

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of the adoption of the following amendments to 3 DCMR Chapter 1, "Organization of the Board of Elections and Ethics." The Board took final rulemaking action with respect to these amendments at a regular meeting on Wednesday, August 6, 2008.

The amendments establish procedures for the conduct of particular aspects of public Board meetings.

A Notice of Proposed Rulemaking with respect to these amendments was published in the D.C. Register on June 20, 2008 at 55 D.C.R. 6895. No comments were received concerning these rules. These amendments will be effective upon publication of this notice in the D.C. Register.

Section 102 of Chapter 1 of 3 DCMR, "Meetings of the Board of Elections," shall be amended to read as follows:

- 102.1 Except as provided otherwise by statute, a quorum of the Board shall consist of no less than two (2) members of the Board and shall be necessary to conduct official Board business.
- 102.2 Regularly scheduled Board meetings shall be held on the first Wednesday of each month at a time to be determined by the Board.
- 102.3 Regular meetings of the Board shall be open to the general public.
- 102.4 Notice of all regular meetings of the Board will be published in the D.C. Register and Board's web site.
- 102.5 The Board encourages comments on any issue under the jurisdiction of the Board at its regular meetings and will provide the public with a reasonable opportunity to appear before the Board and offer such comments.
- 102.6 To ensure the orderly conduct of public Board meetings, public comments may be limited with respect to the number of speakers permitted and the amount of time allotted to each speaker; however, the Board will not discriminate against any speaker on the basis of his or her position on a particular matter.
- 102.7 Any member of the public who intends to comment regarding any agenda item or any issue under the jurisdiction of the Board is encouraged to notify the Board in advance of his or her intent to do so, providing his or her name

and the topic on which he or she wishes to speak. Such notification may be provided by e-mail to ogc@dcooe.org, by fax to (202) 741-8774, by telephone at (202) 727-2194, or by mail or in person at the Board's office. No person shall be prevented from speaking at a Board meeting simply because he or she has not provided advance notice of his or her intent to do so.

- 102.8 The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.
- 102.9 Members of the public who wish to submit items for consideration by the Board shall do so one (1) week in advance. Failure to submit an item in advance as required may, within the Board's discretion, result in the matter being continued until the next regularly scheduled meeting.
- 102.10 The Chairperson shall conduct the meetings of the Board. In the absence of the Chairperson, the senior member of the Board shall conduct the meeting.
- 102.11 Each meeting shall begin with the adoption of the agenda, followed by the adoption of any outstanding minutes of previously conducted Board meetings.
- 102.12 The Executive Director, General Counsel, and Director of Campaign Finance shall each present a report of the activities of their respective units and such other reports as may be requested by the Board.
- 102.13 Each Board member may properly make any and all motions.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
OFFICE OF CAMPAIGN FINANCE

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics (Board), at its regular meeting held August 6, 2008, took final action to adopt the following amendments to Chapter 30, "Campaign Finance Operations," 3 DCMR §3000, 3001, and 3009; and, Chapter 37, "Investigations," 3 DCMR §3711. No changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on June 13, 2008, at 55 DCR 6487. These final rules will be effective upon publication of this notice in the Register.

The amendments clarify the regulations as they pertain to exploratory committees in view of the recently enacted "Exploratory Committee Regulation Amendment Act of 2007"; and, incorporate policy of the Office of Campaign Finance (OCF) as explained and detailed in final decisions and interpretative opinions.

The entire division of §3001, "Exploratory, Draft or 'Testing the Waters' Committees," is rewritten to specify that an "exploratory committee" is the only legal vehicle whereby an individual or a group of individuals may examine the feasibility of candidacy in the District of Columbia; and, to establish the concomitant process therefor. A previous section, §3000.9, is amended to delineate that an exploratory committee is not a political committee.

At §3009, "Reports of Initiative, Referendum, Recall and Proposed Charter Amendment Committees," new §3009.4 is added to clarify that if the subject of a committee, which supports or opposes the initiative, referendum, recall, or proposed charter amendment, is not placed on the ballot of the election for which it is scheduled, the committee will be required to submit reports of receipts and expenditures on January 31 and July 31 of each year until the measure is so presented, if at all.

The Schedule of Fines, listed at §3711, is amended to include fines for persons who exceed the expenditure cap of \$40,000 in the constituent services program; who fail to file statements of acceptance of the positions of chairperson and treasurer for committees; and, who violate the prohibitions on the use of District government resources for campaign related activities.

AMEND §3000, "Organization of Political Committees," by deleting current subsection 3000.9, and substituting the following new subsection:

- 3000.9 Political committees shall not include the following:
- (a) Connected Organization – a corporation, labor or membership organization, cooperative or trade association, or any similar

organization which directly or indirectly establishes, administers or financially supports a political committee; and

- (b) Exploratory Committees – formed solely for the purpose of determining the feasibility of an individual’s candidacy.

AMEND §3001, “Exploratory, Draft or ‘Testing the Waters’ Committees,” by deleting the current section in its entirety, and by substituting the following new section:

3001 **EXPLORATORY COMMITTEES**

3001.1 Any individual, or group of individuals, who organizes for the purpose of exploring the feasibility of a person’s candidacy for an elective office in the District of Columbia, shall form an exploratory committee.

3001.2 An exploratory committee shall include, but not be limited to, the following:

- (a) Draft Committees; and
- (b) “Testing the Waters” Committees.

3001.3 Each exploratory committee shall include the name of the potential candidate in the name of the committee.

3001.4 Exploratory committee activity to determine whether an individual should become a candidate may include, but not be limited to, the following:

- (a) Polling;
- (b) Travel;
- (c) Telephone calls;
- (d) Media expenses;
- (e) Office space; and
- (f) Administrative costs.

3001.5 Each exploratory committee shall be required to file an informational report, in accordance with §3008.

- 3001.6 Informational reports shall be filed in accordance with §3017, except that an informational report shall be filed on the following dates:
- (a) January 31st and July 31st; and
 - (b) On the last day of each month within the 12 month period of an election for the office which is under consideration by the exploratory committee.
- 3001.7 Contributions in support of an exploratory committee shall be received or made in accordance with §3011, except that individual and aggregate contributions shall be limited for the following exploratory committees:
- (a) Mayoral - \$2,000 individual and \$200,000 aggregate;
 - (b) Chairman of the Council - \$1,500 individual and \$150,000 aggregate;
 - (c) At-large member of the Council - \$1,000 individual and \$100,000 aggregate;
 - (d) Ward Councilmember or President of the Board of Education - \$500 individual and \$50,000 aggregate; and
 - (e) Member of the Board of Education \$200 individual and \$20,000 aggregate.
- 3001.8 The life of an exploratory committee for any office shall not exceed 18 months.
- 3001.9 When an exploratory committee reaches 18 months, one of the following acts shall occur:
- (a) The exploratory committee terminates; or
 - (b) The named individual of the exploratory committee becomes a candidate.
- 3001.10 When the named individual of an exploratory committee becomes a candidate, the individual must perform the following:
- (a) File a declaration of candidacy, pursuant to §3002;
 - (b) Form a principal campaign committee, pursuant to §3005; and

- (c) Apply all contributions received during the life of the exploratory committee to the campaign contribution limitations for the specific candidate, pursuant to §3011.

3001.11 Any remaining funds of an exploratory committee shall be transferred only to the following:

- (a) An established principal campaign or political committee; or
- (b) A charitable, scientific, literary, or educational organization, or organizations, which meet the requirements of tax laws of the District of Columbia.

3001.12 All contributions and fund balances of any exploratory committee shall not be deemed the personal funds of any individual, including the named individual of the exploratory committee.

AMEND §3009, “Reports of Initiative, Referendum, Recall and Proposed Charter Amendment Committees,” by adding the following new subsection 3009.4, and renumbering current subsections 3009.4-3009.8 as 3009.5-3009.9:

3009.4 For any period prior to the year in which an election is scheduled to be conducted on an initiative, referendum, recall or proposed charter amendment, each committee organized in support or opposition to the measure shall file reports of receipts and expenditures on January 31 and July 31 of each year until the measure is presented to the electorate.

AMEND §3711, “Schedule of Fines,” by adding the following new subsections:

3711.2	(hh) Failure to file Statement of Acceptance of Position of Chairperson	\$30 per day;
	(ii) Failure to file Statement of Acceptance of Position of Treasurer	\$30 per day;
	(jj) Making expenditures in excess of expenditure limitations	\$1000;
	(kk) Using District government resources for campaign related activities	\$2000;
	(ll) Failure to designate an exploratory committee	\$30 per day;
	(mm) Failure to file Informational Report	\$50 per day;
	(nn) Accepting contributions in excess of aggregate limitations	\$2000.

DEPARTMENT OF HEALTH
NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under section 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendments to chapter 75 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The Proposed Rulemaking was published on June 27, 2008 at 55 DCMR 007092. No comments were received and no changes have been made to the proposed rulemaking. The Proposed Rulemaking was published on June 27, 2008 at 55 DCMR 007092. No comments were received and no changes have been made to the proposed rulemaking.

The purpose of the amendment is to repeal the waiver of examination and education requirements. These final rules will become effective upon publication of this notice in the D.C. Register.

Chapter 75 (Massage Therapy) of Title 17 DCMR (Business, Occupations & Professions) is amended to read as follows:

7509 REPEALED

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under section 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendments to chapter 82 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The Proposed Rulemaking was published on June 27, 2008 at 55 DCMR 00796. No comments were received and no changes have been made to the proposed rulemaking

The purpose of the amendments is to establish licensure and practice regulations for the profession of physical therapist assistant, which was newly established pursuant to the Physical Therapy Assistant Licensure Amendment Act of 2006, effective March 6, 2007 (D.C Law 16- 220; D.C. Official Code § 3-1201.02(12)(B)).

These final rules will become effective upon publication of this notice in the D.C. Register.

Title 17 (Business, Occupations & Professions) is amended as follows:

I. The table of contents is amended as follows:

A. A new chapter heading is added to read as follows:

CHAPTER 82 PHYSICAL THERAPIST ASSISTANTS

B. Section headings for Chapter 82 are added to read as follows:

8200	GENERAL PROVISIONS
8201	TERM OF LICENSE
8202	EDUCATIONAL REQUIREMENTS
8203	[RESERVED]
8204	LICENSURE BY EXAMINATION
8205	LICENSURE BY ENDORSEMENT
8206	CONTINUING EDUCATION REQUIREMENTS

- 8207 APPROVED CONTINUING EDUCATION PROGRAMS AND
ACTIVITIES
- 8208 CONTINUING EDUCATION CREDITS
- 8209 LAWFUL PRACTICE
- 8299 DEFINITIONS

II. A new Chapter 82 is added to read as follows:

CHAPTER 82 PHYSICAL THERAPIST ASSISTANTS

8200 GENERAL PROVISIONS

- 8200.1 This chapter shall apply to applicants for and holders of a license to practice as a physical therapist assistant.
- 8200.2 Chapter 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) shall supplement this chapter.

8201 TERM OF LICENSE

- 8201.1 Subject to § 8201.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of January 31 of each odd-numbered year.
- 8201.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birthdate of the holder of the license or other date established by the Director.

8202 EDUCATIONAL REQUIREMENTS

- 8202.1 Except as otherwise provided in this subtitle, an applicant applying for a license to practice as a physical therapist assistant shall establish to the satisfaction of the Board that the applicant has successfully completed an educational program in physical therapy appropriate for preparation as a physical therapist assistant, which is accredited by an agency recognized by the Secretary of the Department of Education or the Council of Postsecondary Accreditation.
- 8202.2 An applicant shall submit with a completed application an official certified transcript of the applicant's educational record and a certificate of graduation from the educational institution.

- 8203** [RESERVED]
- 8204** **LICENSURE BY EXAMINATION**
- 8204.1 An applicant for licensure as a physical therapist assistant by examination shall initiate the application process by submitting a completed application together with the appropriate application fee and the documentation required by § 8202.2.
- 8204.2 An applicant for licensure as a physical therapist assistant shall have pre-approval from the Board before taking any licensure examination. Only an applicant who has graduated from an accredited physical therapist assistant program may be approved by the Board to take the physical therapist assistant licensure examination.
- 8204.3 An applicant for licensure by examination shall take and pass the National Physical Therapist Examination (“NPTE”) and the District of Columbia jurisprudence examination for physical therapist assistants.
- 8204.4 Following approval from the Board to take the applicable examinations, the applicant may take the national examination and the District jurisprudence examination in any order.
- 8204.5 The passing score on the national examination shall be determined by the body administering the examination.
- 8204.6 The District jurisprudence examination shall be developed and administered by the Board or, a body approved by the Board, on laws and rules pertaining to the practice of physical therapy in the District of Columbia.
- 8204.7 The District jurisprudence examination may consist of questions on District of Columbia laws pertaining to the practice of physical therapy including the Act, this chapter, and chapters 40 and 41 of this title. The passing score of the District examination shall be determined by the Board.
- 8204.8 An applicant for licensure who does not pass either examination on the first attempt shall seek and obtain Board approval for any subsequent attempts to retake the examination. Before the Board may approve an applicant for subsequent testing beyond three (3) attempts, an applicant shall submit proof satisfactory to the Board of having completed any remediation as determined by the Board.
- 8204.9 If the Board determines that an applicant has engaged in or has attempted to engage in conduct that subverts or undermines the

integrity of either the national examination or the District jurisprudence examination, the Board may disqualify the applicant from taking the examinations. Examples of such conduct may include, but are not limited to the following:

- (a) Utilizing in any manner recalled or memorized examination questions;
- (b) Failing to comply with all test center security procedures;
- (c) Attempting to communicate with other examinees during the test; or
- (d) Copying or sharing examination questions or answers or portions of questions or answers.

8204.10 All occurrences of any violation set forth in § 8204.9 shall be recorded in the official records of the Board. Board action may include, but is not limited to the following:

- (a) Disqualifying test results of the applicant's examinations;
- (b) Disqualifying the applicant, permanently or for a specified period of time, from eligibility for the examinations;
- (c) Disqualifying the applicant, permanently or for a specified period of time, from eligibility for licensure; or
- (d) Revocation, suspension, or imposition of probationary conditions on a license issued to the applicant.

8205 LICENSURE BY ENDORSEMENT

8205.1 The Board shall issue a license by endorsement to a physical therapist assistant who has a valid, unrestricted license in good standing from another jurisdiction of the United States and who meets all other requirements of this section.

8205.2 An applicant for licensure by endorsement as a physical therapist assistant shall submit with a completed application the following:

- (a) Official, certified proof of licensure as a physical therapist assistant in good standing from another jurisdiction of the United States;

(b) Official, certified proof, from the body administering the examination, that the applicant has passed the Board-approved national licensure examination for a physical therapist assistant; and

(c) Proof pursuant to § 8202.1.

8205.3 An applicant shall take and pass the District of Columbia jurisprudence examination for physical therapist assistants after obtaining Board approval.

8206 CONTINUING EDUCATION REQUIREMENTS

8206.1 Subject to § 8206.2, this section shall apply to applicants for the renewal, reactivation, or reinstatement of a license expiring January 31, 2011, and for subsequent terms.

8206.2 This section shall not apply to applicants for an initial license by examination or endorsement, nor shall it apply to applicants for the first renewal of a license granted by examination.

8206.3 A continuing education credit shall be valid only if it is part of a program or activity approved by the Board in accordance with § 8207.

8206.4 An applicant for renewal of a license shall submit proof pursuant to § 8206.7 of having completed three (3) continuing education units or thirty (30) hours of approved continuing education credit during the two (2) year period preceding the date the license expires.

