpose.

3804.2 Superior qualifications appointments shall only apply to initial appointments with the District government.

### **3805 PROHIBITED PERSONNEL PRACTICES**

3805.1 No person shall interfere in the competitive process by influencing another person to withdraw from competition for any position in the Management Supervisory Service for the purpose of either improving or injuring the prospects of any applicant for appointment or selection.

3805.2 In accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1401.01 *et seq.*) (2001) (Act), no person who has authority to take or recommend any personnel action with regard to the Management Supervisory

Service shall discriminate against applicants or employees in any aspect of employment on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination also prohibited by the Act.

3805.3 No public official may appoint, employ, promote, advance, or advocate for appointment, employment, or promotion, an individual who is a relative of the public official, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control.

3805.4 A personnel authority may not appoint, employ, promote, or advance an individual in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual.

3805.5 A public official who appoints, employs, promotes, advances, or advocates such appointment, employment, promotion, or advancement of any individual in violation of § 3805.3 shall be required to reimburse the District for any funds improperly paid to the individual.

#### **3806 QUALIFICATION STANDARDS AND GENERAL REQUIREMENTS FOR SELECTION PROCEDURES**

3806.1 A person selected to a position in the Management Supervisory Service shall meet the minimum qualification standards for the position for which selected.

3806.2 The Director of Personnel shall establish standards with respect to education, training, experience, suitability, or other requirements used to evaluate applicants and employees for placement in the Management Supervisory Service, consistent with all applicable laws and regulations. Suitability requirements applicable to the Management Supervisory Service are specified in Chapter 4 of these regulations.

3806.3 The Director of Personnel may adopt new qualification standards under § 3806.2. Until such adoption, the federal qualification standards series of handbooks and applicable supplementary publications shall remain applicable.

3806.4 Whenever the practice of certain occupations and professions is subject to licensure requirements (as established by District, State, or federal law), the possession of a license shall constitute a qualification requirement.

3806.5 As applicable, each personnel authority shall establish employee selection procedures for the Management Supervisory Service. Such procedures shall be consistent with the standards established by these regulations and applicable law, including § 953 of the CMPA (D.C. Official Code § 1-609.53) (2001), and federal issuances pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*), and professionally developed standards for examination and selection.

- 3806.6 The applicant evaluation and qualification standards, and the employee selection procedures for the Management Supervisory Service developed by the personnel authority as required by §§ 3806.2 through 3806.5 shall be incorporated in their entirety, or by reference, in the District Personnel Manual (or any other procedural manual developed). An independent personnel authority with Management Supervisory Service employees may adopt the provisions of the District Personnel Manual (or any other procedural manual developed) applicable to the Management Supervisory Service or incorporate them in a personnel manual developed by the independent personnel authority.
- 3806.7 All personnel actions appointing employees to the Management Supervisory Service, or affecting employees within the Management Supervisory Service, shall comply with the standards and selection procedures established by the personnel authority, and applicable rules as set forth in these regulations.
- 3806.8 When the personnel authority finds that an agency has not complied with competitive principles of this chapter, either in an individual case or on a program basis, the personnel authority shall require the agency to rectify the error or omission.
- 3806.9 All competitive placements shall be made in accordance with the general principles in this section and the specific requirements of applicable sections of this chapter. These principles and requirements shall also govern noncompetitive placements, to the maximum extent practicable.
- 3806.10 Selection procedures for competitive placement shall do the following:
- (a) Be practical in character and fairly test the relative ability and fitness of candidates for jobs to be filled;
  - (b) Result in selection from among the best qualified candidates;
  - (c) Be developed and used without discrimination; and
  - (d) Comply with other requirements of applicable equal employment opportunity and affirmative action laws and regulations.
- 3806.11 Selection procedures for the Management Supervisory Service shall be based on a job analysis (which may cover a single position or group of positions, or an occupation or a group of occupations having common characteristics) to identify and evaluate the factors that are important in evaluating candidates, and the following:
- (a) The basic duties and responsibilities; or
  - (b) The tasks or the knowledge, skills, and abilities required to perform the duties and carry out the responsibilities.
- 3806.12 A minimum educational requirement shall not be established except as authorized under §§ 3806.2 through 3806.4.

3806.13 The personnel authority may require an applicant to provide documentary evidence of his or her qualifications for an appointment in the Management Supervisory Service.

