

## DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in sections 3 and 17 of the Nurse Staffing Agency Act of 2003 (hereinafter "the Act"), effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.*, at 44-1051.02 and 44-1051.16, and in accordance with Mayor's Order 2004-83, dated May 21, 2004, hereby gives notice of his intent to adopt the following licensure rules and operating standards for nurse staffing agencies in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to protect the health and safety of individuals receiving nursing services in the District of Columbia from nursing personnel who are provided or referred to those individuals, either directly or indirectly through the auspices of a health-care facility or agency, by nurse staffing agencies engaged in the business of providing or referring nursing personnel to render temporary nursing services. These rules were developed by a community task force coordinated by the Department of Health. As required by the Act, the rules prescribe licensing requirements and procedures for nurse staffing agencies, as well as fees, documentation and reporting requirements, standards for operation, and enforcement and hearing procedures.

Title 22 DCMR is amended by adding the following new Chapter 49:

## NURSE STAFFING AGENCIES

## 4900 GENERAL PROVISIONS

- 4900.1 These rules are implemented pursuant to and in accordance with the Nurse Staffing Agency Act of 2003 (hereinafter "the Act"), effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.* Each nurse staffing agency must comply with the Act and with these rules, which together constitute standards for licensing and operation of nurse staffing agencies within the District of Columbia.
- 4900.2 Except as otherwise expressly provided in the Act or these rules, no person or entity may operate, or hold himself, herself or itself out as operating, a nurse staffing agency for the purpose of rendering temporary nursing services or related health aide services within the District of Columbia, whether public or private, for profit or not for profit, without being licensed as required by the Act and these rules.
- 4900.3 Each person or entity operating within the District of Columbia as a nurse staffing agency, as defined in the Act, on the effective date of these rules, must submit an application for licensure within ninety (90) days or cease

operation within the District of Columbia within ninety (90) days of the effective date of these rules.

4900.4 Each nurse staffing agency must develop and implement policies and procedures in accordance with section 15 of the Act. The policies and procedures shall comply with the Act and these rules.

**4901 LICENSING**

4901.1 Each applicant for licensure as a nurse staffing agency must submit an application for initial licensure to the Department no later than ninety (90) days before its intended commencement of operation.

4901.2 As part of its initial application for licensure, the applicant must submit to the Department all information listed as required in section 4 of the Act, and the following other information:

- (a) All additional names, if any, under which the applicant or a subordinate part thereof intends to do business as a nurse staffing agency within the District of Columbia;
- (b) The name, professional title, and District of Columbia license number of the agency's nursing personnel and health aide supervisor(s), as further described in section 4904.2;
- (c) If the applicant's District of Columbia operations headquarters is located within the District of Columbia, a copy of the Certificate of Occupancy issued by the District of Columbia government to the applicant for that premises;
- (d) If the applicant's District of Columbia operations headquarters is located outside of the District of Columbia, a copy of each document certifying the responsible jurisdiction's approval of the use of that location or premises as a nurse staffing agency, including approval related to the appropriate zoning, building and fire codes, if applicable;
- (e) If the applicant's District of Columbia operations headquarters is located outside of the District of Columbia, the name, address and telephone number of:
  - (1) If the applicant is a corporation, the corporation's registered agent within the District of Columbia, appointed pursuant to the District of Columbia Business Corporation Act, D.C. Law 9-144, D.C. Official Code §§ 29-101.10 through 101.12; or

- (2) If the applicant is not a corporation, the applicant's attorney-in-fact or general agent, who must maintain a business office or residence within the District of Columbia, and who must be employed or appointed by the applicant as the person upon whom all judicial and other process or legal notice directed to the agency, relative to conduct governed by the Act and by these rules, may be served.
- (f) A copy of the agency's policies and procedures manual;
- (g) The required fee(s); and
- (h) Any other information that the Department may require in order to properly consider the application.
- 4901.3 Each nurse staffing agency seeking renewal of its license to operate must submit an application for license renewal to the Department no later than ninety (90) days before the expiration date of its current license. The required renewal license fee must accompany the application.
- 4901.4 The Department may impose a late application fee, in addition to the established license fee, if a nurse staffing agency fails to submit its license renewal application within the time prescribed.
- 4901.5 Each nurse staffing agency license shall be the property of the District of Columbia government, and must be returned to the Department immediately upon any of the following events:
- (a) Suspension or revocation of the license;
- (b) Non-renewal of the license;
- (c) Forfeiture of the license, consistent with section 4901.6; or
- (d) If operation of the agency is discontinued by the voluntary action of the licensee.
- 4901.6 The Department shall issue each license only for the premises and the person or persons named as applicant(s) in the license application, and the license shall not be valid for use by any other person or persons or at any place other than that designated in the license. Any transfer as to person or place without the approval of the Department shall cause the immediate forfeiture of the license.
- 4901.7 Each applicant for licensure intending to operate in premises located within the District of Columbia must comply with all applicable District of

Columbia laws and regulations regarding zoning, fire safety and building construction for all agency premises before an initial or renewal license will be issued.