8206.5 To qualify for a license, a person in inactive status within the meaning of section 511 of the Act (D.C. Official Code § 3-1205.11) who submits an application to reactivate a license shall submit proof of having completed fifteen (15) hours of approved continuing education credit within one (1) year prior to application for each license year after January 31, 2011, that the applicant was in inactive status.

8206.6 To qualify for a license, an applicant for reinstatement of a license shall submit proof of having completed fifteen (15) hours of approved continuing education credit for each year after January 31, 2011, that the applicant was not licensed.

8206.7 An applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:

- (a) The name and address of the sponsor of the program;
 - (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
 - (c) The dates on which the applicant attended the program;
 - (d) The hours of credit claimed; and
 - (e) Verification by the sponsor of completion, by signature or stamp.
- 8206.8 If an applicant for renewal of a license fails to submit proof of having completed continuing education requirements by the date the license expires, the applicant shall not practice until his or her license has been renewed.
- 8206.9 An applicant for renewal of a license who fails to submit proof of having completed continuing education requirements by the date the license expires may renew the license up to sixty (60) days after the expiration by submitting proof pursuant to § 8206.7 and paying the late fee.
- 8206.10 If an applicant for renewal of a license fails to submit proof of completion of continuing education requirements or pay the late fee within sixty (60) days after the expiration of the applicant's license, the license shall be considered to have lapsed and the applicant shall be required to apply for reinstatement pursuant to section 512 of the Act (D.C. Official Code § 3-1205.12).
- 8206.11 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew after expiration if the applicant's failure to submit proof of completion was for good cause. As used in this section, "good cause" includes the following:
- (a) Serious and protracted illness of the applicant; and
 - (b) The death or serious and protracted illness of a member of the applicant's immediate family.
- 8206.12 The Board may conduct an audit of licensees to determine compliance with the continuing education requirements.
- 8207 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES**

- 8207.1 The Board may, in its discretion, approve continuing education programs and activities that contribute to the growth of an applicant in professional competence while practicing as a physical therapist assistant and which meet the other requirements of this section.
- 8207.2 The Board may approve the following types of continuing education programs, if the program meets the requirements of § 8207.3:
- (a) An undergraduate or graduate course given at an accredited college or university;
 - (b) A seminar or workshop;
 - (c) An education program given at a conference;
 - (d) In-service training (maximum ten (10) hours of credit);
 - (e) Home study courses; and
 - (f) Online courses.
- 8207.3 To qualify for approval by the Board, a continuing education program shall:
- (a) Be current in its subject matter;
 - (b) Be developed and taught by qualified individuals; and
 - (c) Meet one of the following requirements:
 - (1) Be administered or approved by a recognized national, state or local physical therapy organization; health care organization; accredited health care facility; or an accredited college or university; or
 - (2) Be submitted by the program sponsors or the applicant to the Board for review no less than sixty (60) days prior to the date of the presentation and be approved by the Board.
- 8207.4 The Board may issue and update a list of approved continuing education programs.
- 8207.5 An applicant shall have the burden of verifying whether a program is approved by the Board pursuant to this section prior to attending the program.

- 8207.6 The Board may approve the following continuing education activities by an applicant:
- (a) Service as an instructor or speaker at a conference, seminar, workshop, or in-service training;
 - (b) Publication of an article in a professional journal or publication of a book or a chapter in a book or publication of a book review in a professional journal or bulletin; and
 - (c) Participation in research as a principal investigator or research assistant.

8208 CONTINUING EDUCATION CREDITS

- 8208.1 The Board may grant continuing education credit for whole hours only, with a minimum of fifty (50) minutes constituting one (1) credit hour.
- 8208.2 For approved undergraduate or graduate courses, each semester hour of credit shall constitute fifteen (15) hours of continuing education credit, and each quarter hour of credit constitutes ten (10) hours of continuing education credit.
- 8208.3 The Board may grant a maximum of ten (10) continuing education credits per year to an applicant who attends in-service education programs.
- 8208.4 The Board may grant an applicant who serves as an instructor or speaker at an acceptable program for both preparation and presentation time, subject to the restrictions set forth in §§ 8208.5 through 8208.8.
- 8208.5 The maximum amount of credit that may be granted for preparation time is twice the amount of the associated presentation time.
- 8208.6 The maximum amount of credit that may be granted pursuant to § 8208.4 is fifty percent (50%) of an applicant's continuing education requirement.
- 8208.7 If an applicant has previously received credit in connection with a particular presentation, the Board shall not grant credit for a subsequent presentation unless it involves either a different subject or substantial additional research concerning the same subject.

- 8208.8 The presentation shall have been completed during the period for which credit is claimed.
- 8208.9 The Board may grant an applicant who is an author or editor of a published book four (4) units or forty (40) hours of continuing education credit, if the book has been published or accepted for publication during the period for which credit is claimed and the applicant submits proof of this fact in the application.
- 8208.10 The Board may grant an applicant who is the sole author or co-author of a published original paper, journal article or poster presentation, two (2) units or twenty (20) hours of credit, subject to the same restrictions set forth for books in § 8208.9.
- 8208.11 The Board may grant an applicant who is the sole author of a published book review, review paper, or abstract one (1) unit or ten (10) hours of continuing education credit, subject to the same restrictions set forth for books in § 8208.9.

8209 LAWFUL PRACTICE

- 8209.1 A physical therapist assistant may perform physical therapy functions only in accordance with this section.
- 8209.2 A physical therapist assistant may perform the following functions under the direct supervision of a physical therapist:
- (a) Use of therapeutic exercise, mechanical traction, therapeutic massage, compression, heat, cold, ultraviolet, water, and electricity;
 - (b) Measurement and adjustment of crutches, canes, walkers, and wheelchairs, and instruction in their use and care;
 - (c) Instruction, motivation, and assistance to patients and others in improving pulmonary function, learning, and functional activities such as pre-ambulation, transfer, ambulation and daily living activities, and the use and care of orthoses, prostheses, and supportive devices;
 - (d) Modification of treatment procedures as indicated by patient response and within the limits specified in the plan of care, and reported orally or in writing to the physical therapist; and

- (e) Participation in routine administrative procedures required for a physical therapist service.
- 8209.3 A physical therapist assistant may not perform the following:
- (a) Interpret referrals;
 - (b) Perform evaluation procedures;
 - (c) Initiate or adjust treatment programs; or
 - (d) Assume responsibility for planning patient care.
- 8209.4 A licensed physical therapist shall be fully responsible for any actions by a physical therapist assistant performing physical therapist functions while under the physical therapist's supervision.
- 8209.5 A licensed physical therapist shall perform the final evaluation for a patient who has been treated throughout the patient's history by a physical therapist assistant.
- 8209.6 A physical therapist shall provide direct supervision to no more than three (3) physical therapist subordinates at any one time.
- 8209.7 A physical therapist shall ensure the qualifications of all physical therapist assistants under his or her supervision.
- 8209.8 Before a patient is by a physical therapist assistant, a licensed physical therapist shall evaluate the patient and formulate initial and ongoing treatment goals and plans.
- 8209.9 Pursuant to § 8209.8, a licensed physical therapist shall reevaluate each patient being treated by a physical therapist assistant by the seventh (7th) visit and every seventh (7th) visit thereafter.
- 8209.10 Support personnel shall only perform routine assigned tasks under the direct supervision of a licensed physical therapist or a licensed physical therapist assistant, who shall only assign those tasks or activities that are nondiscretionary and do not require the exercise of profession judgment.
- 8209.11 A physical therapist assistant shall comply with the standards of ethical and professional conduct established by the recognized professional program which is approved by the Board, as they may be amended or republished from time to time.

8299 **DEFINITIONS**

8299.1 As used in this chapter, the following terms shall have the meanings ascribed:

Applicant – a person applying for a license to practice as a physical therapist assistant under this chapter.

Board – the Board of Physical Therapy, established by section 209 of the Act (D.C. Official Code § 2-1202.09).

Continuing education unit – a unit of measurement representing ten (10) hours of continuing education credit.

Direct supervision - the supervision in which a physical therapist is personally present and immediately available within the treatment area to give aid, direction, and instruction when physical therapy procedures or activities are performed.

Physical therapist – a person licensed to practice physical therapy under the Act.

Physical therapist assistant – a physical therapy assistant who is a person licensed to practice under the Act.

Practice of physical therapy – the independent evaluation of human disability, injury, or disease by means of noninvasive tests of neuromuscular functions and other standard procedures of physical therapy, and the treatment of human disability, injury, or disease by therapeutic procedures, rendered on the prescription of or referral by a licensed physician, osteopath, dentist, or podiatrist, or by a licensed registered nurse certified to practice as an advanced registered nurse as authorized pursuant to section 601 of the Act (D.C. Official Code § 3-1206.01), embracing the specific scientific application of physical measures to secure the functional rehabilitation of the human body. These measures include the use of therapeutic exercise, therapeutic massage, heat or cold, air, light, water, electricity, or sound for the purpose of correcting or alleviating any physical or mental disability, or preventing the development of any physical or mental disability, or the performance of noninvasive tests of neuromuscular functions as an aid to the detection or treatment of any human condition.

8299.2 The definitions in § 4099 of chapter 40 of this title are incorporated by reference into and are applicable to this chapter.

DEPARTMENT OF HEALTH**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in section 5(a) of 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 § 44-504(a)(2005 Repl.) (hereinafter “the Act”), and in accordance with Mayor’s Order 98-137, dated August 20, 1998, hereby gives notice of the adoption of the following licensure, construction and operating standards for hospitals.

Though hospital standards were revised in part in 2003, the Director now takes this opportunity to replace regulations on hospital operations, previously cited as Chapters 20, 21, 22 and 23 of Title 22 of the District of Columbia Municipal Regulations. These final rules update such areas as patient care and nutrition as well as medication errors and recordkeeping. Chapters 20-23 are hereby repealed.

The proposed rulemaking was published in the D.C Register on September 14, 2007, and January 11, 2008. There were no significant comments received after the second publication. The proposed rulemaking went before the Council for the requisite forty-five day review. On July 15, 2008, the Council passed Resolutions 17-741 and 17-742, declaring the need for updated standards on hospitals an emergency and approving the publication of this rulemaking as final.

Chapter 20 of Title 22 of the District of Columbia Municipal Regulations shall read as follows:

CHAPTER 20 HOSPITALS**2000 GENERAL PROVISIONS**

- 2000.1 This chapter shall provide minimum standards for the establishment and maintenance of hospitals in order to protect the public interest by promoting the health, welfare, and safety of individuals in hospitals.
- 2000.2 In the absence of requirements in this chapter or in other applicable regulations, the management and operation of each hospital shall be in accordance with applicable Medicare Certificate of Participation requirements, and in the absence of other standards, in accordance with the Joint Commission standards, if applicable, and good medical, nursing and public health practices.
- 2000.3 If a hospital delivers services through a contract with a business that is licensed only by another jurisdiction, the hospital shall be responsible for the delivery of services in compliance with the laws of the District of Columbia.

2000.4 The Director of the Department of Health shall make the final determination as to whether any building, or part of a building, or any group of buildings constitutes a hospital.

2001 STANDARDS OF COMPLIANCE

2001.1 The provisions of this chapter set forth the minimal requirements for the establishment, maintenance, and operation of hospitals.

2001.2 Wherever in this chapter or in other applicable standards the performance requirements are not specified, the Director may formulate and publish standards which, if followed, shall constitute substantial compliance with the requirements of this chapter.

2001.3 The standards formulated and published by the Director pursuant to § 2001.2 shall be made available to the public, and shall be maintained on file in the Director's office for inspection during regular business hours.

2002 LICENSE REQUIREMENTS

2002.1 Except as otherwise expressly provided for in this chapter, no person shall operate or hold himself or herself out as operating a hospital in the District of Columbia, whether public or private, for profit or not for profit, without being licensed as required by § 3 of 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.* (2005 Repl.) (hereinafter, the Act).

2002.2 A facility shall submit an application for initial licensure to the Director no later than ninety (90) days prior to the stated date of operation. The license fee shall accompany the application. The application for a hospital license shall state each service for which the applicant undertakes to furnish hospital care and the number of beds allocated to each service; and shall furnish other information as may be required.

2002.3 In addition to the requirements of § 2002.2, an applicant for licensure shall also provide the following:

- (a) Hospital location;
- (b) Previous owner, license number, Medicare and Medicaid numbers;
- (c) Type of hospital (special or general);
- (d) Type of current certification(s);

- (e) Accreditation status;
- (f) Bed capacity;
- (g) Offsite location(s);
- (h) Services to be provided;
- (i) Staffing;
- (j) Description of facility;
- (k) Proposed use of idle space;
- (l) Hospital Administrator/Chief Executive Officer;
- (m) Person in charge in absence of administrator;
- (n) Nurse administrator;
- (o) Name of Medical Director and Director of Nursing;
- (p) Applicant (owner);
- (q) Type of organization;
- (r) Interested parties;
- (s) Other providers owned by the applicant;
- (t) Subsidiary/parent information;
- (u) Chain organization (organization structure);
- (v) Background information (affiliations, adverse actions, etc);
- (w) Owner of building/land;
- (x) Type of organization;
- (y) Name of the lease holder if the hospital has a lease agreement for hospital space;
- (z) Name of management company;

- (aa) Contact person; and
 - (bb) Designee for acceptance of service.
- 2002.4 A facility making application for initial licensure shall have obtained a Certificate of Occupancy and a Certificate of Need and shall list approvals on the application.
- 2002.5 A facility shall submit an application for license renewal to the Director no later than sixty (60) days before the expiration date of the current license. The facility shall submit the license fee with the application.
- 2002.6 The Director may impose a late application filing fee, in addition to the license fee, for a facility that fails to submit a license renewal application within the time prescribed.
- 2002.7 The Director may conduct background checks on the applicant or licensee to determine his or her suitability or capability to operate or to continue operating a health care facility. Background checks shall consist of, but not be limited to, the following:
 - (a) Contacts with the police to ascertain criminal convictions;
 - (b) Verification of licensure status;
 - (c) Verification of educational credentials;
 - (d) Verification of residency status;
 - (e) Verification of solvency; and
 - (f) Contacts with District and other state officials to determine outstanding warrants, complaints, criminal convictions, and records of malpractice actions.
- 2002.8 The licensee of a health care facility shall inform the Director of a change in operation within thirty (30) days after the change. Change of operation means any alteration in function, program, or services that is substantially different from that reported on the hospital's most recent license application.
- 2002.9 Each license in the licensee's possession shall be the property of the District Government and shall be returned to the Director immediately upon any of the following events:
 - (a) Suspension or revocation of the license;

- (b) Refusal to renew the license;
 - (c) Forfeiture consistent with § 2002.10; or
 - (d) Voluntary discontinuance of the operation by the licensee.
- 2002.10 The Director shall issue each license in the name of the owner and operator only for the premises and person or persons named as applicants in the 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 Director shall cause the immediate forfeiture of the license.
- 2002.11 Each hospital license shall specify the following:
- (a) The name of the person to whom the license is issued;
 - (b) The name and location of the hospital;
 - (c) The total rated bed capacity per service;
 - (d) The expiration date; and
 - (e) Any special limitations imposed by the Director.
- 2002.12 The Director shall classify each license as follows:
- (a) General hospitals; or
 - (b) Special hospitals.
- 2002.13 The Director shall classify each facility license as regular, provisional or restricted.
- 2002.14 The D.C. Fire and Emergency Medical Services shall conduct inspections of a facility to determine compliance with fire safety requirements.
- 2002.15 The D.C. Fire and Emergency Medical Services shall submit to the Director the findings from inspections with a determination regarding licensure of a facility. The Director shall incorporate the determination in the licensure recommendation.