### **3807 COMPETITIVE PLACEMENT**

3807.1 Except as provided in this chapter, competitive procedures shall apply to all initial appointments to the Management Supervisory Service, and to subsequent assignments and placements to positions in that service, including the following:

- (a) Promotions;
- (b) Temporary promotions under § 3813 exceeding one hundred twenty (120) days;
- (c) Selection for details for more than two hundred forty (240) days to a position at a higher grade or to a position at the same grade level with known promotion potential; and
- (d) Selection for a position, including by reassignment or demotion, with more promotion potential than the last grade held under a Management Supervisory Service competitive appointment.

### **3808 NONCOMPETITIVE PLACEMENT**

3808.1 Competitive procedures shall not apply to the following actions within the Management Supervisory Service:

- (a) The following types of Management Supervisory Service promotions:
  - (1) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
  - (2) A promotion resulting from an employee's position being reclassified at a higher grade because of accretion of additional duties and responsibilities without planned management action;
  - (3) A career ladder promotion if the original competition for the position clearly established the career ladder; or
  - (4) A temporary promotion under this chapter for a period of one hundred twenty (120) days or less.
- (b) Indefinite reassignment or transfer to a position of the same grade with no known promotion potential;
- (c) A temporary reassignment for a period of one hundred twenty (120) days or less;
- (d) A reassignment or demotion pursuant to §§ 3811.4 through 3811.6;

- (e) Consideration of a candidate not given proper consideration in a competitive promotion action; or promotion of an employee who was denied promotion as a result of other error, on order of the D.C. Office of Personnel or independent personnel authority; and
- (f) Detail of two hundred forty (240) days or less to a position at a higher grade or to a position with known promotion potential.

**3809 EXAMINING SYSTEM, ESTABLISHMENT AND TERMINATION OF REGISTERS**

- 3809.1 Competitive selection procedures shall consist of assembled examining procedures, which may include written, oral, or performance examinations, or a combination thereof; or unassembled examining procedures which may include establishment of rating and ranking plans or selection panels, or both.
- 3809.2 Each competitive selection shall be as a result of a vacancy announcement, available to the public for not less than five (5) workdays, and appropriate recruitment activities.
- 3809.3 The personnel authority shall prescribe the absolute and relative weights to be assigned the individual components of the examination, and, where numerical weights are used, shall assign final ratings on a scale with a maximum value of one hundred (100). In these circumstances, candidates who do not receive at least a rating of seventy (70) shall be rated as "ineligible."
- 3809.4 Where numerical ratings are not used, and the results of the examination are to be used only to distinguish those who successfully completed the examination from those who did not, candidates may be rated as "eligible" or "ineligible."
- 3809.5 When categorical rankings are used, candidates may be rated as "Highly Qualified," "Well Qualified," "Qualified," or "Ineligible."
- 3809.6 Each applicant who meets the minimum requirements for entrance to an examination and is rated seventy (70) or more (when numerical ratings are used), or at least "qualified" (when categorical rankings are used), or "eligible" (when pass-fail ratings are used) in the examination is eligible for consideration for appointment.
- 3809.7 The personnel authority shall add five (5) points to the earned numerical rating of each applicant claiming or entitled to residency preference, as appropriate, under Chapter 3 of these regulations.
- 3809.8 All job-related experience, regardless of whether pay was received shall be creditable.
- 3809.9 The name of each applicant determined to be eligible for the position to be filled, subject to any subsequent suitability determination pursuant to Chapter 4 of these regulations, shall be listed on a register in accordance with §§ 3809.3 through 3809.7.

- 3809.10 Unless otherwise required by an affirmative action plan established in accordance with applicable legal requirements or by law or court order, applicants shall be certified from the register in order of their relative standing on the register, except that applicants who claimed or are entitled to a residency preference pursuant to Chapter 3 of these regulations shall be listed before non-preference candidates as specified in that chapter, and shall be properly identified on the selection certificate as having claimed or being entitled to a residency preference.
- 3809.11 A maximum of ten (10) eligibles shall be certified for each vacancy, and the determination of the number of persons certified shall be based on an evaluation of the internal statistical characteristics of each selection procedure involved, the quantity and quality of competitors, residency preference considerations, equal employment opportunity considerations, and any other appropriate factors; however, more than the maximum of ten (10) may be submitted if an agency provides written justification to the personnel authority.
- 3809.12 Selecting officials may select candidates for appointment from among those listed, provided that a non-preference candidate shall not be selected when there is a residency preference candidate on the selection certificate, or return the certificate to the personnel authority without selection.
- 3809.13 The Director of Personnel or independent personnel authority shall publish instructions and procedures in the District Personnel Manual (or any other procedural manual developed) to set forth the basic rating and ranking plan requirements, and all other requirements of the examination process.

