

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES  
OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR

ERRATA

The Director, Office of Documents and Administrative Issuances, pursuant to D.C. Official Code § 2-559 (2001), entitled "**Correction of errors in documents**," hereby gives notice of corrections to the title and chapter designations specified in notices of emergency, proposed, and final rulemaking published in the *District of Columbia Register*, and issued by the Department of Mental Health ("DMH" or the "department"), on July 27, 2001, November 9, 2001, March 7, 2003, and September 13, 2003, which set forth the rules that are used by the department "to certify community-based providers of mental health rehabilitation services and implement the Medicaid Rehabilitation Option for mental health rehabilitation services." See Notice of Proposed Rulemaking published at 48 D.C. Reg. 6902 (July 27, 2001); Notice of Final Rulemaking published at 48 D.C. Reg. 10297 (November 9, 2001); Notice of Emergency and Proposed Rulemaking published at 50 D.C. Reg. 2067 (March 7, 2003); and Notice of Final Rulemaking published at 50 D.C. Reg. 7746 (September 12, 2003).

The preamble and text of the aforesaid notices of emergency, proposed, and final rulemaking state that DMH was taking formal action to adopt, and subsequently amend, a new chapter 34 of title 22 of the District of Columbia Municipal Regulations ("DCMR"), entitled "Mental Health Rehabilitation Services Provider Certification Standards." Prior to the publication of the subject rulemaking notices in the *D.C. Register*, ODAI authorized, at the request of DMH, the publication of a new title 22A of the DCMR for the compilation of the department's mental health regulations. Therefore, the aforesaid rulemaking notices are corrected to read that the rulemaking actions were being taken by DMH to add, and subsequently amend, chapter 34 of title 22A of the DCMR (emphasis underscored). The regulations currently published in title 22 of the DCMR (Public Health and Medicine (August 1986)), entitled "Community Residence Facilities," will continue to be compiled in chapter 34 of that title and remain in full force and effect.

Inquiries regarding this errata notice should be addressed by mail to Arnold R. Finlayson, Esq., Administrator, Office of Documents and Administrative Issuances, 441 4<sup>th</sup> Street, N.W., Suite 520 South, Washington, D.C. 20001 or via telephone at (202) 727-7882.

**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 §§ 906 and 1059 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 §§ 1-609.06 and 1-610.59) (2003 Supp.), and Proposed Council Resolution 15-829, deemed approved on July 9, 2004, hereby gives notice that final rulemaking action was taken to adopt these rules. These rules amend Chapter 3 of the *D.C. Personnel Regulations*, Residency, to: clearly state in § 305.9 that the Mayor is the official authorized to grant waivers of the domicile requirement to Executive Service appointees; add language to § 305.9 to provide that financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered a basis for granting waivers of the domicile requirement; add language to § 305.9 to establish the criteria for granting waivers of the domicile requirement due to exceptional circumstances; amend § 305.10 to delete the first sentence and expand on the language stating that waivers of the domicile requirement shall not be granted after the effective date of appointment; add a new § 307.18 stating that the Director of Personnel shall notify a subordinate agency head, and the Mayor, when there is reasonable cause to believe that a subordinate agency head is not in compliance with the residency or domicile requirements, as applicable, and that the Mayor shall determine the appropriate course of action to be taken; and amend § 399 to add the definitions of the terms "immediate family" and "subordinate agency." No comments were received and no changes were made under the notice of proposed rulemaking published at 51 DCR (August 20, 2004). Final rulemaking action was taken on September 21, 2004.

**CHAPTER 3****RESIDENCY**

*Subsection 305.9 is amended to read as follows:*

305.9 As specified in this subsection, the Director of Personnel and independent personnel authorities may grant a waiver of the domicile requirement to a person appointed to a position in the Excepted Service on or after October 1, 2002 under the authority of § 903(a)(1) and (2) of the CMPA (D.C. Official Code § 1-609.03(a)(1) and (2)) (2002 Supp.), who is appointed to a hard-to-fill position or presents exceptional circumstances. The Mayor (or his or her designee) may grant a waiver of the domicile requirement to a person appointed to a position in the Executive Service on or after October 1, 2002 under the authority of Title X-A of the CMPA (D.C. Official Code § 1-610.51 *et seq.*) (2001), who is appointed to a hard-to-fill position or presents exceptional circumstances. The provisions for

the granting of waivers of the domicile requirement under this subsection are as follows:

- (a) In the case of a hard-to-fill position in the Excepted Service, an agency head may request a waiver of the domicile requirement for the appointee to the position by submitting written justification to the Director of Personnel or independent personnel authority that the position is hard-to-fill. The request shall include appropriate documentation and information to demonstrate that the position is hard-to-fill and justify consideration of the request for the waiver. Appropriate documentation and information shall include, but not be limited to:
- (1) A statement containing the qualification requirements for the position and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard-to-fill;
  - (2) A copy of the position description or statement of duties for the position;
  - (3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;
  - (4) Copies of any vacancy announcements or other types of advertisement issued and published for the position;
  - (5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;
  - (6) The employment application or résumé of the person for which the waiver is being requested; and
  - (7) A statement setting forth the reasons that the waiver should be granted.
- (b) Financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered as a basis for designating a position as hard-to-fill for the purpose of granting a waiver of the domicile requirement pursuant to this subsection.
- (c) Upon receiving a request for a waiver of the domicile requirement for an appointee to a position in the Excepted Service deemed as hard-to-fill by the agency making the request, the Director of Personnel or independent personnel authority shall promptly consider the factors enumerated in § 305.9(a)(1) through (7), § 305.9(b), and any other applicable factors; determine if the position shall be designated as hard-to-fill and the waiver granted to the person appointed to the position; and notify the agency of the decision.

- (d) In designating an Executive Service position as hard-to-fill and granting a waiver of the domicile requirement to the appointee to the position in question, the Mayor (or his or her designee) shall consider the factors enumerated in § 305.9(a)(1) through (7), as applicable, § 305.9(b), and any other factors he or she deems applicable.
- (e) Any waiver of the domicile requirement granted based on the designation of a position as hard-to-fill for that purpose shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.
- (f) A determination to grant a waiver of the domicile requirement due to exceptional circumstances shall be based on personal circumstances of the appointee to the position, or a member of his or her immediate family, of such a nature that would cause extreme hardship to the person if he or she were required to become a domiciliary of the District of Columbia. Financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered as a personal circumstance for which a waiver should be granted. The determining factor for consideration by the personnel authority authorized to grant a waiver due to exceptional circumstances should be that the particular circumstances of the appointee, combined with his or her qualifications for the position and the benefit to the District government, outweigh the need to require that the person become a domiciliary of the District of Columbia.
- (g) When considering the appointment of a non-District domiciliary who is deemed as presenting exceptional circumstances to a position in the Excepted Service, the agency head (or his or her designee) shall submit a request for a waiver of the domicile requirement for the appointee to the Director of Personnel or independent personnel authority, in writing, before the effective date of the appointment. The request shall include appropriate documentation and information to substantiate the claim that the appointee to the position presents exceptional circumstances that may warrant the granting of a waiver of the domicile requirement.
- (h) Upon receiving a request for a waiver of the domicile requirement for an appointee to a position in the Excepted Service due to exceptional circumstances, the Director of Personnel or independent personnel authority shall promptly consider the documentation and information submitted by the agency; determine if the waiver should be granted; and notify the agency of the decision.
- (i) A waiver of the domicile requirement due to exceptional circumstances granted by the Mayor (or his or her designee) to an appointee to an Executive Service position shall be based on the criteria specified in § 305.9(f).
- (j) Any waiver of the domicile requirement granted due to exceptional circumstances shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.

*Subsection 305.10 is amended to read as follows:*

305.10 Under no circumstance shall a waiver of the domicile requirement pursuant to § 305.9, regardless of the basis for the request, be granted after the effective date of appointment of the person for whom the waiver is sought. In the case of an appointee to the Executive Service, the term "effective date of appointment" means the date the person is appointed in an acting capacity.

*A new § 307.18 is added to read as follows:*

307.18 The Director of Personnel shall notify a subordinate agency head, and the Mayor, when there is reasonable cause to believe that a subordinate agency head is not in compliance with the residency or domicile requirements, as applicable. Upon notification, the Mayor shall determine the appropriate course of action to be taken.

*Section 399 is amended to add the definitions of the terms "immediate family" and "subordinate agency:"*

**Immediate family** – a person who is related to the appointee to a position in the Excepted Service pursuant to § 903(a)(1) and (2) of the CMPA (D.C. Official Code § 1-609.03(a)(1) and (2)) (2002 Supp.) or the Executive Service as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

**Subordinate agency** – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in § 301(q) of the CMPA (D.C. Official Code § 1-603.01(17)) (2001).