- 2002.16 The D.C. Fire and Emergency Medical Services shall take action as deemed necessary against a facility for noncompliance with regulations under its jurisdiction.
- 2002.17 Each facility shall meet the minimum requirements for insurance as appropriate for the number and types of beds in the facility and the number and types of services available as determined by the Director.
- 2002.18 Each facility shall comply with all Certificate of Need requirements. The Director may subject a facility to an adverse action based on failure to comply.
- 2002.19 The license shall be posted in a conspicuous place at all times.

2003 CERTIFICATES REQUIRED

- 2003.1 No license to operate a hospital shall be issued by the Director until the certifications required under this section have been issued.
- 2003.2 Upon satisfactory proof being submitted, the Director shall certify that the services that are, or are proposed to be, furnished on the premises are, or will be, primarily to provide the following facilities and services by or under the supervision of a physician or provider eligible to admit, or by an oral surgeon where a physician is available at all times on call:
- (a) Diagnostic facilities and services and therapeutic facilities and services for surgical or medical diagnosis, treatment, and care of injured, disabled, or sick persons; or
 - (b) Obstetric facilities and services for the care of maternity patients and newborn infants.
- 2003.3 Upon proof satisfactory to them, and after examination of the premises, the Director of the Department of Consumer and Regulatory Affairs, and the Fire Chief shall certify that the premises that are proposed to be used for that purpose are, in their judgment, suitable for that purpose.

2004 INITIAL LICENSURE

- 2004.1 Prior to initial licensure of a facility, the Director shall conduct an on-site inspection to determine compliance with the applicable statutes and rules governing the facility.
- 2004.2 The Director shall send a written report of the findings to the facility no later than fifteen (15) days from the conclusion of the inspection.

- 2004.3 A facility with deficiencies shall correct them within thirty (30) days upon receipt of the written report prior to the issuance of a license. The facility may submit written proof of correction of deficiencies where appropriate.
- 2004.4 The Director may conduct a follow-up inspection to determine correction of deficiencies cited within ten (10) days following the thirty (30) day correction period or upon notification from the facility that the deficiencies have been corrected.
- 2004.5 The Director may deny the application for licensure or issue a restricted or provisional license to a facility that has not corrected deficiencies. The facility shall reapply for licensure when deficiencies are corrected, or for a more limited license, if appropriate.
- 2004.6 The Director shall issue a provisional license, not to exceed ninety (90) days, to a facility initially approved.
- 2004.7 The Director shall conduct an unannounced on-site inspection of the facility within ninety (90) days of operation to assess the facility's continued compliance with the statutes and rules governing the facility. The Director shall issue a regular license not to exceed one (1) year to a facility that is in full or substantial compliance.
- 2004.8 The Director shall renew a provisional license for a facility not in substantial compliance with the applicable statutes and rules of this chapter. Facilities taking ameliorative action to correct violations, but without deficiencies that pose a serious and imminent danger to the public's health, safety and welfare, may apply for renewal.
- 2004.9 The facility shall correct the deficiencies within sixty (60) days and the Director may require the facility to submit a plan of correction.
- 2004.10 The Director shall conduct an on-site inspection after sixty (60) days to determine correction. The Director shall issue a regular license, not to exceed one (1) year, to the facility if found in substantial compliance.
- 2004.11 The Director shall not renew a provisional license or grant a regular license to a facility not in substantial compliance, not taking ameliorative action, or with violations that pose a serious and imminent danger to the public's health, safety and welfare.

2005 LICENSE RENEWAL

- 2005.1 The Director shall conduct an on-site inspection of a facility to determine compliance with the statutes and rules governing the facility prior to the

expiration of the license. Unless otherwise notified, inspections shall be unannounced.

- 2005.2 The Director shall send a written report of the findings to the facility no later than fifteen (15) days from the conclusion of the inspection.
- 2005.3 Consistent with applicable statutes and the rules governing the facility, the Director shall take adverse action, provided in sections 2009 - 2011 of this chapter, against a facility found to have life threatening deficiencies, or a continuing pattern of deficiencies which pose a serious threat to the public's health and safety.
- 2005.4 The Director may require the facility to submit a written, signed and dated plan of correction to abate deficiencies cited no later than ten (10) business days following the receipt of the written report of findings.
- 2005.5 The Director shall issue a renewal license for a period not to exceed one (1) year to a facility with no deficiencies or with minor deficiencies that can be corrected within thirty (30) days.
- 2005.6 The Director shall issue a provisional license not to exceed ninety (90) days to a facility that is not in substantial compliance with the applicable statutes and rules of this chapter, but does not have deficiencies that are life threatening or that endanger the public's health and safety.
- 2005.7 The Director shall issue a regular license not to exceed one (1) year to a facility issued a provisional license pursuant to § 2004.6 that is in full or substantial compliance after ninety (90) days, based on a follow-up inspection.
- 2005.8 The Director shall renew the provisional license for a facility initially issued a license pursuant to § 2004.7 that is not in substantial compliance after ninety (90) days, but is making significant progress toward correction of deficiencies cited.
- 2005.9 The Director may prohibit a facility from accepting new patients and providing a service by issuing a restricted license when he or she finds that the facility has violations of a serious nature, and no substantial corrective action has been taken.
- 2005.10 Consistent with the applicable statutes and rules governing the facility, the Director shall take adverse action against a facility that is not making substantial progress after issuance of the first provisional license, or its renewal, or a restricted license.

2005.11 The Director shall automatically suspend or convert to a provisional or restricted status the license of a facility that loses its federal certification until a determination is made regarding its continued operation and license status.

2006 REMOVAL PERMITS

2006.1 No hospital or part of a hospital shall move from the premises for which a license has been issued to any other premises without first having obtained from the Director a permit to move to the premises not covered by the license issued to the hospital.

2006.2 The removal permit shall indicate on its face the special conditions governing the moving of the hospital or part of the hospital as the Director may find to be in the interest of the public health.

2007 COMPLAINT INVESTIGATIONS

2007.1 The Director may receive any and all complaints alleging violations of the requirements contained in the applicable laws and regulations, and may conduct unannounced investigations to determine the validity of the complaints.

2007.2 The facility shall permit the Director entry to investigate complaints. The Director shall conduct complaint investigations during time periods and staff shifts consistent with the allegations in the complaint when considered appropriate.

2007.3 The Director may require the facility to respond to the written report of findings with a written plan of correction no later than ten (10) days after the receipt of the report.

2007.4 The Director shall communicate the findings of the complaint investigation directly to the facility and the complainant, if the complainant is identified to the Director, at the conclusion of the investigation.

2007.5 The Director shall investigate complaint allegations of a life threatening nature or those that represent immediate danger within two (2) business days of receipt of the complaint by the Department. All other complaints shall be investigated by the Director no later than thirty (30) days from receipt of the complaint or as considered appropriate.

2007.6 The Director shall immediately suspend or revoke a license or issue a provisional or restricted license in accordance with the applicable statutes and the rules of this chapter if a facility is found to have life threatening

deficiencies or deficiencies which seriously endanger the public's health and safety.

2007.7 The Director shall require a facility which is found in violation of the applicable statutes and the rules of this chapter, but whose deficiencies are not life threatening or seriously endangering to the public's health, safety and welfare, to correct the deficiencies within thirty (30) days from receipt of the complaint investigation report.

2007.8 The Director shall issue a provisional or a restricted license, as appropriate, to a facility that has not corrected deficiencies within thirty (30) days.

2007.9 If appropriate, the Director shall issue a restricted license to a facility which is found to have life threatening deficiencies or deficiencies which seriously endanger the public's health and safety. If not appropriate, the Director shall suspend or revoke the facility's license consistent with the applicable statutes and this chapter.

2008 VARIANCES

2008.1 The Director may grant a variance from any of the requirements of the applicable statutes and the rules of this chapter, if the applicant can show undue hardship and the variance can satisfy the following conditions:

- (a) It is not inconsistent with other statutory provisions;
- (b) It is not deleterious to the public health and safety; and
- (c) It would not have the effect of permitting a violation of other laws or regulations of the District of Columbia.

2008.2 A facility requesting a variance shall submit in writing to the Director the following:

- (a) The regulatory requirement(s) for which a variance from strict compliance is being requested;
- (b) Specific justification as to why the facility cannot meet the requirement(s); and
- (c) Alternative measures provided to ensure quality care and services consistent with the applicable statutes and this chapter.

2008.3 The Director shall grant a variance only to the extent necessary to ameliorate an undue hardship and only when compensating factors are

present to give adequate protection to the public health without impairing the intent and purpose of this chapter.

2008.4 If the Director believes that the conditions in § 2008.1 are not met, the Director shall issue a written proposed denial together with advice to the applicant as to his or her right to a hearing on the matter which shall be conducted by the Office of Administrative Hearings in accordance with § 2013.

2008.5 The Director shall maintain a record, to which the public shall have access through the Freedom of Information Act, of all variances granted. The record shall contain a complete written explanation of the basis for each variance.

2008.6 If a variance is requested from standards established pursuant to § 5(a)(3) of the Act, the Director shall provide an opportunity to comment before a decision is made.

2009 CIVIL PENALTIES

2009.1 Violation of any provision of this chapter may be subject to penalties in accordance with § 10 of the Act.

2009.2 In accordance with § 10(e) of the Act, civil fines, penalties, and related costs may be imposed against a hospital for the violation of any provision of this chapter. Adjudication, enforcement and applicable fines, penalties and costs shall be those established by or pursuant to Chapter 18 of Title 2 of the D.C. Official Code.

2009.3 In accordance with § 10(f)(1) of the Act, any person who commits a violation of any provision of this chapter that results in demonstrable harm to a patient, resident, or client of a facility or agency, shall be subject to a fine for each offense not to exceed \$ 10,000. For each violation, each day of violation shall constitute a separate offense, and the penalties prescribed shall apply to each separate offense. The total fine for a series of related offenses shall not exceed \$ 100,000. Procedures for adjudication of violations under this subsection shall be those established pursuant to Chapter 18 of Title 2.

2010 DENIAL, SUSPENSION, AND REVOCATION OF A HEALTH CARE FACILITY LICENSE

2010.1 The Director may refuse to issue or renew or may revoke, or may suspend a license issued pursuant to this chapter for one or more of the reasons listed in § 5(a)(2)(F) of the Act.

- 2010.2 Except for a conversion or summary suspension undertaken pursuant to § 6(d)(1) of the Act, every applicant for or holder of a license, or applicant for reinstatement after revocation, shall be afforded notice and an opportunity to be heard prior to the action of the Director, if the effect of the Director's action would be one of the following:
- (a) To deny a license for cause which raised an issue of fact;
 - (b) To suspend a license;
 - (c) To revoke a license;
 - (d) To refuse to restore a license;
 - (e) To issue a limited renewal license; or
 - (f) To refuse to issue a renewal license for any cause other than failure to pay the prescribed fees.
- 2010.3 When the Director contemplates taking any action of the type specified in 2010.2 of this chapter, the Director shall give to the applicant, or to another designee chosen by the applicant, a written notice containing the following statements:
- (a) In the case of a license denial, that the applicant has failed to satisfy the Director as to the applicant's qualifications;
 - (b) The respect in which the applicant has failed to satisfy the Director; and
 - (c) That the denial shall become final unless the applicant files a request for a hearing with the Director within fifteen (15) days of receipt of the notice.
 - (d) That the Director has sufficient evidence (setting forth the nature of the evidence), which if not rebutted or explained, justifies taking the proposed action; and
 - (e) That the Director shall take the proposed action unless within fifteen (15) days of the receipt of the notice the facility files with the Office of Administrative Hearings a written request for a hearing or in the alternative submits documentary evidence for the court's consideration before final action is taken.
- 2010.4 If the facility does not respond to the notice within the time specified, the Director may, without a hearing, take the action contemplated in the

notice. The applicant or licensee shall be informed in writing of the action taken.

- 2010.5 If the applicant or licensee chooses to submit to the Office of Administrative Hearings documentary evidence but does not request a hearing, the Director may submit a written response to the Office of Administrative Hearings within fifteen (15) days of the receipt of the documentary evidence by the Office of Administrative Hearings or otherwise within a time period allotted by the Office of Administrative Hearings.
- 2010.6 Grounds for suspension, revocation or refusal to issue or renew a license shall include the following:
- (a) Failure to meet or maintain the standards required by this chapter;
 - (b) Willful submission of false or misleading information to the Director in connection with an application for licensure or related to licensing procedures;
 - (c) Violation of this chapter, or other laws and regulations of the District of Columbia or the United States relating to the operation of a hospital and which are applicable to hospitals operating in the District of Columbia;
 - (d) Failure to allow inspections pursuant to this chapter;
 - (e) Failure to obey any lawful order of the Director, pursuant to the rules of this chapter;
 - (f) Conviction of a member of the governing body, a Director, Administrator, the Chief Executive Officer, department head, or other key staff member of a felony involving the management or operation of a hospital, or which is directly related to the integrity of the facility or the public health or safety; or
 - (g) Any act which constitutes a threat to the public's health or safety.

2011 SUMMARY SUSPENSION AND LICENSURE CONVERSION, HEARINGS

- 2011.1 Notwithstanding any other provision of this chapter, the Director, pursuant to § 6(d)(1) of the Act, and under conditions described in that section may do the following:
- (a) Convert the facility's license to a provisional or restricted; or

(b) Summarily suspend the facility's license.

- 2011.2. The Director may summarily suspend the license of any hospital or convert its license to a provisional or restricted license if the Director determines that existing deficiencies constitute an immediate or serious and continuing danger to the health, safety or welfare of its patients.
- 2011.3 Upon summarily suspending a license pursuant to §§ 2011.2, the Director shall immediately give the hospital written notice of the action, including a copy of the order of suspension, a statement of the grounds for the action and notification that the hospital may, within seven (7) business days from the day written notice is received, file with the Office of Administrative Hearings a written request for an expedited hearing with respect to the action.
- 2011.4 The Office of Administrative Hearings shall convene a hearing within three (3) business days following receipt of the facility's timely request for a hearing to review the reasonableness of the suspension.
- 2011.5 If a summary suspension is requested, the request for hearing shall not serve to stay the order suspending the license.
- 2011.6. Except as otherwise noted in this chapter all procedures relating to hearings as set forth in this chapter shall apply to hearings in summary suspensions.
- 2011.7 Conversions of licenses to restricted or provisional licenses shall be in accordance with § 7 of the Act.

2012 SERVICE OF NOTICE

- 2012.1 Any notice required by this chapter may be served either personally or by certified mail, return receipt requested, directed to the applicant or licensee at the last known address as shown by the records of the Department.
- 2012.2 If notice is served personally, it shall be considered by the Director to have been served at the time when delivery is made to the applicant or licensee.
- 2012.3 If notice is served by certified mail, it shall be considered by the Director to have been served on the date written or stamped upon the return receipt showing delivery of the notice to the applicant or licensee, or refusal of the applicant or licensee to receive the notice.
- 2012.4 In the event that the applicant or licensee is no longer at the last known address as shown by the records of the Department and no forwarding

address is available, the notice shall be considered by the Director to have been served on the date the return receipt bearing the notification is received by him or her.

2012.5 If an applicant or licensee scheduled for a hearing does not appear and no continuance has been or is granted, the Director may take the contemplated action without a hearing.

2013 CONDUCT OF HEARINGS

2013.1 Every hearing before the Office of Administrative Hearings shall be open to the public and shall be in accordance with its rules of procedure and this chapter.