#### **3810 MERIT PROMOTION REQUIREMENTS**

- 3810.1 Except as specified in this chapter, all promotions to or within the Management Supervisory Service shall be by open competition. Promotions shall be based on merit.
- 3810.2 The personnel authority shall ensure that each employee within the area of consideration who is absent for legitimate reason, for example, on detail, leave, at training courses, in the military service, on disability compensation, or on temporary assignment under Chapter 27 of these regulations, receives appropriate consideration for promotion.
- 3810.3 To be eligible for promotion, a candidate shall meet minimum qualification standards adopted in accordance with § 3806.3.
- 3810.4 Due weight may be given to performance evaluations and incentive awards of a candidate.
- 3810.5 Selection procedures shall provide for an agency's right to select or not select from among a group of best-qualified candidates.
- 3810.6 The area of consideration shall be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of positions covered.

- 3810.7 The minimum area of consideration shall be the agency, except that a smaller area may be authorized by the personnel authority in a situation that meets criteria established by the personnel authority.
- 3810.8 Administration of the promotion procedures shall include record keeping, the provision of necessary information to applicants and the public, and ensuring that each individual's right to privacy is protected.
- 3810.9 Each personnel authority shall maintain a record of each promotion sufficient to allow reconstruction of the promotion action, including documentation of how each candidate was rated and ranked.
- 3810.10 All promotion records shall be retained as specified in the appropriate personnel retention schedules or other appropriate retention document.
- 3811 PLACEMENT BY REASSIGNMENT OR DEMOTION**
- 3811.1 A personnel authority may fill a vacancy within the Management Supervisory Service by reassignment of a Management Supervisory Service employee to another position of the same grade, either competitively or non-competitively, as provided in this section.
- 3811.2 A temporary reassignment may be made for a period not to exceed one (1) year.
- 3811.3 A temporary reassignment exceeding one hundred twenty (120) days to a position with established promotion potential higher than the currently held position shall be effected competitively.
- 3811.4 An agency may reassign, or reduce the grade of, an employee who has been placed on a Performance Improvement Plan pursuant to Chapter 14 of these regulations and who, at the end of the Performance Improvement Plan, is found to have failed to meet the requirements of the Plan.
- 3811.5 Any reassignment or demotion pursuant to § 3811.4 shall be to a vacant Management Supervisory Service position for which the affected employee qualifies; provided that there is no diminution in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3811.6 When, as a result of attrition, reductions in force, reorganizations, or approved realignments within an agency, a Management Supervisory Service employee ceases to perform managerial or supervisory functions or duties, the personnel authority may abolish the Management Supervisory Service position, and reassign or demote the employee to a vacant Management Supervisory Service position for which he or she qualifies; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3811.7 Any reassignment or demotion pursuant to §§ 3811.4 through 3811.6 shall be effected non-competitively.

3811.8 An employee may voluntarily accept a reassignment or demotion pursuant to §§ 3811.4 through 3811.6, or be terminated as specified in § 3818.

### **3812 TAPER APPOINTMENT**

3812.1 A personnel authority may fill a Management Supervisory Service vacancy in a continuing position, in the absence of lists of eligibles, by a Temporary Appointment Pending Establishment of a Register (TAPER appointment).

3812.2 A person appointed to a TAPER appointment shall meet the minimum qualifications standards for the position.

3812.3 A TAPER appointment shall be terminated as soon as lists of eligibles for Management Supervisory Service appointment can be established by open competition in accordance with this chapter; shall not exceed ninety (90) days; and may be extended for an additional period of ninety (90) days only upon determination that a list of eligibles cannot be created.

3812.4 A person appointed to a TAPER appointment may be converted to a Management Supervisory Service appointment non-competitively if the TAPER appointment was made as a result of open competition.

### **3813 TEMPORARY PROMOTION**

3813.1 A Management Supervisory Service employee may be temporarily promoted to a higher-grade Management Supervisory Service position without competition for any period of thirty (30) days or more and not exceeding one hundred twenty (120) days.

3813.2 Competitive procedures shall be used for a temporary promotion over one hundred twenty (120) days. In computing the days, prior service under all details to higher grade positions or temporary promotions shall be counted, whether competitive or noncompetitive, during the preceding twelve (12) months.

3813.3 A competitive temporary promotion shall be in accordance with the following:

(a) It shall be for a period of one (1) year or less; and

(b) It may be made for an indefinite period without further competition, provided that the original competition made known to all potential applicants the fact that it might lead to an indefinite promotion.

3813.4 A temporary promotion shall not be used for the purpose of training or evaluating an employee in a higher-grade position.

