

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 4 of the Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-103 (a)(1) (2001)) and section 21 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3520 (2001)), hereby gives notice of the adoption of the following rules to be included in Title 26, Chapter 45 of the District of Columbia Municipal Regulations ("DCMR"). Notice of the Proposed Rulemaking was published January 23, 2004 (51 DCR 952). The final rules will be effective upon the publication of this notice in the D.C. Register.

26 DCMR is amended by adding a new Chapter 45, Oversight Role and Fiduciary Obligation of Members of the Board of Directors of a Hospital and Medical Services Corporation, to read as follows:

**CHAPTER 45 OVERSIGHT ROLE AND FIDUCIARY OBLIGATIONS OF
MEMBERS OF THE BOARD OF DIRECTORS OF A
HOSPITAL AND MEDICAL SERVICES CORPORATION**

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| 4500 | APPLICABILITY |
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EMPLOYEES OF THE CORPORATION |
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| 4500 | APPLICABILITY |
| 4500.1 | These rules shall apply to domestic corporations issued a certificate of authority pursuant to § 6 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3505 (2001)). |
| 4500.2 | A corporation shall comply with the requirements of these rules within 30 days after they become effective. |

**4501 REQUIRED CODE OF CONDUCT FOR DIRECTORS, OFFICERS,
AND EMPLOYEES OF THE CORPORATION**

- 4501.1 The board of directors of the corporation shall adopt a code of conduct that governs the conduct of the corporation's directors, officers, and employees.
- 4501.2 The code of conduct shall be submitted to the Commissioner for approval prior to its adoption by the board of directors. The Commissioner will advise the corporation, in writing, within twenty (20) days after receipt, whether the code of conduct is approved. If the Commissioner disapproves the code of conduct, he or she will specify, in writing, which elements of the code of conduct are inadequate. Any subsequent revisions to the code of conduct also shall be submitted to the Commissioner for approval.
- 4501.3 The corporation's bylaws shall be amended to require the corporation's board of directors to adopt policies consistent with the provisions of the code of conduct and any compliance program rules adopted by the Commissioner.
- 4501.4 The corporation shall file with the Commissioner annually, on or before June 1, a copy of its bylaws, which shall require the corporation's board of directors to adopt policies consistent with the provisions of the code of conduct and the rules of this chapter.

4502 MINIMUM REQUIREMENTS FOR CODE OF CONDUCT

- 4502.1 The code of conduct adopted by the corporation pursuant to this chapter shall include all fiduciary obligations applicable to directors as set forth in this chapter. In addition, the code of conduct as applicable to directors, officers, and employees shall include provisions that:
- (a) Specify prohibited outside activities;
 - (b) Specify prohibited uses of corporation funds;
 - (c) Require proper accounting and audit procedures;
 - (d) Protect the corporation's handling of confidential medical and financial information;
 - (e) Require ethical subcontracting;

- (f) Prohibit the giving or receiving of gifts or gratuities under specific guidelines;
- (g) Regulate the purposes and expense of business travel;
- (h) Regulate the business relationships between officers and employees and agents, sales representatives, providers and consultants;
- (i) Prohibit payments to government employees;
- (j) Require cooperation with the investigation of any violation of the code of conduct, whether undertaken by the corporation or the Commissioner;
- (k) Regulate the retention of records;
- (l) Prohibit unsafe or unhealthy work place activities;
- (m) Prohibit unlawful work place discrimination or harassment;
- (n) Prohibit the use or possession of unlawful drugs on corporate property;
- (o) Require the reporting of any knowledge of a suspected violation of the code of conduct to the compliance officer; and
- (p) Specify the penalties for violations of the code of conduct.

4502.2 The code of conduct may include other provisions consistent with the effective management of the corporation.

4503 CODE OF CONDUCT COMPLIANCE PROGRAM

4503.1 The corporation's board of directors shall appoint a code of conduct compliance officer who shall have the responsibility to investigate all reports of violations of the code of conduct.