- 4901.8 Each applicant for licensure intending to operate in premises located outside the District of Columbia must provide proof of compliance with the applicable jurisdiction's laws regarding zoning, fire safety and building construction for all agency premises as part of the agency's application for an initial or renewal license.
- 4901.9 If a completed renewal application is filed timely pursuant to these rules, the continued operation of the nurse staffing agency past the stated expiration date on the current license shall not be unlawful if the Department has not yet taken official action on the application for renewal.
- 4901.10 The Department shall have the authority to issue regular, provisional, and restricted licenses, as further described in these rules, and to classify each issued license as regular, provisional or restricted.
- 4901.11 The Department shall issue a regular initial license or renewal license, for a period not to exceed one (1) year, to each nurse staffing agency that is in substantial compliance with the Act and with these rules.
- 4901.12 The Department may issue a provisional license, not to exceed ninety (90) days, to a nurse staffing agency that is not in substantial compliance with the Act or these rules, when the Department determines that the agency is taking appropriate ameliorative action in accordance with an established timetable.
- 4901.13 A provisional license issued pursuant to section 4901.12 may be renewed no more than once.
- 4901.14 The Department may issue a restricted license, prohibiting a nurse staffing agency from accepting new clients or from delivering one or more specified services, for a period not to exceed one (1) year, to an agency that is not in substantial compliance with the Act or these rules, as an alternative to suspension, revocation or denial of renewal of the agency's license.
- 4901.15 Each licensed nurse staffing agency that ceases to operate within the District of Columbia must notify the Department within five (5) business days of ceasing operation, and must return its license to the Department within ten (10) business days of ceasing operation.

**4902 FEES**

- 4902.1 The fee for each initial license shall be \$1000.
- 4902.2 The fee for each renewal license shall be \$1000.
- 4902.3 The additional fee for a late application shall be \$100.
- 4902.4 A fee of \$50 shall be charged for a duplicate license.
- 4902.5 A fee may be imposed for an on-site inspection of an agency located outside of the Washington Metropolitan Statistical Area, as further explained in Section 4906.3.

**4903 INSURANCE**

- 4903.1 Each nurse staffing agency must maintain the following minimum amounts of insurance coverage:
- (a) Blanket malpractice insurance for all professional employees in the amount of at least one million dollars (\$1,000,000) per occurrence and at least three million dollars (\$3,000,000) in the aggregate; and
  - (b) General liability insurance covering personal property damages and bodily injury in the amount of at least one million dollars (\$1,000,000) per occurrence and at least three million dollars (\$3,000,000) in the aggregate.

**4904 PERSONNEL**

- 4904.1 All nursing personnel and health aides, as defined in the Act and in these rules, must be employees of the nurse staffing agency.
- 4904.2 All nursing personnel and health aides, as defined in the Act and in these rules, must be evaluated by and must report to a Registered Nurse licensed in the District of Columbia who is a full-time employee of the nurse staffing agency.
- 4904.3 Each nurse staffing agency must have written personnel policies, that are available to each employee and staff member, and that include the following:
- (a) Terms of employment or contract, including wage scale, hours of work, vacation, sick leave, insurance, and other benefits, if any;
  - (b) Provisions for monitoring and evaluating each employee's or staff member's performance by appropriate supervisors;

- (c) Provisions pertaining to probationary periods, promotions, disciplinary actions, termination and grievance procedures;
- (d) A position description for each category of employee and staff member; and
- (e) Provisions for orientation, periodic training or continuing education, and periodic competency evaluation.