2013.2 An applicant or licensee entitled to a hearing shall have the following rights:

- (a) To be represented by counsel;
- (b) To present testimony;
- (c) To present witnesses and evidence on his or her behalf;
- (d) To examine all opposing witnesses on any matter relevant to the issues; and
- (e) To have subpoenas issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request therefore to the Office of Administrative Hearings.

2013.3 In any proceeding resulting from the Director's contemplated action to deny new licensure, the applicant shall have the burden of proving his or her qualification for licensure.

2013.4 In any proceeding resulting from the Director's contemplated action to refuse to renew, to revoke, or to suspend a license, the Department shall have the burden of proving that such action should be taken, or in the case of a summary suspension, that the action was valid.

2013.5 In all hearings, a complete record shall be made of all evidence presented during the course of a hearing. Any party to the proceedings desiring it shall be furnished with a copy of the record, upon payment of the fee prescribed by the Office of Administrative Hearings.

2013.6 Final decisions shall be rendered, petitions for reconsiderations taken and appeals filed in accordance with the rules of the Office of Administrative Hearings.

2014 GOVERNING BODY AND ADMINISTRATION

2014.1 Each hospital shall have a governing body which shall have the authority and responsibility for the direction and policy of the hospital.

2014.2 The governing body's responsibilities shall include:

- (a) Monitoring policies to assure appropriate administration and management of the facility;
- (b) Maintaining the hospital's compliance with all applicable state and federal statutes, relevant state and federal rules and regulations, the hospital's policies and procedures as well as the hospital's plans of correction;
- (c) Ensuring the quality of all services, care and treatment provided to patients whether those services, care or treatment are furnished by hospital staff or through contract with the hospital;
- (d) Designating an administrator who is responsible for the day-to-day management of the hospital and defining the administrator's duties and responsibilities;
- (e) Notifying the Department in writing within thirty (30) working days when a vacancy in the administrator position occurs, including who will be responsible for the position until another administrator is appointed;
- (f) Notifying the Department in writing within thirty (30) working days when the administrator vacancy is filled indicating effective date and name of person appointed administrator;
- (g) Appointment and reappointment of medical staff members who are credentialed in accordance with the District of Columbia Health Occupations Revision Act of 1985 (D.C. Law 6-99) and delineating their clinical privileges, according to the procedures for credentials review established by the medical staff and approved by the governing authority;
- (h) In collaboration with the medical staff, establishing criteria for membership on the medical staff or clinical privileges;

- (i) Rendering within a fixed period of time the final decision regarding medical staff recommendations for denial of staff appointments and reappointments, as well as for the denial, limitation, suspension or revocation of privileges. There shall be a mechanism provided in the medical staff bylaws, rules and regulations for review of decisions, including the right to be heard when requested by the practitioner;
- (j) Ensuring the medical staff is accountable to the governing body for the quality of medical care and treatment;
- (k) Ensuring a medical staff and a utilization review process is formed and operated for the purpose of reviewing the medical and hospital care provided and the use of hospital resources to assist individual physicians, administrators and nurses in maintaining and providing a high standard of medical and hospital care and efficient use of the hospital;
- (l) At least once each year, reviewing reports and recommendations regarding all Quality Assurance/Performance Improvement activities and the Medical Staff and Utilization Review process. Reports shall be utilized to implement programs and policies to maintain and improve the quality of patient care and treatment;
- (m) Establishing a means for liaison and communication between the governing authority, the medical staff and administration and promoting effective communication and coordination of services among the various hospital departments, administration and the medical staff;
- (n) Requiring the medical staff to be organized with a chief of staff, president, or chairperson and approving the organization, bylaws, rules and regulations, and policies and procedures of the medical staff and the departments in the hospital;
- (o) Establishing visitation policies which are in the best interest of patients, including, but not limited to, protection from communicable diseases, protection from exposure to deleterious substances and hazardous equipment and assurance of health and safety of patients; and
- (p) In addition to the requirements of section 2032.1(d), establishing a written infection control program which includes a description of risks, strategies to address the risks, a statement of goals, a system to evaluate the program and applicable policies and procedures.

2015 ADMINISTRATOR

- 2015.1 The administrator shall be responsible for planning, organizing, and directing the day to day operation of the hospital. The administrator shall report and be directly responsible to the governing body in all matters related to the maintenance, operation, and management of the hospital.
- 2015.2 The Administrator shall be present forty (40) hours per week during regular business hours, and shall be responsible for the operation of the facility twenty-four (24) hours per day, seven (7) days per week.
- 2015.3 The administrator's responsibilities include:
- (a) Making sure there is adequate attention to the management of the hospital twenty-four (24) hours of day;
 - (b) Providing for the protection of patients' health, safety, and well-being;
 - (c) Maintaining staff appropriate to meet patient needs;
 - (d) Designating a substitute, who shall be responsible and accountable for management of the facility, to act in the absence of the administrator;
 - (e) Developing and implementing procedures on collecting and reporting information on abuse, neglect and exploitation;
 - (f) Ensuring that investigations of suspected abuse, neglect or exploitation are completed and that steps are taken to protect patients;
 - (g) Developing and implementing procedures for the collection of data on and reporting of adverse events and unusual incidents, which may also be known as or include, sentinel events and near misses. Procedures must also include the implementation of corrective actions.
 - (h) Ensuring that bodies are held in the morgue no longer than thirty (30) days and that the hospital complies with the following:
 - (1) Reporting requirements provided by the Vital Records Act of 1981 (D.C. Law 4-34), and

- (2) Notification and reporting requirements in the the Establishment of the Office of the Chief Medical Examiner Act of 2000 (D.C. Law 13-172); and
- (i) Developing and implementing policies to ensure adequate and appropriate monitoring of infants and children when they are placed in patient care units without adult patients

2016 GENERAL STAFF REQUIREMENTS

- 2016.1 Each hospital shall maintain a sufficient number of staff with the qualifications, training and skills necessary to meet patient needs. The hospital shall be staffed twenty-four (24) hours per day.
- 2016.2 Each hospital shall ensure and maintain evidence of, for employees and contract staff, current active licensure, registration, certification or other credentials in accordance with applicable District of Columbia law, prior to staff assuming job responsibilities and shall have procedures for verifying that the current status is maintained.
- 2016.3 Whenever a licensed health-care professional is terminated as a result of a job-related incident, the hospital shall refer a report of the incident to the appropriate professional health-care board which shall review the report in accordance with the District of Columbia Health Occupations Revision Act of 1985 (D.C. Law 6-99).

2017 HEALTH EXAMINATIONS

- 2017.1 Each person, other than a physician, involved in the performance of duties involving direct patient care shall have an occupational health screening by a physician or other qualified health professional within thirty (30) calendar days prior to entering active status or within thirty (30) calendar days after entering, and at least once every two (2) years thereafter. Each physician shall have a health examination performed by another physician or other qualified health care professional at the time of appointment and once every two (2) years thereafter.
- 2017.2 Each health screening shall include a medical history, physical examination, intradermal tuberculin test and any indicated laboratory work, except that the intradermal tuberculin test and subsequent tests shall be performed in accordance with section 2017.3.
- 2017.3 Preventative measures, testing and frequency of testing for tuberculosis shall be in accordance with standards and guidelines developed by the Centers for Disease Control and Prevention.

- 2017.4 A report, signed by an examining physician or other qualified health professional, shall be made of each examination.
- 2017.5 The report of each examination shall be kept on file in the hospital and shall be open to inspection by the Department.
- 2017.6 In lieu of the pre-employment intradermal tuberculin test required by this subsection, the examining physician may accept a written report of the test or x-ray made by a qualified person within twelve (12) months prior to the date of the examination.
- 2017.7 Each person who is involved in direct patient care and who has been absent from duty because of an illness required to be reported to the Department shall, prior to returning to duty, obtain certification from a physician or other qualified health professional, as provided for in the hospital's policies, that he or she may return to duty without apparent danger of transmitting the cause of the illness to any patient.
- 2017.8 A copy of each certification as required in § 2017.7 shall be kept on file and made available for examination by the Department.
- 2017.9 Hospital work shall be deemed to be an occupation the duties of which are such that the activity of each individual performing the work is likely to be dangerous to the lives or health of other persons, within the meaning of §213 of chapter 2 of this title relating to the reporting and control of communicable diseases.
- 2017.10 Immunization against communicable disease shall be required of all employees and all other persons who routinely come in contact with patients or patient areas. Immunizations shall be in accordance with current standards and guidelines developed by the Centers for Disease Control and Prevention.

2018 STAFF TRAINING

- 2018.1 Each hospital shall ensure that staff receive training in order to perform assigned job responsibilities.
- 2018.2 Each hospital shall provide and maintain evidence of an orientation program for all new staff and, as needed, for existing staff who are given new assignments. The orientation program shall include an explanation of:
- (a) Job duties and responsibilities;
 - (b) Hospital's sanitation and infection control programs;

- (c) Organizational structure within the hospital;
- (d) Patient rights;
- (e) Patient care policies and procedures relevant to the job;
- (f) Personnel policies and procedures;
- (g) Emergency procedures;
- (h) The Disaster preparedness plan; and
- (i) Reporting requirements for abuse, neglect or exploitation.

2018.3 Each hospital shall provide and maintain evidence of ongoing/continuous in-services or continuing education for staff. A record shall be maintained including dates, topics and participants.

2018.4 Each hospital shall maintain a current employment record for each staff person. The record shall contain, at a minimum, information on orientation, in-services, credentialing, health history screening and background check information, including information verifying compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (D.C. Law 12-238, as amended; D.C. Official Code § 44-551 *et seq.*).

2019 MEDICAL STAFF

2019.1. Each hospital shall have a medical staff that shall be responsible for carrying out the provisions of the bylaws, consistent with rules and regulations, and shall recommend to the governing body bylaws, or amendments to the bylaws, as they deem appropriate to the operation of the particular hospital. The medical staff shall be organized in a manner and shall function in a manner consistent with the size, needs and resources of the hospital and of the medical staff.

2019.2 The clinical staff of each medical service, surgical service, obstetric service, pediatric service, psychiatric service, radiology service, and anesthesiological service shall be organized under the directorship of an internist, surgeon, obstetrician, pediatrician, psychiatrist, radiologist, and anesthesiologist respectively, each of whom shall be responsible for the policies, procedures, and supervision of the medical work in his or her respective service. Likewise, any medical service shall be organized under the directorship of a licensed professional who is a medical specialist in that medical service.

2019.3 The medical staff shall be responsible to the governing authority for the quality of medical care and treatment provided in the hospital and shall:

- (a) Participate in a Quality Assurance/Performance Improvement program to determine the status of patient care and treatment;
- (b) Abide by hospital and medical staff policies;
- (c) Establish a disciplinary process for infraction of the policies; and
- (d) Recommend criteria and procedures for appointment and reappointment to the medical staff and for delineating clinical privileging to facilitate the provision of quality patient care and treatment.

2019.4 Each licensee shall require all employees, contract workers, and volunteers working in the hospital to familiarize themselves with the provisions of this chapter as appropriate to the functions they perform and with all other regulations applicable to their duties.

2019.5 Each hospital shall provide a medical staff that shall be adequate for the diagnostic facilities and services, therapeutic facilities and services, and rehabilitation facilities and services which the hospital undertakes to provide.

2020 AVAILABILITY OF PHYSICIANS

2020.1 Each general hospital shall have a physician available on the premises at all times.

2020.2 Each special hospital shall at all times have a physician available on the premises or available on call; Provided, that when the Director, after consultation with the chief of the involved service, finds that the condition of the patients in the hospital requires the presence of a physician on the premises at all times, the Director shall impose the requirement.

2020.3 Each patient shall be under the care of a physician, regardless of whether the patient is also under the care of an allied health professional practitioner authorized to practice in the District.

2021 NURSING STAFF

2021.1 Each hospital shall provide a nursing staff that is adequate for the diagnostic facilities and services, therapeutic facilities and services, and rehabilitation facilities and services that the hospital undertakes to provide.

- 2021.2 The Department of Nursing Service shall be under the direction of a registered nurse qualified by education, experience, and demonstrated ability for the position of Director of Nursing Service.
- 2021.3 The Director of Nursing Service shall participate in the establishment of policies and procedures for the conduct of nursing service.
- 2021.4 The Director of Nursing shall be a full-time employee during regular business hours, and shall be responsible for the operation of the nursing service twenty-four (24) hours per day, seven (7) days per week.
- 2021.5 A well-organized departmental plan of administrative authority, with delineation of responsibilities and duties of each category of nursing shall be required both in relation to patient care and to the educational responsibilities of the nursing service.
- 2021.6 An Assistant to the Director of Nursing shall be provided for the evening and night tours of duty.
- 2021.7 Supervisory and staff personnel shall be provided for each department of patient care unit to ensure the immediate availability of a professional nurse for bedside care of all patients at all times.
- 2021.8 Qualified personnel shall be provided in sufficient numbers to provide nursing care not requiring the services of a licensed registered nurse.
- 2021.9 Nursing personnel for the surgical operating suite, maternity and newborn service, outpatient service, and other services of the hospital shall be provided in keeping with their size and degree of activity.
- 2021.10 All nursing personnel shall be qualified by education, experience, and demonstrated ability for the positions to which they are assigned.
- 2021.11 Private duty nurses and licensed practical nurses and nursing assistants shall be under the supervision and direction of a registered nurse at all times.
- 2021.12 Nursing care procedures and care plans (which may be interdisciplinary care plans), written in conformance with hospital policy, shall be provided for patients, either on an individual or patient care unit basis. follow the policy

2022 PATIENT RIGHTS

- 2022.1 Each hospital shall protect and promote each patient's rights. This includes the establishment and implementation of written policies and procedures, which include, but are not limited to, the following rights. Each patient or designee, when appropriate, shall have the right to:
- (a) Respectful and safe care given by competent personnel;
 - (b) Be informed of patient rights during the admission process;
 - (c) Be informed in advance about care and treatment and of any change;
 - (d) Participate in the development and implementation of a plan of care and any changes;
 - (e) Make informed decisions regarding care and to receive information necessary to make decisions;
 - (f) Refuse treatment and to be informed of the medical consequences of refusing treatment;
 - (g) Formulate advance directives and have the hospital comply with the directives unless the hospital notifies the patient of the inability to do so;
 - (h) Personal privacy and confidentiality of medical records;
 - (i) Be free from abuse, neglect, and exploitation;
 - (j) Access information contained in his/her medical record within a reasonable time frame when requested, subject to limited circumstances where the attending physician determines it would be harmful to disclose the information to the patient for therapeutic reasons;
 - (k) Be free from chemical and physical restraints that are not medically necessary;
 - (l) Receive hospital services without discrimination based upon race, color, religion, gender, national origin, or payer. Hospitals are not required to provide uncompensated or free care and treatment unless otherwise required by law; and
 - (m) Voice complaints and file grievances without discrimination or reprisal and have those complaints and grievances addressed.

2022.2 Each hospital shall establish and implement a process to provide patients and/or their designee appropriate education to assist in understanding the identified condition and the necessary care and treatment.

2022.3 Each hospital shall document its assessment of each patient's ability to understand the scope and nature of the diagnosis and treatment needed.

2023 GRIEVANCES

2023.1 Each hospital shall establish and implement a written process that promptly addresses grievances filed by patients or their representatives. The process includes, but is not limited to:

- (a) A procedure for submission of grievances which is made available to patients or representatives;
- (b) Time frames and procedures for review of grievances and provision of a response; and
- (c) How information from grievances and responses are utilized to improve the quality of patient care and treatment.