4503.2 Suspected violations of the code of conduct shall be reported to the compliance officer who shall then promptly investigate the report and prepare a written report of his findings to the board of directors. The board of directors shall ensure that the compliance officer has the authority and funding to retain independent experts as deemed necessary by the compliance officer to assist him or her in any investigations authorized under this section.

4503.3 The board of directors of the corporation shall make a written report to the Commissioner of all cases where the board has determined that there has been a violation of the code of conduct. The report shall set forth the facts

upon which any violation of the code of conduct is predicated. The report shall also set forth any remedial action taken by the corporation in response to the finding that a violation has occurred.

4503.4 The corporation shall cooperate with any investigation of a violation of these rules conducted by the Commissioner or other District of Columbia official.

4504 FIDUCIARY OBLIGATIONS OF BOARD MEMBERS

4504.1 Directors shall carry out the corporation's purposes as set forth in its charter. In fulfilling this obligation, directors shall:

(a) Annually review the corporation's charter, by-laws and District of Columbia and federal law governing the corporation's operations;

(b) Review the activities of the corporation's officers, employees, and agents to ensure that they comply with the provisions of the corporation's charter, by-laws and District of Columbia and federal law governing the corporation's operations;

(c) Promptly investigate any case where a director learns of a suspected violation of the corporation's charter, by-laws or state or federal laws governing the corporation's operations by an officer or employee of the corporation;

(d) Review the use of the corporation's funds; and

(e) Use professional legal and financial advisors to monitor changes in the law and to ensure the corporation's compliance with all legal requirements.

4504.2 Directors shall act in good faith, in a reasonably prudent manner, and in a manner reasonably believed to further the best interests of the corporation as a charitable and benevolent institution. In fulfilling this obligation, Directors shall:

(a) Exhibit fairness, openness, and honesty in all corporation business;

(b) Apply sound practical judgment when making decisions for the corporation;

(c) Be attentive to the operations of the corporation and alert to potential problems;

(d) Manage the financial affairs of the corporation carefully and responsibly;

- (e) Comply with all regulatory requirements affecting the corporation;
- (f) Secure independent professional advice regarding any proposals that may result in a financial benefit for officers of the corporation; and
- (g) Secure independent professional advice for any matter beyond the expertise of the board or the board committee considering the issue.

4504.3 Directors shall give their complete and undivided loyalty to the corporation's mission as set forth in its charter. In fulfilling this obligation, Directors shall:

- (a) Further the goals of the corporation and not their own interests;
- (b) Ensure that any perquisites of their position are customary for directors of similar corporations;
- (c) Ensure that they do not use their position or any information they receive in their official capacity to gain any personal advantage;
- (d) Not receive excessive compensation or benefits;
- (e) Not receive loans from the corporation; and
- (f) Not use their positions to benefit third persons.

4504.4 Directors shall be entitled to rely upon information provided to them by officers and employees, but only to the extent that a reasonable person would believe such information to be reliable and competent. Directors have an affirmative duty to investigate any information provided to them by officers and employees that does not reasonably appear to be reliable and competent.

4504.5 Directors shall be entitled to rely upon the advice of lawyers and accountants regarding a director's compliance with these rules, but only to the extent that a reasonable person would believe such advice to be reliable and competent. Directors shall obtain a second opinion whenever advice provided to them by lawyers and accountants does not reasonably appear to be reliable and competent.

4505-4598 RESERVED

4599 **DEFINITIONS**

4599.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

Commissioner – the Commissioner of the District of Columbia Department of Insurance, Securities and Banking.

Compliance officer – the person appointed pursuant to this chapter by the corporation’s board of directors to investigate and report on reports of violations of the corporation’s code of conduct for directors, officers, and employees.

Director – a member of the corporation’s board of directors or board of trustees.

Domestic corporation – a corporation organized under the laws of the District, or formed or organized under an act of Congress.

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 X-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Official Code § 1-610.51 *et seq.* (2001)), hereby gives notice that final rulemaking action was taken to adopt the following rules. The rules amend § 1005 of Chapter 10 of the *D.C. Personnel Regulations, Executive Service*, to include language on the procedures for approval of performance incentives, and add a new § 1006, Additional Income Allowance for Medical Officers. No comments were received and no changes were made under the notice of proposed rulemaking published at 51 DCR 7131(7/16/04). Final rulemaking action was taken on August 31, 2004.