3813.5 A Career or Excepted Service employee may be temporarily promoted to a Management Supervisory Service position for which he or she qualifies, as specified in this section, except that a Career Service employee may be promoted to a Management Supervisory Service position without losing his or her existing status in the Career Service.

**3814      DETAIL**

- 3814.1      A Management Supervisory Service employee may be detailed to another Management Supervisory Service position to meet a temporary employment need for a period of not more than one hundred twenty (120) days to an established position or two hundred forty (240) days to an unestablished position; and, unless prohibited by this section, the detail may be extended by the personnel authority in increments of one hundred twenty (120) days.
- 3814.2      A detail to an established position as defined in Chapter 11 of these regulations may be made for up to one (1) year during a major reorganization.
- 3814.3      All details to established higher graded positions extending beyond two hundred forty (240) days shall be made by competition.
- 3814.4      No detail to a higher graded position or to an unestablished position as defined in Chapter 11 of these regulations shall extend beyond one (1) year, unless the personnel authority determines that highly unusual circumstances warrant an extension beyond one (1) year.
- 3814.5      The provisions of §§ 3814.2 through 3814.4 shall apply to a detail of a Career or Excepted Service employee to a position that would otherwise be in the Management Service and for which the employee qualifies, except that a Career Service employee may be detailed to a Management Supervisory Service position without losing his or her existing status in the Career Service.

**3815      MANDATORY CONTINUING EDUCATION AND TRAINING**

- 3815.1      Each employee appointed to the Management Supervisory Service shall be required to maintain and enhance his or her management and supervisory skills and to attend requisite training courses every year as prescribed by the personnel authority.
- 3815.2      The Director of Personnel shall publish instructions and procedures in the District Personnel Manual (or any other procedural manual developed) to set forth the basic requirements for mandatory continuing education and training pursuant to this section.
- 3815.3      Failure of an employee to complete the prescribed training within time frames specified by the personnel authority may result in administrative action against the employee.

**3816      PERFORMANCE MANAGEMENT FOR MANAGEMENT SUPERVISORY SERVICE**

- 3816.1      Employees in the Management Supervisory Service shall be subject to the provisions of Chapter 14 of these regulations.

**3817 RESIDENCY PREFERENCE FOR MANAGEMENT SUPERVISORY SERVICE**

3817.1 The residency preference provisions of § 801(e) (1), (2), (3), (5), (6), and (7) of the CMPA (D.C. Official Code § 1-608.01(e) (1), (2), (3), (5), (6), and (7)) (2001) and Chapter 3 of these regulations shall apply to employment in the Management Supervisory Service.

**3818 EMPLOYEE RIGHTS**

3818.1 An appointment to the Management Supervisory Service shall be an at-will appointment. A person appointed to a position in the Management Supervisory Service shall not acquire Career Service status, shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time.

3818.2 An employee in the Management Supervisory Service shall be provided a 15-day notice prior to termination.

3818.3 Pursuant to § 954 of the CMPA (D.C. Official Code § 1-609.54 (b)) (2001), an employee in the Management Supervisory Service shall be entitled to severance pay upon termination for non-disciplinary reasons.

3818.4 A Management Supervisory Service employee who has been placed on a thirty (30) to ninety (90) day Performance Improvement Plan pursuant to Chapter 14 of these regulations and who, at the end of the Performance Improvement Plan is found to have failed to meet the requirements of the Plan, may be terminated as specified in § 3818.2.

3818.5 Placement of an employee on a Performance Improvement Plan shall not prevent termination of the employee prior to the end of the thirty (30) to ninety (90) day period of such plan, provided that the termination is for reasons not related to performance.

3818.6 Upon termination for non-disciplinary reasons, and at the discretion of the personnel authority, a person with Career or Educational Service status or with Excepted Service status due to appointment as an attorney in that Service, may retreat, within three (3) months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted and for which he or she qualifies.

3818.7 A retreat pursuant to § 3818.6 shall be to a position in the Service in which the person acquired status.

3818.8 Terminations from the Management Supervisory Service shall not be subject to administrative appeal.

*Section 3899 is amended to delete the definition of the term "disqualification; and to amend the definition of the terms "eligibles" and "suitability:"*

### 3899 DEFINITIONS

For the purposes of this chapter, the following terms have the meaning ascribed:

**Agency** – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term "agency" shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

**Area of consideration** – the area in which the agency makes a search for eligible candidates and from which applications will be accepted in a specific competitive recruitment action.

**Background investigation** – thorough inquiry into the past and present conduct and behavior of an applicant to determine his or her suitability for appointment.

**Days** – calendar days, unless otherwise specified.

**Demotion** – the change of an employee to a lower grade, or to a position with a lower basic pay rate, when both the old and new positions are under the same pay schedule or in different pay schedules.