4904.4 Each nurse staffing agency must maintain accurate personnel records, which shall include the following information for each employee and staff member:

- (a) Name, address and social security number;
- (b) Current professional license, certification or registration number, if required;
- (c) Documentation of current CPR certification, if required;
- (d) Resume of education, training certificates acquired, prior employment including references, skills checklist, and evidence of attendance at orientation and in-service training, workshops and/or seminars;
- (e) Verification of previous employment;
- (f) Documentation of reference checks;
- (g) Documentation of any required criminal background check as provided in section 15(j) of the Act;
- (i) Results of all competency testing;
- (j) A position description;
- (k) Copies of completed performance evaluations;
- (l) Documentation of all disciplinary actions, if any;
- (m) Health certification as required by section 4904.7 or 4904.8;
- (m) Documentation of acceptance or declination of immunizations; and

- (n) Documentation of drug testing, as required by clients.
- 4904.5 Each nurse staffing agency must maintain its personnel records for all nursing personnel and health aides rendering services within the District of Columbia, and for all staff members performing duties ancillary to nursing services rendered within the District of Columbia, in its District of Columbia operations headquarters.
- 4904.6 Each employee and staff member must have the right to review his or her personnel records.
- 4904.7 At the time of initial employment of each employee or staff member for whom it is reasonably foreseeable that he or she will come into contact with one or more patients, the nurse staffing agency must verify that the employee or staff member has been screened for communicable disease within the previous six (6) months, according to the guidelines issued by the federal Centers for Disease Control and Prevention, and that the employee or staff member is certified to be free of communicable disease.
- 4904.8 Each employee or staff member for whom it is reasonably foreseeable that he or she will come into contact with one or more patients must be screened at least annually for communicable disease, according to the guidelines issued by the federal Centers for Disease Control and Prevention, and must be certified to be free of communicable disease.
- 4904.9 No employee may provide nursing or health aide services, and no nurse staffing agency may knowingly permit an employee to provide such services, if the employee:
- (a) Is under the influence of alcohol, any mind-altering drug, or any combination thereof; or
  - (b) Has a communicable disease which poses a confirmed health risk to other persons.
- 4905 COMPLAINT, INCIDENT, AND DISCIPLINARY REPORTING PROCEDURES**
- 4905.1 Each nurse staffing agency must develop and implement policies and procedures for:
- (a) Receiving, recording, and investigating complaints;
  - (b) Recording, reporting, and investigating incidents; and

- (c) Reporting to the Board of Nursing or to the Department, as required by the Act and by this Chapter, information that may be grounds for disciplinary action under the Health Occupations Revision Act or the Certified Nurse Aide regulations.
- 4905.2 Each agency's policies and procedures must provide that a complaint may be presented orally or in writing.
- 4905.3 Each agency must respond to each complaint received by it within fourteen (14) calendar days of receipt of the complaint, must investigate the complaint as soon as reasonably possible, and must, upon completion of the investigation, provide the complainant with the results of the investigation.
- 4905.4 Each agency must report any incident, as further defined in this Chapter, to the Department, if that incident is related to the operation of the nurse staffing agency or to the services provided by the agency's employees and if that incident results in injury, illness, harm, or the potential for significant harm to any patient or client receiving services from the agency.
- 4905.5 Each agency must report each incident described in subsection 4905.4, above, to the Department no later than twenty-four (24) hours after the agency learns of the incident, must investigate the incident as soon as reasonably possible, and must provide the Department with the results of the investigation upon completion of the investigation.
- 4905.6 Each agency must report any action taken by, or any condition affecting the fitness to practice of, a Licensed Practical Nurse or a Registered Nurse that might be grounds for enforcement or disciplinary action under the Health Occupations Revision Act to the Board of Nursing within (5) business days of the nurse staffing agency's receipt or development of the information.
- 4905.7 Each agency must report any action taken by a Certified Nurse Aide that might be grounds for listing that individual on the Nurse Aide Abuse Registry to the Department within five (5) business days of the nurse staffing agency's receipt or development of the information.
- 4905.8 Each agency must develop and implement a system of recording complaints and incidents, which must reflect all complaint, incident, and investigative activity for each calendar year, and which must include, for each complaint or incident:
- (a) The name, address and phone number of the complainant, if known;



- (b) If the complaint is anonymous, a statement so indicating;
- (c) The date on which the complaint is received;
- (d) The date and time the incident occurred;
- (e) The date and time the incident is reported to the Department;
- (f) A description of the complaint or incident;
- (g) The date on which the complaint or incident investigation is completed;
- (h) Whether the complaint is substantiated; and
- (i) Any subsequent action taken as a result of the complaint or incident, and the date on which that action is taken.

4905.9 The information required pursuant to subsection 4905.8, above, must be maintained by each agency for at least three (3) years after the date on which the complaint is received or on which the agency learns of the incident.

4905.10 All records related to incidents and complaints must be made accessible to the Department at all times, and must be furnished to the Department immediately upon request.