CHAPTER 10

EXECUTIVE SERVICE

Section 1000.2 is amended to read as follows:

- 1000.2 Appointments to Executive Service positions shall be made by the Mayor as provided by §§ 1051 through 1063 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 § 1-610.51 *et seq.*) (2001).

Section 1005 is amended to read as follows:

1005 PERFORMANCE INCENTIVES

- 1005.1 Pursuant to § 1057 of the CMPA (D.C. Official Code § 1-610.57) (2001), the Mayor may authorize performance incentives for exceptional service by a subordinate agency head.
- 1005.2 A performance incentive may be paid only once in a fiscal year, and only when the agency head is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is to be paid.
- 1005.3 The amount of a performance incentive shall be determined by the Mayor and shall not exceed ten percent (10%) of the employee's rate of basic pay in any year.

- 1005.4 A performance incentive pursuant to this section shall be approved as specified in § 1005.6.
- 1005.5 A performance incentive granted under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable. The amount of a performance incentive shall not be adjusted upward to cover these taxes.
- 1005.6 Performance incentives pursuant to this section shall be approved in accordance with procedures established by the Director of Personnel. The procedures shall provide for the following approval authorities, which may be further limited by written instruction from the Mayor when deemed to be in the best interests of the District government:
- (a) The Mayor may approve performance incentives exceeding two thousand dollars (\$2,000) for subordinate agency heads (not including the Director of Personnel) as specified in § 1005.6(c).
 - (b) The Mayor may grant a performance incentive to the Director of Personnel after review and recommendation by the City Administrator.
 - (c) To advise the Mayor in reviewing and recommending performance incentives for subordinate agency heads (excluding the Director of Personnel), the Mayor shall appoint a committee comprised of all Deputy Mayors, the Mayor's Chief of Staff, the City Administrator, and the Director of Personnel (or his or her designee). The committee shall meet at least once every year to discuss annual performance incentives for subordinate agency heads.

A new § 1006 is added to read as follows:

1006 ADDITIONAL INCOME ALLOWANCE FOR MEDICAL OFFICERS

- 1006.1 Pursuant to § 1056 of the CMPA (D.C. Official Code § 1-610.56) (2001), at the discretion of the Mayor, a subordinate agency head who is required to hold a medical degree and who enters into a service agreement, may be paid an additional income allowance of up to fifteen percent (15%) of the maximum rate of pay for the level held.

Section 1006 is renumbered as 1007 and amended to read as follows:

1007 SEPARATION PAY

- 1007.1 Pursuant to § 1058 of the CMPA (D.C. Official Code § 1-610.58) (2001), at the discretion of the Mayor and subject to the provisions of this section, a subordinate agency head may receive separation pay of up to twelve (12) weeks upon separation from District government service, provided that the agency head has been employed by the District government in the position from which separating for at least one (1)

year prior to separation. Any separation pay granted to a subordinate agency head who has been employed by the District government for less than one (1) year prior to separation shall not exceed four (4) weeks of his or her basic pay.

- 1007.2 The number of weeks of separation pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government.
- 1007.3 Separation pay, if authorized pursuant to § 1007.1, shall be provided at the time of separation from the District government as a lump-sum, one-time payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.
- 1007.4 Separation pay shall not be payable to any individual who:
- (a) Accepts an appointment to another position in the District government without a break in service; or
 - (b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement program under § 2605 of the CMPA (D.C. Official Code § 1-626.05) (2001).
- 1007.5 An individual who receives separation pay pursuant to this section, and who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, shall be required to repay the amount of separation pay attributable to the period covered by such appointment. The pro-rated amount to be repaid shall be based on the entire amount of the separation pay, including all deductions for taxes, *etc.*, and shall be paid to the agency that made the separation payment.