2024 PATIENT CARE AND TREATMENT

2024.1 Except in the case of emergency, no medication or treatment other than dental shall be given to any patient without an order of a physician or other qualified health professional. A physician order shall include physician approved protocols.

2024.2 No dental medication or treatment shall be given to any patient without an order of a dentist, physician, or other qualified health professional, except in an emergency.

2024.3 The physician's, dentist's, or other qualified health professional's order shall be recorded at the time it is made and shall be signed by the physician, dentist, or other qualified health professional as soon as practicable.

2024.4 Each hospital shall provide the necessary care and treatment to meet the needs of patients. Care and treatment provided shall meet prevailing professional standards and scope of practice requirements. Each hospital shall establish and implement written policies and procedures that encompass care and treatment provided to patients.

2024.5 A plan of care shall be established, implemented and kept current to meet the identified needs for each inpatient. The plan of care shall be interdisciplinary when appropriate to meet individual needs of patients.

2024.6 When the hospital is responsible for the administration of medication, medication shall be administered by a qualified health professional for whom medication administration is included within the scope of practice. The hospital shall ensure that medication is properly administered in accordance with prevailing professional standards.

2024.7 The hospital shall allow patients to self-administer medications, with or without supervision, when assessment determines that self-medication is appropriate and that the patient is capable of doing so.

2025 ERRORS IN PROVISION AND ADMINISTRATION OF MEDICATIONS

2025.1 Each hospital shall establish and implement policies and procedures for reporting any errors in administration or provision of prescribed medications. Errors shall be reported to the prescriber in a timely manner upon discovery and a written report of the error prepared.

2025.2 Documentation of medication errors shall be maintained by each hospital and made available for review by the Department.

2025.3 Each hospital shall establish and implement policies and procedures for reporting any adverse reaction to a medication in a timely manner upon discovery to the prescriber and for documenting the event in the patient's medical record.

2025.4 Each hospital shall establish and implement procedures on the handling of drugs to ensure that patients receive medications as prescribed by a medical practitioner. At a minimum, the following shall be evident:

- (a) An accounting during each shift at each nursing unit of all controlled substances that have been dispensed as multiple-dose floor stock and individual patient prescriptions; and
- (b) Authorized personnel designated by hospital policy in accordance with applicable law are allowed access to medications, including controlled substances.

2025.5 Each hospital shall maintain records in sufficient detail to assure that patients receive the medications prescribed by a medical practitioner and maintain records to protect medications against theft and loss.

- 2025.6 Each hospital shall develop and maintain for each inpatient an individual medication administration record that includes, but is not limited to:
- (a) The identification of the patient;
 - (b) The name of the medication given;
 - (c) The date, time, dosage, method of administration or provision for each medication;
 - (d) Identification of the person who administered or provided the medication and any refusal by the patient; and
 - (e) The patient's medication allergies and sensitivities.

2026 SEPARATE PATIENT CARE

- 2026.1 Each hospital regularly providing care for obstetric conditions, pediatric conditions, and psychiatric conditions shall have one (1) or more physically and functionally separate care units for each category of conditions for which care is regularly provided.
- 2026.2 A newborn infant shall not be placed in the same room with any child or any adult except in a maternity nursing unit with mothers for whom there is no apparent danger of transmitting a communicable disease.
- 2026.3 Infants and children shall not be placed in patient rooms with adult patients other than with parents or legal guardians.
- 2026.4 Patients with suspected or diagnosed contagious conditions shall be isolated from those not having the suspected or diagnosed condition except in an emergency and on a temporary basis.
- 2026.5 The maternity and newborn care unit shall be separate from other patient care units and shall be used only for the care of maternity patients and newborn infants; provided, that when there are no other beds available, noninfectious gynecological patients may be cared for on a temporary basis in a maternity and newborn patient care unit.

2027 RESTRAINT OR SECLUSION OF PATIENTS

- 2027.1 Every general hospital, special hospital for adults with one hundred (100) or more beds, and every special hospital that maintains a psychiatric service for adults shall provide one (1) or more security rooms.

- 2027.2 All other special hospitals shall maintain a seclusion room and provide an attendant to be with the patient constantly where needed prior to removal to a psychiatric service.
- 2027.3 No patient shall be placed in mechanical restraint or other seclusion, unless ordered by a physician or other qualified health professional, and unless a nurse or attendant is continuously on duty in charge of and responsible for the patient.
- 2027.4 No restraint shall be applied unless it is designed and applied so that the person responsible can readily remove the restraints in case of an emergency.

2028 PATIENT NUTRITION

- 2028.1 Each hospital shall provide for the daily nutritional needs of all patients, including the provision of any diets ordered by a medical practitioner.
- 2028.2 A current diet manual acceptable to dietary, nursing and medical staff shall be maintained and available for reference.
- 2028.3 Education on matters of diet and nutrition shall be available to patients when appropriate.
- 2028.4 Assessments of the nutritional status of patients shall be conducted by an appropriate professional licensed to conduct nutritional assessments in accordance with the District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99.
- 2028.5 Each hospital shall document on-going nutritional assessments for patients who require and receive supplemental nutrition. Nutritional assessments shall include weighing, laboratory testing and other appropriate indicators.

2029 DISCHARGE PLANNING

- 2029.1 Each hospital shall provide discharge planning to patients. The discharge planning program includes, but is not limited to:
- (a) A system for timely evaluation of any discharge planning needs of patients;
 - (b) Identification of staff responsible for the program;
 - (c) Development of a discharge plan, including medication review, with the patient or representative when need is identified;

- (d) Medication review with the patient or representative;
- (e) Maintenance of a complete and accurate list of community-based services, resources and facilities to which patients can be referred; and
- (f) Arrangement for the initial implementation of a discharge plan including transfer of necessary medical information.

2030 RECORD KEEPING REQUIREMENTS.

- 2030.1 Each hospital shall maintain records and reports in a manner to ensure accuracy and easy retrieval.
- 2030.2 A medical record shall be maintained for every patient, including newborn infants, admitted for care in the hospital or treated in the emergency or outpatient service. Medical records may be created and maintained in written or electronic form, or a combination of both, provided that a complete record is accessible at all times. Medical records shall contain sufficient information to clearly identify the patient, to justify the diagnosis and treatment and to document the results accurately.
- 2030.3 Each medical record shall contain, when applicable, the following information:
- (a) Identification data;
 - (b) Chief complaint;
 - (c) Present illness;
 - (d) History and physical examination;
 - (e) Admitting diagnosis;
 - (f) All pathology/laboratory and radiology reports;
 - (g) Properly executed informed consent forms;
 - (h) Consultation reports;
 - (i) Medical practitioner orders;
 - (j) Documentation of all care and treatment, medical and surgical;
 - (k) Tissue report;

- (l) Progress notes of all disciplines;
 - (m) Discharge summary and final diagnosis;
 - (n) Autopsy findings; and
 - (o) Advanced directives, if available.
- 2030.4 Medical records shall contain entries which are dated, legible and indelibly verified. The author of each entry shall be identified and authentic. Authentication shall include signature, written initials, or computer entry.
- 2030.5 Telephone or verbal orders of authorized individuals are accepted and transcribed by qualified personnel who are identified by title or category in the medical staff bylaws or rules and regulations. Telephone or verbal orders shall be authenticated as soon as is practical by the medical practitioner who is responsible for ordering, providing or evaluating the service furnished.
- 2030.6 The hospital shall monitor and require medical records be completed within thirty (30) days of discharge of the patient.
- 2030.7 The medical record of each patient shall be maintained and preserved, in original, microfilm, electronic or other similar form, for a period of at least ten (10) years following discharge or in the case of minors, the records shall be kept until three years after the age of majority has been attained. In cases in which a hospital ceases operation, all medical records of patients shall be transferred as directed by the patient or authorized representative to the hospital or other health care facility or health care service to which the patient is transferred. All other medical records that have not reached the required time for destruction shall be stored to assure confidentiality and the Department shall be notified of the address where stored.
- 2030.8 Medical records shall be kept confidential, available only for use by authorized persons or as otherwise permitted by law. Records shall be available for examination by authorized representatives of the Department.
- 2030.9 Patient information and/or records will be released only with consent of the patient or designee or as permitted by law. When a patient is transferred to another health care facility or service, appropriate information for continuity of care shall be sent to the receiving health care facility or service.

2030.10 In addition to patient medical records, each hospital shall maintain, when applicable, the following:

- (a) A permanent patient index that includes, but is not limited to:
 - (1) Name and identification numbers of each patient;
 - (2) Dates of admission and discharge;
 - (3) Name of admitting physician; and
 - (4) Disposition or place to which patient was discharged/transferred.
- (b) Administrative records and reports including governing authority and departmental meeting minutes, staff orientation and in-service records and staff schedules as worked for a minimum of three years, unless longer is required by law.
- (c) Records of all reports made regarding abuse, neglect, misappropriation of property or exploitation.

2030.11 In order to ensure the patient's right of confidentiality, medical records are destroyed or disposed of by shredding, incineration, electronic deletion, or another equally effective protective measure.

2031 PHYSICAL PLANT STANDARDS

2031.1 All hospitals shall be designed, constructed and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The physical plant standards for facilities, which include support services, care and treatment areas, construction standards and building systems are set forth below.

2031.2 The hospital may share the following support service areas among detached structures, care and treatment areas, or with other licensed health care facilities.

- (a) Dietary: If food preparation is provided on site, the hospital shall dedicate space and equipment for the preparation of meals. Food service physical environment and equipment shall comply with Title 25 of the District of Columbia Municipal Regulations (the Food Code) except when used only for training or activity purposes.

- (b) Laundry: If the hospital provides laundry services, the services may be provided by contract or on-site by the hospital.
 - (1) Contract: If contractual services are used, the hospital shall have areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.
 - (2) On-site: If on-site services are provided, the hospital shall have areas dedicated to laundry.
 - (A) If personal laundry areas are provided, the areas shall be equipped with a washer and dryer for use by patients. In new construction, the hospital shall provide a conveniently located sink for soaking and hand-washing of laundry.
 - (B) Hospital laundry area for hospital processed bulk laundry shall be divided into separate soiled (sort and wash areas) and clean (drying, folding, and mending areas) rooms. In new facilities a separate soaking and hand-washing sink and housekeeping room shall be provided in the laundry area.
 - (C) Separate clean linen supply storage facilities shall be conveniently located in each care and treatment location.
- (c) Diagnostic: If the hospital provides radiology or laboratory services, the services shall comply with the following:
 - (i) Imaging rooms shall accommodate the operational and shielding requirements of the equipment installed and the condition of the patient and shall provide clear floor area adequate for the safety of staff and patients.
 - (ii) Laboratory areas shall provide for sample collection and protection, analyzing, testing and storage. The hospital shall handle all potentially contagious and hazardous samples in a manner as to minimize transmission of infectious diseases.
- (d) Waste processing: The hospital shall provide areas to collect, contain, process, and dispose of medical and general waste produced within the hospital in such a manner as to prevent the attraction of rodents, flies and all

other insects and vermin, and to minimize the transmission of infectious diseases.

2032 MEDICAL SERVICES

2032.1 In the absence of applicable requirements in this chapter, the following services shall be operated in accordance with the indicated provisions of the Medicare/Medicaid participation requirements:

- (a) Pharmaceutical services, Title 42 of the Code of Federal Regulations (hereinafter "CFR") § 482.25;
- (b) Radiological services, 42 CFR § 482.26;
- (c) Laboratory services, 42 CFR § 482.27;
- (d) Infection control services , 42 CFR § 482.42;
- (e) Surgical services, 42 CFR § 482.51;
- (f) Anesthesia services, 42 CFR § 482.52;
- (g) Outpatient services, 42 CFR § 482.54;
- (h) Emergency services, 42 CFR § 482.55; and
- (i) Rehabilitation services, 42 CFR § 482.56.

2033 CARE AND TREATMENT AREAS

2033.1 The hospital shall not share the following care and treatment areas among detached structures or with other facilities operated by another licensee:

- (a) Staff Areas: Facilities that provide nursing services shall provide the following support areas for each distinct group of care and treatment patient rooms.
 - (1) Control Point: The hospital shall have an area or areas for charting, and patient records, and call and alarm annunciation systems.
 - (2) Medication Station: The hospital shall have a medication station for storage and distribution of drugs and routine medications. Distribution may be done from a medicine preparation room or unit, from a self-contained medicine-dispensing unit, or by another system. If used, a medicine

preparation room or unit shall be under visual control of nursing staff and shall contain a work counter, sink, refrigerator, and double-locked storage for controlled substances.

- (3) Utility Areas: The hospital shall have a work area where clean materials are assembled. The work area shall contain a work counter, a hand-washing fixture, and storage facilities for clean and sterile supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile supply materials, the work counter and hand-washing fixtures may be omitted. A hospital shall have separate work rooms or holding rooms for soiled materials. A work room for soiled materials shall contain a fixture for disposing wastes and a hand-washing sink.
- (b) Equipment and Supplies: The hospital shall have services and space to distribute, maintain, clean and sanitize durable medical instruments, equipment, and supplies required for the care and treatment performed in the hospital.
 - (1) Durable Medical: The hospital shall ensure that the durable medical equipment is tested and calibrated in accordance with the manufacturer's recommendations.
 - (2) Sterile Processing: The hospital shall have areas for decontamination and sterilizing of durable medical instruments and equipment.
 - (A) The hospital shall provide separate central sterile processing and waste processing areas.
 - (B) In new construction and where provided, central processing areas shall have separate soiled (sorting and decontamination) and clean (sterilizing and processing) rooms. The hospital shall have hand-washing sinks in both clean and soiled rooms.
 - (C) Equipment Storage: The hospital shall have space to store equipment, stretchers, wheelchairs, supplies, and linen out of the path of normal traffic.
 - (c) Surgery: A hospital providing surgical services shall have at least one operating or procedure room and the following support areas. In new construction and hospitals with more

than two operating rooms, the following support areas and central processing areas shall be located in restricted access areas:

- (1) Preoperative Patient Area: Preoperative patient area(s) shall have sufficient space and equipment to accommodate both ambulatory and non-ambulatory patients. These areas shall be under the direct visual control of the nursing staff.
 - (2) Recovery Area: Recovery area(s) shall contain a medication station, hand-washing sink, charting area, provisions for bedpan cleaning; and equipment and supply storage space.
 - (3) Dressing Area: A hospital providing outpatient surgery shall have patient dressing and toilet rooms separate from staff gowning areas.
 - (4) Housekeeping Room: The hospital shall have soiled utility and housekeeping areas exclusively for the surgical suite.
- (d) Emergency Care: A hospital providing emergency services shall have at least one procedure or treatment room for emergency services. To support the provision of emergency care, the hospital shall have the following:
- (1) Entrance: A well marked, illuminated covered entrance at grade level for emergency vehicle and pedestrian access;
 - (2) Waiting Area: Patient and visitor waiting area(s) that are in direct observation of the reception, triage, or control station, with access to a public phone and drinking fountain;
 - (3) Storage: Storage areas for general medical/surgical emergency supplies, medications and equipment under staff control and out of the path of normal traffic; and
 - (4) Toilet Room: A patient toilet room with hand-washing sink convenient to the procedure or treatment room(s).