**4906 INSPECTIONS AND INVESTIGATIONS BY THE DEPARTMENT**

4906.1 The Department shall be authorized to take the following actions to determine whether an applicant or a licensee is in compliance with the Act and with these rules:

- (a) On-site inspection, which may include review of records, interviews of employees, staff members, clients, and patients, and observation of nursing personnel and other staff;
- (b) Review of records, timely delivered to the Department upon its request, by the applicant or licensee;
- (c) Interviews of persons authorized by the applicant or licensee to represent the nurse staffing agency; or
- (d) Any combination of the above.

- 4906.2 In the case of a nurse staffing agency whose District of Columbia operations headquarters is located outside of the District of Columbia, the Department may require that the agency's responsible party, owner or president, and/or other authorized representative, present himself or herself in person at the Department to submit the agency's application and/or to verify required information at the request of Department officials.
- 4906.3 In the case of a nurse staffing agency whose District of Columbia operations headquarters is located outside of the Washington Metropolitan Statistical Area, and of which the Department determines that an on-site inspection is required in order to assess the agency's compliance with the Act and these rules, the Department may impose a fee for the inspection, not to exceed the Department's actual costs in performing the inspection.
- 4906.4 Each nurse staffing agency or applicant for licensure as a nurse staffing agency must permit authorized officials of the Department, upon presentation of identification, to enter all premises of the agency, regardless of whether the officials' visit is previously announced or unannounced, and must permit these officials to conduct unimpeded inspection, as the officials deem is needed, to:
- (a) Determine whether a licensee is in compliance or noncompliance with the Act and these rules; or
  - (b) Verify information submitted by an applicant to determine whether the applicant qualifies for licensure.
- 4906.5 Each nurse staffing agency must permit authorized officials of the Department, upon presentation of identification or upon presentation of an official letter of request, to have unimpeded access to all records relating to the District of Columbia operations of the agency, including client records, employee and staff records, policies and procedures, contracts, and any other information deemed necessary by the Department to determine compliance with the Act and these rules.
- 4906.6 Failure to permit entry and/or inspection as described in subsection 4906.4, or failure to permit access to records as described in subsection 4906.5, shall be cause for refusal to issue, refusal to renew, revocation, or suspension of the agency's license.
- 4906.7 Authorized officials of the Department, upon presentation of identification, shall have the right to enter and inspect all premises of an entity which the Department has reason to believe is operating as a nurse staffing agency without being licensed as required by the Act and these rules, provided that they obtain:

- (a) The permission of the owner or operator; or
- (b) An Order of the Superior Court of the District of Columbia.

4906.8 The Department may refer, for appropriate legal action, any case involving an unlicensed entity that the Department has reason to believe is operating as a nurse staffing agency in violation of the Act or of these rules.

**4907 ENFORCEMENT**

4907.1 The Department may refuse to issue, refuse to renew, revoke, or suspend a nurse staffing agency's license for any of the following reasons:

- (a) Willful submission or use of false or misleading information in connection with an application for or with the use of a license;
- (b) Violation of the Act, of these rules, or of any other federal or District of Columbia law or regulation applicable to nurse staffing agencies operating in the District of Columbia;
- (c) Failure to meet or maintain the standards required by the Act or by these rules;
- (d) Failure to allow inspection or access to records as provided by these rules;
- (e) Failure to comply with any lawful order of the Department pursuant to the Act or to these rules; or
- (f) Any act that constitutes a threat to the public's health or safety.

4907.2 Each nurse staffing agency licensee, and each nurse staffing agency applicant that has submitted a complete application, shall be afforded notice and an opportunity to be heard prior to the action of the Department, if the intent of the Department is to refuse to issue, refuse to renew, revoke, or suspend the agency's license, except that a license may be summarily suspended before a hearing in accordance with this Section as further described below.

4907.3 If the Department intends to refuse to issue, refuse to renew, revoke, or suspend an agency's license, it must provide the agency with a written notice, which must include:

- (a) The violation(s) and/or other unlawful or harmful act(s) that form the basis of the Department's proposed action, including a brief

description of the facts of each violation or unlawful or harmful act; and

- (b) A statement informing the agency that the proposed action will become final unless the agency submits, within fifteen (15) days, a written request to the Office of Adjudication and Hearings for a hearing on the proposed action.

4907.4 If the agency does not respond to the notice within the time and in the manner specified in the notice, the Department may, without a hearing, take the action contemplated in the notice, at which time it must notify the agency, in writing, of the action taken.

4907.5 The Department may summarily suspend a nurse staffing agency's license if the operation of the agency poses an imminent danger to the health, safety or welfare of the public.