Section 1007 is renumbered as 1008 and amended to read as follows:

1008 UNIVERSAL LEAVE

- 1008.1 An employee appointed on or after January 2, 1999 without a break in service from another position in the District government to serve in an acting or interim capacity in an Executive Service position shall not become subject to the provisions of this section until confirmation by the Council and promulgation of the Mayor's Order appointing him or her to the Executive Service position, whereupon applicability of this section shall become effective as of the date specified by Mayor's Order as the effective date of that appointment.
- 1008.2 Each Executive Service employee shall have a universal leave account.
- 1008.3 On the first pay period of the leave year, each individual shall have his or her universal leave account credited with twenty-six (26) days of universal leave.

- 1008.4 Except as provided in § 1008.5, each full biweekly pay period represents one (1) workday of accrued universal leave.
- 1008.5 Each Executive Service employee appointed after the first pay period of the leave year shall have his or her leave account credited with universal leave on a pro rata basis.
- 1008.6 An Executive Service employee who initially enters on duty on any workday of a biweekly pay period shall receive credit for the entire biweekly pay period for purpose of crediting universal leave.
- 1008.7 Universal leave provided by this chapter shall be used on days on which an Executive Service employee would otherwise work and receive pay and shall be exclusive of official holidays and non-workdays established by statute or administrative order.
- 1008.8 There shall be no charge to universal leave for absences of less than one (1) workday.
- 1008.9 An Executive Service employee may carry over not more than five (5) days of unused universal leave for use in succeeding years. All other unused leave shall be forfeited at the end of the leave year.
- 1008.10 Upon separation, an Executive Service employee shall be paid for any universal leave remaining to his or her credit (less a pro-rated amount representing the portion of the universal leave that would be creditable for the remainder of the year).
- 1008.11 Payment for leave upon separation from the Executive Service as provided in §1008.10 shall be at the employee's rate of pay at the time of separation.
- 1008.12 Except as provided in § 1008.14, each employee who was in the Executive Service on or before January 2, 1999 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted.
- 1008.13 The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to § 1008.12, payable at the rate of pay in effect on the last day of the last pay period of the 1998 leave year.
- 1008.14 Each employee appointed without a break in service to a position in the Executive Service from another position in the District government on or after October 21, 1998 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted.
- 1008.15 The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to § 1008.14, payable at the rate of pay in effect immediately before his or her appointment to the Executive Service.
- 1008.16 Upon separation, an Executive Service employee shall be paid for any annual leave remaining in the annual leave escrow account.

- 1008.17 Sick leave credit of an Executive Service employee that was accrued under § 1203(j) of the CMPA (D.C. Official Code § 1-612.03(j)) ((2001) shall be held in a sick leave escrow account and may be used at the discretion of the employee until exhausted.
- 1008.18 Any balance remaining in a sick leave escrow account at the time of retirement of an Executive Service employee under the U.S. Civil Service Retirement System (Chapter 83 of Title 5 of the U.S. Code) or the Police and Fire Retirement System (D.C. Official Code § 5-701 *et seq.* (2001)) shall be available for use as additional service credit under the provisions of the applicable retirement system.
- 1008.19 When an employee elects to use leave from either the annual leave escrow account or the sick leave escrow account, such usage shall only be charged for absences for a full day, resulting in a reduction of eight (8) hours in the balance of the sick leave or annual leave escrow account.

“Reserved” §§ 1007 through 1010 are renumbered as 1009 through 1011, respectively:

1009 RETIREMENT BENEFITS [RESERVED]

1010 LIFE INSURANCE BENEFITS [RESERVED]

1011 DISABILITY INCOME PROTECTION PROGRAM [RESERVED]

Section 1099 is amended to modify the definitions of the terms “Executive Service” and “subordinate agency:”

1099 DEFINITIONS

1099.1 In this chapter, the following terms have the meaning ascribed:

Executive Service – except as modified by § 1008.1 for purposes of §1008, any subordinate agency head position under the administrative control of the Mayor, to which the Mayor is authorized to appoint executives in accordance with §§ 1051 through 1063 of the CMPA (D.C. Official Code § 1-610.51 *et seq.*) (2001).

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).