- (e) Rehabilitation: A hospital providing rehabilitation services in a distinct unit shall have at least one treatment room or cubicle, an area for specialized treatment and care, hand-washing sink(s), storage for equipment and supplies, call system, medication storage and distribution, and areas to allow for patient toileting, dressing, and consultation.
- (f) Obstetrics: A hospital providing obstetric services in a distinct unit shall have at least one patient room, nursery with work area, space and equipment to allow for care and treatment of both mother and infant, hand-washing sink, storage for equipment and supplies, call and alarm annunciation systems, medication storage and distribution, and convenient accommodations for patient toileting, dressing, and consultation.
- (g) Psychiatric or Mental Health: A hospital providing psychiatric or mental health services in a distinct unit shall provide space and equipment that allows for patient and staff safety. The hospital shall provide at least one observation room, separate quiet and noisy activity areas, dining areas, private and group areas for specialized treatment and care, a hand-washing sink, storage for equipment and supplies, security systems, and an area for medication storage and distribution. Patient toileting, dressing, holding, and consultation rooms shall have durable finishes. In rooms where care and treatment is provided to patients exhibiting violent, aggressive or suicidal behavior, the rooms shall have:
 - (1) Tamper-resistant air distribution devices, lighting fixtures, sprinkler heads, and safety devices;
 - (2) Ventilation, exhaust, heating and cooling components that are inaccessible to patients;
 - (3) Bedroom, toilet, and bathing room doors that are not lockable or capable of being obstructed from within; and
 - (4) Electrical outlets protected by ground fault interrupting devices.
- (h) In-patient Hospice Care: A hospital providing in-patient hospice services in a distinct unit shall have private patient bedrooms, over-night and dining accommodations for

family members, private family visiting areas, areas that allow for toileting, bathing, dressing and hand-washing, storage for equipment and supplies, call system, medication storage and distribution.

- (1) Alzheimer's, Dementia, and Related Conditions: A hospital providing in-patient services for Alzheimer's, dementia, and related conditions in a distinct unit shall have personalized patient bedrooms, activity areas, separate dining areas, features that support patient orientation to their surroundings, areas for specialized treatment and care, hand-washing sinks, secured storage for equipment and supplies, call and security systems, and an area for medication storage and distribution.
- (i) Outpatient Areas: Areas for the care and treatment of patients not residing in the hospital shall comply with the following:
 - (1) Areas shall not interfere with inpatients being served;
 - (2) Furniture and equipment shall meet care and treatment needs of outpatients;
 - (3) Toilets, which are easily accessible from all program areas shall be provided; and
 - (4) Sufficient inside and outside space to accommodate the full range of program activities and services shall be provided.

2034 CONSTRUCTION STANDARDS

2034.1 All hospitals shall be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The standards for the facilities are set forth below.

2034.2 New construction shall comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:

- (a) *The BOCA (Building Officials and Code Administrators) National Building Code;*
- (b) *Life Safety Code (National Fire Protection Association 101);*

- (c) *Health Care Facilities (National Fire Protection Association 99);*
- (d) *Guidelines for Design and construction of Hospitals and Health Care Facilities;*
- (e) *National Electrical Code; and*
- (f) *Uniform Federal Accessibility Standards.*

2035 ENVIRONMENT

- 2035.1 All facilities shall comply with the following applicable codes and standards to provide a safe environment:
- (a) *Life Safety Code (National Fire Protection Association 101); and*
 - (b) *The Food Code, Title 25 of the District of Columbia Municipal Regulations*
- 2035.2 Existing and new facilities shall comply with the physical plant standards contained in § 2031 of this chapter. The hospital shall maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose, or location.
- 2035.3 Interpretations: All dimension, sizes, and quantities; noted herein will be determined by rounding fractions to the nearest whole number.
- 2035.4 Floor area is the space with ceilings at least seven feet in height and does not include areas such as enclosed storage, toilets, and bathing rooms, corridors and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width will not be included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling shall be at least seven feet in height with areas less than five feet in height not included in the required floor area.
- 2035.5 Dining Areas: If provided, dining areas for patients shall have an outside wall with windows for natural light and ventilation. In addition:
- (a) Dining areas shall be furnished with tables and chairs that accommodate or conform to patient needs.
 - (b) Dining areas shall have a floor area of fifteen (15) square feet per patient in existing facilities and twenty (20) square feet per patient in new construction.

(c) Dining areas shall allow for group dining at the same time in either separate dining areas or a single dining area, or dining in two (2) shifts, or dining during open dining hours.

(d) Dining areas shall not be used for sleeping, offices or corridors.

2035.6 Activity Areas: If provided, activity areas shall have space for patient socialization and leisure time activities. In addition:

(a) Activity areas shall have furnishings to accommodate group and individual activities.

(b) Activity areas shall have a floor area of at least fifteen (15) square feet per patient residing in bedrooms and may be combined with dining areas.

(c) Activity areas shall not be used for sleeping, offices, or as a corridor.

(d) The hospital shall make activity areas available to all patients.

2035.7 Bathing Rooms: A hospital shall provide a bathing room consisting of a tub and/or shower adjacent to each bedroom or provide a central bathing room on each floor with patient rooms. Tubs and showers regardless of location shall be equipped with hand grips or other assistive devices as needed or desired by the bathing patient.

(a) In new construction a central bathing room shall open off the corridor and contain a toilet and sink or have an adjoining toilet room, and not open directly in food preparation or dining area.

(b) Bathing Fixtures: Existing and new facilities shall have at least one bathing fixture per twenty (20) licensed beds. New construction shall have at least one bathing fixture per twelve (12) licensed beds.

2035.8 Toilet Rooms: The hospital shall provide toilet rooms with hand-washing sinks for patient use.

(a) Existing facilities shall have a toilet and sink adjoining each bedroom or shared toilet rooms may provide one fixture per four licensed beds.

(b) New construction and new facilities shall have a toilet and sink fixture provided adjoining each patient room.

- 2035.9 Patient Rooms: The hospital shall provide patient rooms which allow for sleeping, afford privacy, provide access to furniture and belongings, and accommodate inpatient care and treatment.
- 2035.10 Patient Rooms:
- (a) Shall not be located in any garage, storage area, shed or similar detached buildings;
 - (b) Shall not be accessed through a bathroom, food preparation area, laundry or another bedroom;
 - (c) Shall be located on an outside wall with a window with a minimum glass size of 8 square feet per patient. The window shall provide an unobstructed view of at least ten (10) feet;
 - (d) Shall contain at least twenty-five (25) cubic feet of storage volume per patient in dressers, closets or wardrobes; and
 - (e) If they have multiple beds, shall allow for an accessible arrangement of furniture, which provides a minimum of three (3) feet between beds.
- 2035.11 Existing or New Facility: Patient rooms in existing and new facilities shall have at least the following floor areas:
- (a) Floor areas for single patient rooms shall be one hundred (100) square feet.
 - (b) Floor areas for multiple bed patient rooms shall be eighty (80) square feet per bed with maximum of four (4) beds.
- 2035.12 New Construction: Patient rooms in new construction shall have at least the following floor areas.
- (a) Floor areas for single patient rooms shall be one hundred and twenty (120) square feet.
 - (b) Floor areas for multiple bed patient rooms shall be one hundred (100) square feet per bed with a maximum of two (2) beds.
- 2035.13 Isolation Rooms: The number and type of isolation rooms in a hospital shall be determined by the hospital and based upon an infection control risk assessment. In addition:

- (a) Facilities shall make provisions for isolating patients with infectious diseases.
- (b) A hospital shall have a minimum of one isolation room with an adjoining toilet room.
- (c) In new construction, facilities shall equip isolation rooms with hand-washing and gown changing facilities at the entrance of the room.

2035.14 Observation Areas: If the hospital provides medical observation, extended recovery or behavior intervention methods, the hospital shall provide one or more appropriately equipped rooms for patients needing close supervision. Each room shall:

- (a) Have appropriate temperature control, ventilation and lighting;
- (b) Be void of unsafe wall or ceiling fixtures and sharp edges;
- (c) Have a way to observe the patient, such as an observation window or if necessary, flat wall mirrors so that all areas of the room are observable by staff from outside of the room;
- (d) Have a way to assure that the door cannot be held closed by the patient in the room which could deny staff immediate access to the room; and
- (e) Be equipped to minimize the potential of the patient's escape, injury, suicide or hiding of restricted substances.

2035.15 Critical Care Rooms: If monitored complex nursing care is provided, the hospital shall provide one or more rooms for patients needing the care. Each room shall be appropriately located and equipped to promote staff observation of patients. Rooms with a single occupant shall have a minimum floor area of no less than one hundred and thirty (130) square feet. Multiple bed locations shall contain at least one hundred and ten (110) square feet per bed with a minimum of four (4) feet between beds. The room shall include provision for life support, medical gas, sleeping, and convenient bathing and toileting facilities.

2035.16 Bassinets: Each bassinet shall have a minimum floor area of forty (40) square feet with at least three (3) feet between bassinets.

2035.17 Cubicles: Patient care and treatment cubicles shall have a minimum floor area of sixty (60) square feet with at least three (3) feet between bedsides and adjacent side walls.

- 2035.18 Examination Rooms: Each examination room shall have a minimum floor area of eighty (80) square feet and a minimum of three (3) feet clear dimension around three (3) sides of the examination table or chair.
- 2035.19 Treatment Rooms: Treatment room for procedures performed under topical, local, or regional anesthesia without pre-operative sedation shall have a minimum floor area of one hundred and twenty (120) square feet and a minimum of ten (10) feet clear dimension.
- 2035.20 Procedure Rooms: Procedure rooms for invasive and minor surgical procedures performed in conjunction with oral, parenteral, or intravenous sedation or under analgesic or dissociative drugs shall have a minimum floor area of two hundred (200) square feet and a minimum of fourteen (14) feet clear dimension.
- 2035.21 Operating Rooms: Operating rooms for major surgical procedures that require general or regional block anesthesia and support of vital bodily functions shall have a minimum floor area of three hundred (300) square feet and a minimum of sixteen (16) feet clear dimension.
- 2035.22 Corridors: The hospital corridors shall be wide enough to allow passage and be equipped as needed by the patient with safety and assistive devices to minimize injury. All stairways and ramps shall have handrails.
- 2035.23 Doors: The hospital doors shall be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize patient injury.
- 2035.24 All patient room, toilet, and bathing room doors shall provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.
- (a) In new construction all toilet and bathing rooms used by patients with less than fifty (50) square feet of clear floor area shall not have doors that solely swing inward.
 - (b) Doors may prevent escape and create seclusion where therapeutically required, such as emergency protective custody, detoxification and psychiatric locations.
- 2035.25 Outdoor Areas: Any outdoor area for patient usage provided by the hospital shall be equipped and situated to allow for patient safety and abilities.
- 2035.26 Hand-washing Sinks: The hospital shall provide a hand-washing sink equipped with towels and a soap dispenser in all examination, treatment, isolation and procedure rooms and which shall also be available for every

four care and treatment cubicle locations. Two scrub sinks shall be available near the entrance of each operating room.

- 2035.27 Privacy: In multiple bed patient rooms, visual privacy, and window curtains shall be provided for each patient. In new facilities and new construction the curtain layout shall totally surround each care and treatment location which will not restrict access to the entrance to the room, lavatory, toilet, or enclosed storage facilities.
- 2035.28 Finishes: A hospital shall provide the following special room finishes:
- (a) Washable room finishes should be provided in procedure rooms, existing isolation rooms, sterile processing rooms, workroom, laundry, and food-preparation areas shall have smooth, non-adsorptive, surfaces which are not physically affected by routine housekeeping cleaning solutions and methods. Acoustic lay-in ceilings, if used, shall be non-perforated.
 - (b) Scrubbable room finishes provided in operating rooms and new isolation rooms shall have smooth, non-adsorptive, non-perforated surfaces that are not physically affected by harsh germicidal cleaning solutions and methods.

2036 BUILDING SYSTEMS

- 2036.1 Hospitals shall have building systems that are designed, installed and operated in such a manner as to provide for the safety, comfort, and well being of the patient.
- 2036.2 Water and Sewer Systems: The hospital shall have and maintain an accessible, adequate, safe and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the hospital shall be connected to it and its supply used exclusively.
- 2036.3 The collection, treatment, storage, and distribution potable water system of a hospital shall be constructed, maintained, and operated in accordance with all provisions of the Safe Drinking Water Act, approved December 16, 1974 (88 Stat. 1660; 42 U.S.C.S. §§ 300f et seq.).
- 2036.4 The water distribution system shall be protected with anti-siphon devices, and air-gaps to prevent potable water system and equipment contamination.

- 2036.5 Continuously circulated filtered and treated water systems shall be provided as required for the care and treatment equipment used in the hospital.
- 2036.6 The hospital shall maintain a sanitary and functioning sewage system.
- 2036.7 Hot Water System: The hot water system shall have the capacity to provide continuous hot water at temperatures as required by these regulations.
- 2036.8 Heating and Cooling Systems: The hospital shall provide a heating and air conditioning system for the comfort of the patient and capable of maintaining the temperature in patient care and treatment areas as follows:
- 2036.9 In existing and new facilities the systems shall be capable of producing a temperature of at least seventy degrees Fahrenheit (70°F) during heating conditions and a temperature that does not exceed eighty-five degrees Fahrenheit (85°F) during cooling conditions.
- 2036.10 In new construction the systems shall be capable of producing a temperature of at least seventy-five degrees Fahrenheit (75°F) during heating conditions and a temperature that does not exceed eighty degrees Fahrenheit (80°F) during cooling conditions.
- 2036.11 In new construction and new facilities, central air distribution and return systems shall have the following percent dust spot rated filters:
- (a) General areas: thirty (30) +%; and
 - (b) Care, treatment, and treatment processing areas: ninety (90) +%.
- 2036.12 Surgical areas shall have heating and cooling systems that are capable of producing room temperatures at a range between sixty-eight (68°F) and seventy-three degrees Fahrenheit (73°F) and humidity at a range between thirty (30) and sixty percent (60%) relative humidity.
- 2036.13 Airflow shall move from clean to soiled locations. In new construction, air movement shall be designed to reduce the potential of contamination of clean areas.
- 2036.14 Floors in operating rooms, procedure rooms and other locations subject to wet cleaning methods or body fluids shall not have openings to the heating and cooling system.

- 2036.15 Ventilation System: All hospitals shall provide exhaust and clean air to prevent the concentrations of contaminants which impair health or cause discomfort to patients and employees.
- (a) Existing facilities shall have adequate ventilation.
 - (b) New construction and new facilities shall provide a mechanical exhaust ventilation system for windowless toilets, baths, laundry rooms, housekeeping rooms, kitchens and similar rooms at ten air changes per hour.
 - (c) New construction shall provide mechanical ventilation system(s) capable of providing air changes per hour (hereafter "ACH") as follows:
 - (A) Care and treatment areas: five (5) ACH;
 - (B) Procedure and airborne isolation areas: fifteen (15) ACH; and
 - (C) Operating rooms: twenty (20) ACH.
 - (d) Hospitals shall provide an emergency backup ventilation system for all patient rooms without operable windows.
- 2036.16 Electrical System: The hospital shall have an electrical system that has sufficient capacity to maintain the care and treatment services that are provided and that properly grounds care and treatment areas.
- (a) New construction and new facilities shall have ground fault circuit interrupters protected outlets in wet areas and within six (6) feet of sinks.
 - (b) All facilities shall provide the minimum average illumination levels as follows:
 - (1) General purpose areas: five (5) foot candles;
 - (2) General corridors: ten (10) foot candles;
 - (3) Personal care and dining areas: twenty (20) foot candles;
 - (4) Reading and activity areas: thirty (30) foot candles;
 - (5) Food preparation areas: forty (40) foot candles;

- (6) Hazardous work surfaces: fifty (50) foot candles;
- (7) Care and treatment locations: seventy (70) foot candles;
- (8) Examination task lighting: one hundred (100) foot candles;
- (9) Procedure task lighting: two hundred (200) foot candles;
- (10) Surgery task lighting: one thousand (1000) foot candles;
and
- (11) Reduced night lighting in patient rooms and corridors.