4907.6 If the Department summarily suspends a nurse staffing agency's license, it must immediately provide the agency with written notice of the action, which must include:

- (a) A copy of the order of suspension;
- (b) A statement of the violation(s) and/or other unlawful or harmful act(s) that form the basis of the suspension, including a brief description of the facts of each violation or unlawful or harmful act; and
- (c) A statement informing the agency that it may, within seven (7) days of its receipt of the notice, appeal the suspension by submitting a written request to the Office of Adjudication and Hearings for an expedited hearing on the suspension.

4907.7 If a nurse staffing agency files a timely request for a hearing on the summary suspension of its license, as provided in subsection 4907.6, the Department, by and through the Office of Adjudication and Hearings, must convene the hearing within three (3) business days of its receipt of the agency's timely request.

4907.8 An agency's request for a hearing, as provided in subsections 4907.6 and 4907.7, shall not serve to stay the order suspending the agency's license.

#### **4908 CIVIL PENALTIES**

4908.1 Civil fines, penalties, and fees may be imposed as sanctions for any violation of the Act or of these rules, pursuant to titles I-III of the

Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.01, *et seq.*) and to the regulations promulgated pursuant thereto.

**4909 CONDUCT OF HEARINGS**

4909.1 Hearings shall be conducted and appeals shall be heard in accordance with the rules governing the conduct of administrative hearings for health-care facilities, located at 22 DCMR 3110, 3111 and 3112.

**4999 DEFINITIONS**

For the purposes of these rules, the following terms shall be defined as follows:

**Applicant** - a person or entity that has timely filed an application for initial licensure or license renewal.

**Board or Board of Nursing** - the District of Columbia Board of Nursing.

**Client** - a health care facility or agency, or an individual, which enters into an agreement or a contract with a nurse staffing agency for the provision or referral of nursing personnel, Home Health Aides or Personal Care Aides.

**Complaint** - a report, by whatever means, made to a nurse staffing agency, that alleges a problem related to the operation of a nurse staffing agency or to the services provided by the agency's employees.

**Department** - the District of Columbia Department of Health.

**District of Columbia operations headquarters** - the nurse staffing agency's office from which the agency conducts its business for the provision of nursing services within the District of Columbia.

**Health aide** - a Home Health Aide or Personal Care Aide, qualified and authorized to perform home health aide services or personal care services in accordance with Title 29 of the District of Columbia Municipal Regulations, Chapters 50 and 51.

**Health care facility or agency** - any entity providing health care services that is defined or designated as a health care facility or agency pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, D.C. Law 5-48, D.C. Official Code § 44-501 *et seq.* This includes, but is not limited to, hospitals, nursing homes, hospices, community residence facilities, maternity centers, ambulatory surgical facilities, renal dialysis facilities, and home care agencies.

**Health Occupations Revision Act or HORA** - the District of Columbia Health Occupations Revision Act, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

**Incident** – an occurrence related to the operation of a nurse staffing agency or to the services provided by the agency’s employees that results in injury, illness, harm, or the potential for significant harm to any patient or client receiving services from the agency. “Incident” includes, but may not be limited to: death; physical, sexual, or verbal abuse; mistreatment; exploitation; neglect; physical injury; improper use of restraints; medication error; illness resulting from mistreatment or neglect, whether intentional or unintentional; theft of a patient or client’s personal property or funds; and any other occurrence requiring the services of a law enforcement agency or of emergency personnel.

**Licensee** - a nurse staffing agency operating under the authority of a license that has not been denied, suspended or revoked.

**Nurse Aide Abuse Registry** – a listing of Certified Nurse Aides who have been found to have abused, neglected, or misappropriated funds of one or more patients, pursuant to Title 29 of the D.C. Municipal Regulations, Chapter 32.

**Nurse staffing agency** - any person, firm, corporation, partnership, or other business entity engaged in the business of providing or referring nursing personnel to a health care facility or agency, or to an individual, for the purpose of rendering temporary nursing services within the District of Columbia, and as further defined in the Nurse Staffing Agency Act of 2003, effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.*

**Nursing personnel** - any individual who is licensed by the District of Columbia Board of Nursing as a Licensed Practical Nurse or as a Registered Nurse, or any individual who is certified as a Certified Nurse Aide in accordance with Title 29 of the District of Columbia Municipal Regulations, Chapter 32.

**Patient** – any individual who receives nursing services from one or more staff members or employees of a nurse staffing agency.

**Responsible party** - the employee or other affiliate of a nurse staffing agency who directs the nurse staffing agency’s day-to-day nurse staffing operation.