**Detail** – the temporary assignment of an employee to a different position for a specified period, with the employee returning to the position from which detailed at the end of the detail. A position is not filled by a detail, as the employee continues to be the incumbent of the position from which detailed.

**Eligibles** – those qualified persons to be chosen for appointment on the basis of any of the following (subject to possible suitability determination pursuant to Chapter 4 of these regulations):

- (a) Having received a rating of seventy (70) or more under § 3809.3.
- (b) Having successfully completed an examination under § 3809.4.
- (c) Having been rated "Highly Qualified," "Well Qualified," or "Qualified" under § 3809.5; or
- (d) Having been rated "eligible" under § 3809.6.

**Management Supervisory Service** – all positions in the District of Columbia government as provided for in §§ 951 through 958 of the CMPA (D.C. Official Code § 1-609.51 *et seq.*) (2001).

**Manager** – an employee vested with the authority to direct the work of an organization, held accountable for the success of specific line or staff functions; responsible for supervision of staff, monitoring and evaluating the progress of an organization toward meeting goals, and making adjustments in objectives, work plans, schedules and commitment of resources. These positions

shall serve as head or assistant head of a major organization, or direct a specialized project of marked difficulty, responsibility or community significance.

**Minimum area of consideration** – the agency in which a vacancy for competitive recruitment occurs, or a portion thereof.

**Open competition** – the use of examination procedures that permit application and consideration of all persons without regard to current or former employment with the District government.

**Personnel authority** – an individual or entity with the authority to administer all or part of a personnel management program as provided in § 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2001).

**Placement** – term that includes the development and use of examinations that affect the measurement, ranking, and selection of individuals for initial appointment and subsequent assignment or promotion in the Management Supervisory Service.

**Planned management action** – an action wherein management has a recognized option or alternative to assign work between two (2) or more employees, and assigns the work to a particular employee.

**Project** – part of the mission, functions, programs, activities, laws, rules, and regulations which an agency is authorized and funded to administer or enforce. The focus of a project may be on providing products and services to the public, State and local government, private industry, etc. A project may be professional, scientific, technical, administrative or fiscal in nature. Typically, projects involve broad objectives such as protective services, law enforcement, public health, safety and well being of citizens, collection of revenue, regulation of trades, development and maintenance of information systems, delivery of benefits and services, etc. Included in this definition are specialized or staff projects that may be considerably narrower in scope, *e.g.*, human resources, contracting and procurement, and budget and fiscal operations. Projects are usually of such magnitude that they must be carried out through a combination of line and staff functions.

**Promotion** – the change of an employee while continuously employed, from one grade to a higher grade under the Management Supervisory Service Schedule, or between pay systems. When an action involves a change between two (2) pay systems (*i.e.*, from the District Service Schedule to the Management Supervisory Service Schedule), the action is a promotion if the representative rate of the grade to which changed is higher than the representative rate of the grade currently held by the employee.

**Public official** – an officer, an employee, or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated, to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.

**Qualified candidates** – those who meet established qualification requirements for the position, including any selective factors.

**Reassignment** – the change of an employee while continuously employed, from a Management Supervisory Service position to another Management Supervisory Service position of the same grade and without a change to the rate of pay of the employee being reassigned.

**Register** – a list of eligible applicants compiled in order of relative standing for certification.

**Relative** – an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

**Selection certificate** – list of eligible candidates from a register for appointment to a position submitted by a personnel authority to a public official.

**Selective factors** – knowledge, skills, or abilities essential for successful performance on the job, which represent an addition to the basic qualification standard for a position.

**Sensitivity** – the degree of public trust required of an incumbent of a position as determined by the personnel authority.

**Suitability** – Pursuant to Chapter 4 of these regulations, the quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.

**Supervisor** – incumbent of a position that accomplishes work through the direction of other employees and meets at least the minimum requirements for coverage under the appropriate supervisory grade evaluation guide.

**TAPER appointment** – a time-limited appointment pending the establishment of a register when there are insufficient candidates on a register appropriate for filling a Management Supervisory Service position and the public interest requires that the vacancy be filled before eligibles can be certified.

**Temporary promotion** – a promotion for a definite period of thirty (30) days or more, not to exceed one (1) year, which may be extended for up to one (1) additional year.

**Time-limited appointment** – an appointment with a specific time limitation consistent with the anticipated duration of the programs, projects, problems, or phases thereof, requiring such services.

**Transfer** – a change, without a break in service of a full workday of a Management Supervisory Service employee to another Management Supervisory Service position under a different personnel authority.