2036.17

Essential Power System: Facilities shall have an emergency power generator for all care and treatment locations which involve general anesthetics or electrical life support equipment, and in emergency procedure and treatment rooms.

- (a) Existing and new facilities shall maintain emergency power for essential care and treatment equipment and lighting, medical gas systems, and nurse call systems.
- (b) New construction shall maintain emergency power for essential care and treatment equipment and lighting, medical gas systems, ventilation and heating systems, and nurse call systems.
- (c) Facilities with electrical life support equipment shall maintain essential power systems with an on-site fuel source. The minimum fuel source capacity shall allow for non-interrupted system operation.

2036.18

Call Systems: Call systems shall be operable from patient beds (except at psychiatric or mental hospital beds), procedure and operating rooms, and recovery bed and toilet locations. The system shall transmit a receivable (visual, audible, tactile, or other) signal to on-duty staff which readily notifies and directs the staff to the location where the call was activated. In addition:

- (a) In new construction the call system shall have a dedicated emergency call device which allows activation by a patient from treatment rooms and cubicles, and toilet and bathing fixtures.
- (b) In locations where patients are unable to activate the call, a dedicated staff assist or code call device shall promptly summon other staff for assistance.

- 2036.19 Medical Gas System: The hospital shall safely provide medical gas and vacuum by means of portable equipment or building systems as required by patient receiving care and treatment. In addition:
- (a) The installation, testing, and certification of nonflammable medical gas, clinical vacuum, and air systems shall comply with the requirements of the *Life Safety Code (National Fire Protection Association 101)*.
 - (b) The hospital shall identify portable and system components, and periodically test and approve all medical gas piping, alarms, valves, and equipment for patient care and treatment. The hospital shall document such approvals for review and reference.

2037 HOUSEKEEPING AND MAINTENANCE

2037.1 Each hospital shall provide a safe, clean and comfortable environment for patients.

2037.2 Housekeeping and Maintenance: The hospital shall provide the necessary housekeeping and maintenance to protect the health and safety of patients. In addition:

- (a) The hospital's buildings and grounds shall be kept clean, safe and in good repair.
- (b) All garbage and rubbish shall be disposed of in such a manner as to prevent the attraction of rodents, flies and all other insects and vermin. Garbage shall be disposed of in such a manner as to minimize the transmission of infectious diseases and minimize odor.
- (c) The hospital shall provide and maintain adequate lighting, environmental temperatures and sound levels in all areas that are conducive to the care and treatment provided.
- (d) The hospital shall maintain and equip the premises to prevent the entrance, harborage or breeding of rodents, flies and all other insects and vermin.

2037.3 Equipment, Fixtures and Furnishings: The hospital shall provide and maintain all equipment, fixtures and furnishings clean, safe and in good repair. In addition:

- (a) Common areas and patient areas shall be furnished with beds, chairs, sofas, tables and storage that is comfortable and reflective of patient needs.

- (b) The hospital shall provide equipment adequate to meet the care and treatment needs of patients.
- (c) The hospital shall establish and implement a process designed for routine and preventative maintenance of equipment and furnishings to ensure that the equipment and furnishings are safe and function to meet the intended use.

2037.4 Linens: The hospital shall provide each patient with an adequate supply of clean bed, bath and other linens necessary for care and treatment. Linens shall be in good repair. In addition:

- (a) The hospital shall establish and implement procedures for the storage and handling of soiled and clean linens.
- (b) When the hospital provides laundry services, water temperatures to laundry equipment shall exceed one hundred and sixty degrees Fahrenheit (160°F) or the laundry may be appropriately sanitized or disinfected by another acceptable method in accordance with manufacturer's instructions.

2037.5 The hospital shall develop and implement policies and procedures to ensure that any facility-owned pet does not negatively affect patients. The policies and procedures shall include:

- (a) An annual examination by a licensed veterinarian;
- (b) Vaccinations as recommended by the licensed veterinarian that include, at a minimum, current vaccination for rabies for dogs, cats and ferrets;
- (c) Provision of pet care necessary to prevent the acquisition and spread of fleas, ticks and other parasites; and
- (d) Responsibility for care and supervision of the pet by facility staff.

2037.6 Environmental Safety: The hospital shall be responsible for maintaining the environment in a manner that minimizes accidents. In addition:

- (a) The hospital shall maintain the environment to protect the health and safety of patients by keeping surfaces smooth and free of sharp edges, mold or dirt; keeping floors free of objects and slippery or uneven surfaces and keeping the environment free of other which may pose a potential risk.

- (b) The hospital shall maintain all doors, stairways, passageways, aisles, or other means of exit in a manner that provides safe and adequate access for care and treatment.
 - (c) The hospital shall provide water for bathing and hand-washing at safe and comfortable temperatures to protect patients from potential for burns or scalds.
- 2037.7 The hospital shall establish and implement policies and procedures to monitor and maintain water temperatures that accommodate patient preferences, but not to exceed the following temperatures:
 - (a) Water temperature at patient hand-washing fixtures shall not exceed one hundred and twenty degrees Fahrenheit (120°F).
 - (b) Water temperatures at patient bathing and therapy fixtures shall not exceed one hundred and ten degrees Fahrenheit (110°F).
- 2037.8 The hospital shall establish and implement policies and procedures to ensure hazardous/poisonous materials are properly handled and stored to prevent accidental ingestion, inhalation, or consumption of the hazardous/poisonous materials by patients.
- 2037.9 The hospital shall restrict access to mechanical equipment which may pose a danger to patients.
- 2037.10 Disaster Preparedness and Management: The hospital shall establish and implement procedures to ensure that patient care and treatment, safety and well-being are maintained during and following instances of natural disasters, disease outbreaks, or other similar situations, including:
 - (a) The hospital shall establish plans to move patients to points of safety or provide other means of protection in case of fire, tornado, or other natural disasters or the threat of ingestion, absorption, or inhalation of hazardous materials;
 - (b) The hospital shall ensure that food, water, medicine, and medical supplies, and other necessary items for care and treatment are available and obtainable from alternate sources;
 - (c) The hospital shall ensure that plans are in place to move and house patients in points of safety when the building or a portion of the building is damaged to the point it is uninhabitable. The damage may be due to fire, tornadoes or other disasters; and
 - (d) The hospital shall ensure that plans are in place to provide for the comfort, safety and well-being of patients in the event of electrical

or gas outage, heating, cooling or sewage systems failure, or loss or contamination of water supply.

2099 DEFINITIONS

2099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Abuse - any knowing, reckless, or intentional act or omission by a provider that causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, injury, death, or financial exploitation of a patient.

Act - 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.*).

Administrator - the person who is responsible for day-to-day operation of the facility to include the Medical Director.

Anesthesiologist - a licensed physician who is certified by the American Board of Anesthesiology or who has training and experience in the field of anesthesiology, substantially equivalent to that required for certification.

Communicable disease - Communicable disease - any disease denominated a communicable disease, including without limitation any illness due to an infectious agent or its toxic product, which is transmitted directly or indirectly to a well person from an infected person, animal, or ectoparasite; or any illness due to an infectious agent or its toxic product which is transmitted through the agency of an intermediate host, vector, or by exposure within the immediate environment. Communicable disease also shall mean any disease occurring as an outbreak of illness or toxic conditions, regardless of etiology in an institution or other identifiable group of people.

Conversion - the act of limiting a license to either a restricted or provisional status.

District or D.C - the District of Columbia.

Dentist - any licensed person who is authorized to practice dentistry in accordance with the District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99.

Department - the District of Columbia Department of Health.

Director - the Director of the Department of Health.

Emergency room - any area in the hospital set up for the reception and treatment of persons in need of emergency medical care.

Hospital - a facility that provides twenty-four 24-hour inpatient care, including diagnostic, therapeutic, elective surgery, and other health-related services, for a variety of

physical or mental conditions, and may in addition provide outpatient services, particularly emergency care.

Hospital, general - a hospital that has the facilities and provides the services that are necessary for the general medical and surgical care of patients, including the provision of emergency care by an Emergency Department.

Hospital, private - a hospital not operated by an agency of the United States of the District of Columbia.

Hospital, special - a hospital that:

- (a) Defines a program of specialized services, such as obstetrics, mental health, orthopedy, long term acute care, rehabilitative services or pediatric services;
- (b) Admits only patients with medical or surgical needs within the defined program; and
- (c) Has the facilities for and provides those specialized services.

Idle space - Hospital area that is not used for patient services or any activity related to patient services and is either (1) inactive, (2) under renovation or (3) inactive in anticipation of renovation..

Infant - a young person between the ages of thirty (30) days and one (1) year.

Infectious disease - a disease caused by an communicable agent.

Internist - a licensed physician who is certified by the American Board of Internal Medicine or who has training and experience in internal medicine substantially equivalent to that required for that certification.

Joint Commission - an independent, not-for-profit organization that evaluates and accredits health-care facilities in the United States.

Laboratory - any area in the hospital set up for chemical, bacteriological, and histopathological examinations.

Medical record - a hospital record of a patient that provides identifying information about the patient and information about his or her medical condition, progress, and treatment.

Near miss - any process variation that did not affect an outcome but for which a recurrence carries a significant chance of a serious adverse outcome

Newborn - any newly delivered infant who is up to twenty-nine days old..

Nurse - a person who is licensed and currently registered to practice nursing in accordance with the District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99.

Nurse, private duty - a licensed professional or practical nurse who is engaged directly by the patient or his or her representative for the purpose of rendering nursing care to that patient.

Nursery - a room in a newborn patient care unit used as a patient room for newborn infants.

Obstetrician - a licensed physician who is certified in obstetrics by the American Board of Obstetrics and Gynecology, or who has training and experience in obstetrics substantially equivalent to that required for that certification.

Oral surgeon - a dentist who is a diplomat of the American Board of Oral Surgery, or a member of the American Society of Oral Surgery, or who has training and experience substantially equivalent to that required to be a diplomat or member.

Patient - a person who has been admitted to a hospital for the diagnosis, treatment, or care of physical or mental conditions.

Patient room - a room set aside for the accommodation, care, and treatment of a patient or patients.

Pediatrician - a licensed physician who is certified by the American Board of Pediatrics, or who has training and experience in pediatrics substantially equivalent to that required for that certification.

Person - any individual, firm, partnership, corporation, company, or association; and including any administrators, guardians, trustees, directors, and agents.

Public Hospital - a hospital owned and operated by the government.

Physician - a person currently licensed pursuant to the Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code Section 3-1201.01 et seq., to practice medicine and surgery, or a person licensed in another jurisdiction whose application for a license or registration is pending in the District.

Provisional License- a license issued to a facility which is not in substantial compliance with all applicable laws and regulations, but which is taking ameliorative action in accordance with a mutually agreed upon timetable to achieve compliance.

Psychiatrist - a licensed physician who is certified in psychiatry by the American Board of Neurology and Psychiatry, or who has substantial training and experience in psychiatry equivalent to that required for that certification.

Qualified Health Professional - a person licensed pursuant to the Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code Section 3-1201.01 et seq., to practice a health occupation in the District, and who is authorized under the terms of that Act to perform the activity referred to in the particular regulation.

Regular license- a license which is issued for one year to a facility which is in compliance with all applicable laws and regulations.

Restricted license- a license which permits operation of a facility but prohibits the facility from accepting new residents and patients or from delivering services that it would otherwise be authorized to deliver, or both.

Sentinel event - an unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof.

Substantial Compliance- meeting the majority of rules without jeopardizing health and safety.

Surgeon - a physician who is certified by the American Board of Surgery or who has training and experience in surgery substantially equivalent to that required for that certification.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 16 of the Choice in Drug Treatment Act of 2000, effective July 18, 2000 (D.C. Law 13-146; D.C. Official Code § 7-3015) and Mayor's Order 2002-73, dated April 3, 2002, hereby gives notice of the adoption of the following amendments to Title 29 of the District of Columbia Municipal Regulations (DCMR) on an emergency basis on May 2, 2008. The Director took final action to adopt the rules on August 4, 2008. A Notice of Emergency and Proposed Rulemaking was published on June 27, 2008, at 55 DCR 7141. No comments were received and no changes have been made since the publication of the emergency and proposed rules. These final rules will be effective on August 30, 2008. The rules amend chapter 23 to establish the requirements for certification of providers under section 4a of Drug Treatment Choice Program.

Pursuant to D.C. Official Code § 7-3015(a), the proposed and emergency rules were submitted to the Council of the District of Columbia for review and approval. The Council approved the rules by Resolution 17-738 on July 15, 2008.

Chapter 23 of Title 29 (Public Welfare) (May 1987) of the DCMR is amended as follows:

Amend the table of contents for Chapter 23 by adding the following after the description for section 2367:

2368 Access to Recovery Certification

A new subsection 2300.14 is added to read as follows:

2300.14 A facility or provider intending to provide services under the Access to Recovery Program (ATR Program) established by § 4a of the Choice in Drug Treatment Act of 2000 shall apply for certification under § 2368. The requirement to apply for ATR Program certification under this subsection shall apply to a facility currently certified under this chapter, or intending to seek certification under this chapter, as a substance abuse treatment provider, if the facility also intends to provide services under the ATR Program.

A new subsection 2304.5 is added to read as follows:

2304.5 A provider certified to provide services solely under § 2368 shall be exempt from any other requirements in this chapter, unless otherwise required under § 2368, and provided that the provider is not also a substance abuse treatment provider.

A new section 2368 is added to read as follows:

2368 Access to Recovery Program

2368.1 A provider intending to provide recovery support services under this section shall submit an application on a form approved by the Director. The certification provided under this section shall be in addition to certification under this chapter for substance abuse treatment services if the provider currently offers or intends to offer substance abuse treatment services. The application shall include the following information:

- (a) Evidence of a valid Certificate of Occupancy and other government certifications necessary for the specific services the provider intends to provide;
- (b) A current organizational chart;
- (c) A list of the specific recovery support services the provider intends to provide for each target population;
- (d) A physical description of the facility where services are to be provided;
- (e) A description of the provider's staffing capacity including:
 - (1) Total number of staff providing recovery support services;
 - (2) Client to staff ratio;
 - (3) Number of program clients the provider can serve;
 - (4) Language fluency of the staff; and
 - (5) Minimum qualifications, experience, and training required of staff;
- (f) A description of the provider's program operations including staffing, location, and days and hours of operation;
- (g) The specific qualifications, licensure, training, experience and certification of the staff providing recovery support services; and
- (h) Documentation of the following:
 - (1) Organization mission statement;
 - (2) Organization directors or governing members;

- (3) Policies and procedures;
- (4) Organization code of ethics;
- (5) Risk management strategy, including liability insurance;
- (6) Consent form for services to be rendered;
- (7) Statement of confidentiality; and
- (8) Financial infrastructure of the organization.

2368.2 The Director shall review each application and inform the applicant of any deficiencies. The applicant shall supply any missing or incomplete information or documentation. The Director shall approve or disapprove a completed application within thirty (30) days of receipt by the Department. Certification under this section shall be for a period of two (2) years and shall be renewable for additional two (2) year periods, subject to the availability of ATR Program funding.

2368.3 The Department and its authorized agents, upon presentation of proper credentials, shall have the authority to enter the premises of a provider during normal operating hours for the purpose of conducting announced or unannounced inspections to ensure compliance with certification standards. An inspection conducted under this subsection shall comply with the requirements of sections 2306, 2307, and 2308 of this chapter.