**Washington Metropolitan Statistical Area** – an area composed of the District of Columbia and portions of the surrounding states, also known as the Washington DC-VA-MD-WV Metropolitan Statistical Area, and so designated by the Executive Office of the President of the United States, Office of Management and Budget, as a core area containing a substantial population nucleus, together with adjacent communities having a high degree of social and economic integration with that core.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be submitted to Denise

S. Pope, Administrator, Department of Health, Health Regulation Administration, 825 North Capitol Street, N.E., Second Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained by writing to the address shown above.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

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**NOTICE OF PROPOSED RULEMAKING**

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The Director of the Department of Housing and Community Development (Department), pursuant to the authority set forth in §5(d) of the Community Development Act of 1975 (December 16, 1975), D.C. Law 1-39 (D.C. Official Code §6-100(4)(c) and (d) (2001 ed.)) and Mayor's Order 76-111, 22 DCR 6367 (May 14, 1976), hereby gives notice of its intent to adopt the following amendments to Chapter 28 of Title 14 DCMR (Housing) in not less than ten (10) days from the date of publication of this notice in the D.C. Register. Chapter 28 of Title 14 DCMR governs the administration and operation of the Single Family Residential Rehabilitation Program (Program).

On June 25, 2004, at 51 DCR 26, the Director proposed to amend paragraphs 2800.1, 2801.1, 2801.4, 2801.5, 2801.6, 2801.8, 2801.9, 2803.1, 2803.1(a), 2803.1(d), 2803.2(a), 2805.1, 2805.4, 2805.5, 2807.1, 2807.2, 2807.3, 2807.4, 2807.5, 2809.1, 2809.3, 2809.4, 2809.5, 2809.6, 2811.1, 2811.2 and 2899.1; amend subsections 2801, 2807, 2809 and 2812; create a new paragraph 2801.5a; delete paragraphs 2801.2, 2801.12, 2801.13, 2803.1(c), 2805.6, 2807.6, 2807.7, 2809.1(a), 2809.1(b), 2809.2, 2811.1(a) and 2811.1(b); and delete subsections 2802, 2806, 2808 and 2810.

These amendments and other modifications were proposed for the purposes of focusing the Program on core services to the District. The amendments and deletions provided the Program with the authority only to offer direct amortizing and deferred rehabilitation loans, and grants for lead-based paint hazard abatement and accessibility-related modifications, to owner-occupants of 1-4 unit residential buildings who have incomes that meet the guidelines used for Community Development Block Grant, HOME Investment Partnership Program, and Housing Production Trust Fund eligibility. They removed the authority for the Department to assist owner-investors, to refinance existing debt on assisted buildings, or provide assistance for non-housing code-related repairs.

The June 25, 2004 notice provided a thirty (30) day comment period. No comments were received during that time. However, in the interim, the Department determined that the current Handicapped Accessibility Improvement Program funding limit is too low. Therefore, the Director proposes to modify the new paragraph 2801.5a to increase the maximum grant available for the Handicapped Accessibility Improvement Program from \$10,000 to \$30,000.

The Notice of Proposed Rulemaking is being republished for an abbreviated comment period of ten (10) days because the modification to the June 25, 2004 notice provides additional benefit to the public.



Single Family Residential Rehabilitation Program

Chapter 28 (Single Family Residential Rehabilitation Program) of Title 14 DCMR is amended as follows:

Paragraph 2800.1 is amended by striking the phrase “by providing publicly assisted loans in conjunction with loans from local banks and savings and loan associations and, when appropriate, direct government rehabilitation loans”.

Subsection 2801 is amended to read “ELIGIBILITY FOR LOANS AND GRANTS”.

Paragraph 2801.1 is amended (1) by substituting the phrase “Rehabilitation loans and grants” for the phrase “Leveraged direct rehabilitation loans” and (2) by substituting the phrase “the District of Columbia” for the phrase “Community Development (CD) Areas designated by the Mayor and Council”.

Paragraph 2801.2 is deleted.

Paragraph 2801.2(a) is deleted.

Paragraph 2801.2(b) is deleted.

Paragraph 2801.4 is amended by striking the phrases “and investor-owned,” and “and multi-family”.

Paragraph 2801.5 is amended to read “Each applicant for an amortized or deferred loan shall meet the following conditions:”

A new paragraph 2801.5a is inserted to read as follows:

“2801.5a Applicants shall be eligible to receive grants as follows:

“(a) For grants of up to \$30,000 to pay for modifications to a home to allow accessibility to mobility-impaired occupants, an applicant must provide physician’s evidence of need on forms prescribed by the Department.

“(b) For grants to correct lead-based paint hazards, an applicant shall have lead-based paint hazards identified in the home by a certified lead-based paint risk assessor.”

Paragraph 2801.6 is amended by substituting the phrase “loan or grant assistance” for the phrase “a rehabilitation loan”.

Paragraph 2801.8 is amended by inserting the phrase “and/or grant” between the words “loan” and “documents”.

Paragraph 2801.9 is amended by inserting the phrase "and/or grant" between the words "loan" and "prior".

Paragraph 2801.12 is deleted.

Paragraph 2801.13 is deleted.

Subsection 2802 is deleted in its entirety.

Paragraph 2803.1 is amended by striking the comma after the word "expenses" and the phrase "which shall constitute not less than eighty percent (80%) of the total amount financed by either a leveraged loan or a direct loan".

Paragraph 2803.1(a) is amended by inserting a comma after the word "conditions", and the phrase "lead-based paint hazards,".

Paragraph 2803.1(c) is deleted.

Paragraph 2803.1(d) is amended by inserting a period after the phrase "during construction" and substituting the following for the remaining text:

"This amount shall not exceed two thousand dollars (\$2,000) during demolition specifically for lead-based paint hazard abatement, plus two thousand dollars (\$2,000) during general rehabilitation, per household. Each amount shall be included in the amount of the loan or grant, as appropriate, provided to the household."

Paragraph 2803.2(a) is amended by striking the phrase "of property which exceed twenty percent (20%) of the rehabilitation construction costs".

Paragraph 2805.1 is amended by striking the words "leveraged and direct".

Paragraph 2805.4 is amended by deleting the phrase "'as-is' value of the property plus the estimated cost of rehabilitation" and inserting the phrase "'as-is' value of the property subject to completion of rehabilitation" in its place.

Paragraph 2805.5 is amended by striking the phrase "'as-is' value" and inserting the phrase "'as-is' value of the property subject to completion of rehabilitation" in its place.

Paragraph 2805.6 is deleted.

Subsection 2806 is deleted in its entirety.

Subsection 2807 is amended to read "LOAN CRITERIA"

Paragraph 2807.1 is amended by striking the phrase "of § 2801.12 or § 2801.13" and substituting the phrase "established by the U.S. Department of Housing and Urban Development for the

HOME Investment Partnerships Program for the Washington, D.C. Metropolitan Statistical Area” in its place.

Paragraph 2807.2 is amended by striking the phrase “For a direct loan,”.

Paragraph 2807.3 is amended by striking the phrase “For a direct loan,”.

Paragraph 2807.4 is amended by striking the phrase “For a direct loan,”.

Paragraph 2807.6 is deleted.

Paragraph 2807.7 is deleted.

Subsection 2808 is deleted in its entirety.

Subsection 2809 is amended to read “DEFERRED PAYMENT LOANS”

Paragraph 2809.1 is amended to read “The maximum deferred payment loan amount shall be the amount, as determined by DHCD based on the underwriting standards set forth in § 2805, which the borrower cannot afford to borrow on an amortizing basis, not to exceed the loan principal limits established in § 2807.”

Paragraph 2809.1(a) is deleted.

Paragraph 2809.1(b) is deleted.

Paragraph 2809.2 is deleted.

Paragraph 2809.3 is amended by striking the word “direct”.

Paragraph 2809.4 is amended by striking the word “direct”.

Paragraph 2809.5 is amended by striking the word “direct”.

Paragraph 2809.6 is amended by striking the word “direct”.

Subsection 2810 is deleted in its entirety.

Paragraph 2811.1 is amended to read “Each owner of a property containing rental units in addition to the owner-occupied unit who receives assistance for repairs benefiting those rental units shall be required to sign a rent regulatory agreement with the Department specifying affordability and relocation benefit requirements affecting those units. The rent regulatory agreement shall be on a form prescribed by the Department.”

Paragraph 2811.1(a) is deleted.

Paragraph 2811.1(b) is deleted.

Paragraph 2811.2 is amended by substituting the phrase “§ 2811.1” for the phrase “§ 2811.1”.

Subsection 2812 is amended to read “CONFLICT OF INTEREST OF PUBLIC BODY”.

Subsection 2899.1 is amended by deleting the definitions of “low-moderate income” and “moderate income”.

Any person desiring to comment on these proposed rules should submit comments in writing, not later than ten (10) days from the date of publication of this notice in the D.C. Register, to Paul Cohn, Acting Program Manager, Single Family Residential Rehabilitation Program, Department of Housing and Community Development, 801 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, DC 20002. Additional copies of these proposed rules may be obtained at that address.

**DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

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**NOTICE OF PROPOSED RULEMAKING**

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The Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in section 3(h) of the "Life Insurance Amendments Reform Act of 1984", effective March 14, 1985 (D.C. Law 5-160; D.C. Official Code § 31-4728 (2001)), gives notice of his intent to adopt the following amendments to Title 26 (Insurance and Securities) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the amendments is to adopt the 2001 Commissioner's Standard Ordinary ("CSO") Mortality Table and replace the 1980 CSO Mortality Table, which is used in determining minimum reserve liabilities under the standard valuation laws, and in determining minimum cash surrender values and paid-up non-forfeiture benefits.

**CHAPTER 30 (VALUATION OF LIFE INSURANCE POLICIES) OF TITLE 26, DCMR, IS AMENDED AS FOLLOWS:**

**The title to Section 26-3001 is amended to read as follows:**

**3001            General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves Prior to January 1, 2005**

**Section 3004.1 is amended by adding the following definitions:**

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners ("NAIC") in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the National Association of Insurance Commissioners* (2nd Quarter 2002). Unless the context indicates otherwise, the 2001 CSO Mortality Table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

"2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

“Composite mortality tables” means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

“Smoker and nonsmoker mortality tables” means mortality tables with separate rates of mortality for smokers and nonsmokers.

**A new section 3005 is added to read as follows:**

**3005            2001 CSO Mortality Table for Determining Minimum Reserve Liabilities and Nonforfeiture Benefits After January 1, 2005**

3005.1            The regulations in this section shall have the following applicability:

- (a)            At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in § 3005.2, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005 and before the date specified in paragraph (b) and pursuant to D.C. Official Code §§ 31-4701(c)(2)(A) and 31-4705.02(e)(16)(A)(i). If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.
- (b)            Subject to the conditions stated in § 3005.2, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009 and pursuant to D.C. Official Code §§ 31-4701(c)(2)(A) and 31-4705.02(e)(16)(A)(i).
- (c)            The 2001 CSO Mortality Table may be applied to Chapter 30 of Title 26, DCMR, in the following manner and subject to the transition dates in this section:
  - (1)            For § 3001.1, the 2001 CSO Mortality Table shall be the minimum standard for basic reserves;
  - (2)            For § 3001.2, the 2001 CSO Mortality Table shall be the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in §§ 3001.2(c)(1) to 3001.2(c)(9). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or

necessary to be in compliance with relevant Actuarial Standards of Practice;

- (3) For § 3000.2(b)(2), the net level reserve premium shall be based on the ultimate mortality rates in the 2001 CSO Mortality Table;
  - (4) For § 3002.6, the valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table;
  - (5) For § 3002.10(d), the calculations specified in § 3002.10 shall use the ultimate mortality rates in the 2001 CSO Mortality Table;
  - (6) For § 3002.11(d), the calculations specified in § 3002.11 shall use the ultimate mortality rates in the 2001 CSO Mortality Table;
  - (7) For § 3002.12(b), the calculations specified in § 3002.12 shall use the ultimate mortality rates in the 2001 CSO Mortality Table;
  - (8) For § 3003.1(b), the one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table; and
  - (9) For § 3004.1, all calculations shall be made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in § 3005.1(c)(4). The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year  $k+t$ , but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.
- (d) Nothing in this section shall be construed to expand the applicability of Chapter 30 of Title 26, DCMR, to include life insurance policies exempted under § 3000.2.

3005.2 The following conditions shall apply with respect to the use of the 2001 CSO mortality table:

- (a) For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may use:

- (1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
  - (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by D.C. Official Code § 31-4720 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
  - (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.
- (b) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.
- (c) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions in § 3001.
- (d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the Commissioner shall be based on an asset adequacy analysis as specified in 26 DCMR § 2900 *et seq.* The Commissioner may exempt a company from this requirement if its business is conducted exclusively in the District.

3005.3 Gender-Blended Tables shall apply in the following circumstances:

- (a) For any ordinary life insurance policy delivered or issued for delivery in the District on and after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this paragraph.



- (b) When a company is choosing among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002.
- (c) It shall not be a violation of D.C. Official Code § 31-2231.01 *et seq.* for an insurer to issue the same kind of life insurance policy on both a gender-specific and gender-neutral basis.

3005.4 If any provision of these regulations or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

Persons desiring to comment on the proposed rulemaking may submit their comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be addressed to Leslie Johnson, Hearing Officer, Department of Insurance, Securities and Banking, 810 First Street, N.E., Room 701, Washington, DC 20002. Copies of the proposed rules may be obtained from the Department at the above address.