2368.4 A provider certified under this section shall comply with the records management standards for confidentiality, and maintenance and reporting, and storage and retention under sections 2353, 2354, and 2355 of this chapter.

2368.5 A provider certified under this section shall comply with the fiscal management standards under section 2315 of this chapter.

2368.6 A provider certified under this section shall comply with the facility environment and safety standards under section 2322 of this chapter.

2368.7 If the provider provides transportation services, the provider shall comply with the vehicle environment and safety standards under section 2323 of this chapter.

2368.8 If the provider provides a food service, the provider shall comply with the food and nutrition standards under section 2325 of this chapter.

2368.9 The Department may refuse to issue or renew, or may revoke or suspend a certification under this section for failure to comply with the provisions of

this section, or other applicable District or federal laws. Action to deny, suspend or revoke certification under this section shall be conducted pursuant to the procedures set forth in section 2367 of this chapter.

Section 2399 is amended by adding the following definitions:

Access to Recovery Program or ATR Program—the voucher program for the provision of recovery support services under section 4a of the Choice in Drug Treatment Act of 2000, effective July 18, 2000 (D.C. Law 13-146; D.C. Official Code § 7-3003.01).

Act—the District of Columbia Substance Abuse Treatment and Prevention Act of 1989 (“Act”) effective March 15, 1990 (D.C. Law 8-80; D.C. Official Code § 44-1201 *et seq.*).

Provider—a person, firm, corporation, partnership, or organization that provides recovery support services, substance abuse treatment services, or a combination of substance abuse treatment services and recovery support services.

Recovery support services—services provided through the Access to Recovery Program, which may include care coordination services, spiritual and faith based support services, community based support services, educational support services, parenting classes, family counseling services, child care, transportation, and other services related to, but not including, substance abuse treatment, with the exception of methamphetamine-related treatment services. Methamphetamine-related treatment services provided through the Access to Recovery Program shall be provided solely by providers certified pursuant to section 2300, not including section 2300.14.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF FINAL RULEMAKING**

The Director, DCHR, with the concurrence of the City Administrator, pursuant to Mayor's Order 2007-95, dated April 18, 2007 and Mayor's Order 2008-92, dated June 26, 2008; and in accordance with the provisions of Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*) (2006 Supp.), as amended by section 204 of Title II of the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 4-1501.05) (2007 Supp.) (hereinafter jointly referred to as the Act), hereby gives notice that final rulemaking action was taken to adopt the following rules. The Act establishes criminal background and traffic record checks requirements for District government employees providing direct services to children or youth in District government agencies considered "*covered child or youth services providers.*" These rules amend subsections 414.2 (d) and (e) of Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations, on the subject of *covered agencies*, to delete the language limiting agency coverage pursuant to the Act for the Fire and Emergency Medical Services Department (FEMSD) and Metropolitan Police Department (MPD), to specific organizational units within the FEMSD and MPD. No comments were received and no changes were made under the notice of emergency and proposed rulemaking published in the *D.C. Register* on June 27, 2008 (55 DCR 7145). Final rulemaking action was taken on July 28, 2008.

CHAPTER 4**ORGANIZATION FOR PERSONNEL MANAGEMENT**

Subsections 414.2 (d) and (e) of Section 414 of Chapter 4 of the D.C. Personnel Regulations are amended to read as follows:

- (d) Fire and Emergency Medical Services Department (FEMSD);
- (e) Metropolitan Police Department (MPD);

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF FINAL RULEMAKING**

The Director, Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353, D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006 (Act), effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.), hereby gives notice that final rulemaking action was taken to adopt the following rules. Title I of D.C. Law 13-353, as amended, establishes drug and alcohol testing requirements for District government employees serving children or youth. These rules amend Chapter 39, Testing for the Presence of Controlled Substances and Alcohol, of Title 6 of the District of Columbia Municipal Regulations (DCMR), to implement the provisions of the Act relating to alcohol concentration levels of motor vehicle operators in agencies covered by the provisions of D.C. Law 13-353, and make other amendments to sections 3901 through 3910, and 3999 of the chapter. The amendment pursuant to the Act is contained in section 3905.4 of the chapter. No comments were received and no changes were made under the notice of emergency and proposed rulemaking published in the *D.C. Register* on June 27, 2008 (55 DCR 7147). Final rulemaking action was taken on July 28, 2008.

CHAPTER 39**TESTING FOR THE PRESENCE OF CONTROLLED
SUBSTANCES AND ALCOHOL**

Sections 3901 through 3910, and 3999 of Chapter 39 of the D.C. Personnel Regulations, are amended to read as follows:

**3901 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-
SENSITIVE POSITIONS: GENERAL PROVISIONS**

3901.1 Pursuant to Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 13-353; D.C. Official Code § 1-620.31 *et seq.*) (2006 Repl.), as amended by section 4 (b) of the Anti-Drunk Driving Clarification Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-195; D.C. Official Code § 1-620.33) (2007 Supp.), and as a means of ensuring the health and safety of children and youth, a Mandatory Drug and Alcohol Testing Program for Safety-Sensitive Positions (Program) has been established within the District government. The purpose of the Program is to test appointees (new hires) into and employees in safety-sensitive positions for illegal drug and alcohol use, and including random, reasonable suspicion, and post-accident testing.

- 3901.2 Each personnel authority with safety-sensitive positions shall contract with a professional testing vendor or vendors to conduct testing under the Program. The vendor or vendors shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing, in accordance with the procedures in 49 C.F.R. Part 40, and District government procedures.
- 3901.3 The vendor or vendors selected to conduct the testing shall be certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing.
- 3901.4 District government employees in safety-sensitive positions shall be given written notice that the District government is implementing a drug and alcohol testing program for safety-sensitive positions pursuant to D.C. Official Code § 1-620.31 *et seq.*, at least thirty (30) days in advance of implementation of the Program. No employee shall be tested prior to receiving the thirty-day (30-day) initial notification of the Program.
- 3901.5 The Director, D.C. Department of Human Resources (DCHR), shall develop operating policies and procedures for the Program for agencies subordinate to the Mayor that have safety-sensitive positions.
- 3901.6 The provisions of the Program are specified in sections 3902 through 3910 of this chapter.
- 3901.7 Position vacancy announcements for positions identified and designated as safety-sensitive shall include a statement informing each applicant that:
- (a) The position for which he or she is applying has been identified and designated as a safety-sensitive position subject to mandatory drug and alcohol testing;
 - (b) If tentatively selected for the safety-sensitive position, he or she will be required to submit to testing for illegal drug use prior to appointment, and that appointment to the position will be contingent upon a negative drug test result; and
 - (c) Once hired into a safety-sensitive position, he or she shall be subject to mandatory random drug or alcohol testing.
- 3901.8 The position description for each position designated as safety-sensitive shall include a statement of such designation and a statement indicating that incumbents of the position shall be subject to testing for drug and alcohol use.
- 3901.9 The Director, DCHR, shall publish the list of safety-sensitive positions in agencies under the personnel authority of the Mayor, in the District Personnel Manual (or any

other procedural manual developed). The list shall be updated periodically, as needed.

3902 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: APPLICABILITY

3902.1 Pursuant to D.C. Official Code § 1-620.32 (a) (2006 Repl.), the following appointees and District government employees shall be subject to drug and alcohol testing:

- (a) An appointee (new hire) to a safety-sensitive position with a District government agency;
- (b) A District government employee in safety-sensitive position who has a reasonable suspicion referral; and
- (c) A post-accident District government employee in a safety-sensitive position, as soon as reasonably possible after the accident.

3902.2 The following subordinate agencies shall be covered under the Program, on the basis that each one of these agencies, as a whole or certain components thereof, has safety-sensitive positions:

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;
- (d) Fire and Emergency Medical Services Department;
- (e) Metropolitan Police Department;
- (f) Traffic Safety Administration within the District Department of Transportation;
- (g) Office of the State Superintendent of Education;
- (h) Department of Youth Rehabilitation Services;
- (i) Department of Employment Services;
- (j) Department of Mental Health;
- (k) Child and Family Services Agency;
- (l) Department of Disability Services;

- (m) D.C. Public Schools; and
- (n) Any other subordinate or independent District government agency subject to these regulations, including an agency which, as a result of a permanent or a temporary change to its mission such as may be caused by reorganization.

3903 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: STANDARDS FOR THE IDENTIFICATION OF POSITIONS SUBJECT TO TESTING

3903.1 Upon consulting with the head of a District government agency with safety-sensitive positions, the appropriate personnel authority shall identify and determine which positions in the agency shall be designated safety-sensitive positions subject to mandatory drug and alcohol testing under the Program. In identifying the safety-sensitive positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to at least one (1) of the following duties and responsibilities:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
- (d) Educational activities;
- (e) Individual counseling;
- (f) Group counseling;
- (g) Assessment, case management, and support services;
- (h) Psychiatric and psychological assessment services;
- (i) Developmental, speech, and language evaluation services;
- (j) Diagnostic evaluation and treatment services;
- (k) Childhood development services;
- (l) Medical or clinical services;

- (m) Therapeutic services, including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;
- (o) Mentoring services;
- (p) Youth care services;
- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, or youth problem-solving;
- (t) Youth employment services; or
- (u) Driving a motor vehicle to transport children or youth.

3903.2 The following standards shall be applied in designating a position as safety-sensitive:

- (a) The underlying guiding standard to be applied in identifying safety-sensitive positions shall be one of reasonableness, coupled with the standards outlined in section 3903.2 (b) through (f) of this section, as applicable.
- (b) A determination that a position is a safety-sensitive position shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 3903.1 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.
- (c) Location in a District government agency with safety-sensitive positions does not automatically make a position or its incumbent subject to testing under the Program.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee subject to testing under the Program.
- (e) Administrative, clerical, or technical support positions and staff within the immediate office of the head of a District government agency with safety-sensitive positions, and other components, units, or divisions of the agency that provide non-operational support services shall not be subject to testing under the

Program unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 3903.1 of this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely.

- (f) An employee whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to testing under the Program while in the covered temporary assignment.

3904 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS – NOTIFICATION REQUIREMENTS

3904.1 Pursuant to D.C. Official Code § 1-620.35 (a) (2006 Repl.), the Mayor and other personnel authorities with safety-sensitive positions shall:

- (a) Issue a drug and alcohol testing policy; and
- (b) Notify employees in safety-sensitive positions at least thirty (30) days in advance of implementing the Program.

3904.2 The drug and alcohol testing policy shall inform employees in safety-sensitive positions of all of the following:

- (a) Which employees will be tested;
- (b) Circumstances under which an employee will be tested;
- (c) The methodology to be used for testing; and
- (d) The consequences of a positive test result.

3904.3 Each employee occupying a safety-sensitive position shall sign an acknowledgment that he or she received the employee notification informing him or her of the requirements for alcohol and drug testing under the Program.

3904.4 Upon acknowledging receipt of the written notification, each employee occupying a safety-sensitive position shall be given one (1) opportunity to seek treatment if he or she acknowledges a drug or alcohol problem. An employee who so acknowledges a drug or alcohol problem shall be allowed to undergo and complete a counseling and rehabilitation program, and shall not be subject to administrative action while completing the counseling and rehabilitation program; however, the employing agency shall immediately detail the employee to a non safety-sensitive position while he or she completes the counseling and rehabilitation program.

3905 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: TESTING

- 3905.1 Appointees and District government employees subject to testing under the Program shall be tested for drug and alcohol use as specified in this section and section 3906 of this chapter.
- 3905.2 A final offer of appointment to a covered position shall not be made until after the results of any test conducted are received and it is determined that the test result is negative.
- 3905.3 Pursuant to D.C. Official Code § 1-620.32 (b) (2006 Repl.), District government employees in safety-sensitive positions shall be subject to random testing, unless the employing agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter testing requirements shall apply.
- 3905.4 A District government employee who is required to drive a motor vehicle to transport children or youth in the course of performing his or her official duties shall be deemed to have given his or her consent, subject to the conditions of sections 3901 through 3910 of this chapter, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable cause or a police officer arrests such employee for a violation of the law and has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District of Columbia while the employee's alcohol concentration was 0.08 grams or more per two hundred and ten (210) liters of breath; or while under the influence of an intoxicating liquor or any drug or combination thereof; or while the employee's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.
- 3905.5 An employee who acknowledges a drug or alcohol problem upon receiving the initial thirty-day (30-day) notification, and who completes a counseling and rehabilitation program for illegal drug use or alcohol abuse, shall be tested before being allowed to return to the safety-sensitive position he or she occupied before completion of such a program. After returning to the safety-sensitive position, the employee shall be subject to testing as specified in sections 3905.3 and 3905.4 of this section and section 3908 of this chapter, as applicable.

3906 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: TESTING METHODOLOGY

- 3906.1 Testing for illegal drug use shall be conducted by collecting a urine sample from the individual being tested.
- 3906.2 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."

- 3906.3 The vendor or vendors selected to conduct the testing shall conduct the breathalyzer test for alcohol use; or collect urine specimens on site for drug testing at a location designated by each personnel authority for such purposes.
- 3906.4 In the case of drug testing, the vendor shall split each sample and perform enzyme-multiplied-immunossay technique (EMIT) testing on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor, using the gas chromatography/mass spectrometry (GCMS) methodology.
- 3906.5 The appropriate personnel authority shall notify, in writing, any appointee or employee in a safety-sensitive position found to have a confirmed positive urinalysis test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method.
- 3906.6 Probable cause or reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral, as confirmed by a second supervisor, or a post-accident employee, a supervisor shall escort the employee to the vendor's test site for specimen collection or a breathalyzer.
- 3906.7 In the event that a covered employee may require medical care following an accident, medical care shall not be delayed for the purpose of testing.
- 3906.8 A breathalyzer test shall be deemed positive if the vendor determines that one (1) milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

3907 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: POSITIVE DRUG AND ALCOHOL TESTS

- 3907.1 The following shall be grounds for termination of employment, provided that the notification requirements in section 3904 of this chapter have been met:
- (a) A confirmed positive drug test result;
 - (b) A positive breathalyzer test;
 - (c) Refusal to submit to a drug test or breathalyzer; or
 - (d) In the case of an employee who acknowledged a drug and alcohol problem as specified in section 3904.4 of this chapter, failure to complete the counseling and rehabilitation program, or a confirmed positive drug test result for the test conducted upon completion of the counseling and rehabilitation program pursuant to section 3905.5 of this chapter.

3907.2 The appropriate personnel authority shall decline to make a final offer of employment to a safety-sensitive position to an appointee if he or she:

(a) Refuses to take the required drug test; or

(b) Has a confirmed positive drug test result.

3907.3 A person described in section 3907.2 of this section shall not reapply for appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of his or her refusal to take the required drug test or the date of the confirmed positive test result, as applicable.

3907.4 A District government employee who is terminated for any of the events described in section 3907.1 of this section shall be denied subsequent appointment to a safety-sensitive position with the District government for a period of one (1) year from the date of any of these events.

3908 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: REASONABLE SUSPICION REFERRALS

3908.1 The immediate supervisor or manager of an employee occupying a safety-sensitive position shall make a reasonable suspicion referral for testing of an employee in a safety-sensitive position when there is a reasonable suspicion that the employee is under the influence of illegal drugs or alcohol to the extent that the employee is too impaired to perform his or her duties.

3908.2 Prior to contacting the appropriate personnel authority to make a referral under this section, the supervisor or manager shall:

(a) Have probable cause or reasonable suspicion that the employee is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired;

(b) Gather all information and facts to support this suspicion; and

(c) Receive a second opinion from another supervisor or manager.

3908.3 A reasonable suspicion referral may be based on direct observation of illegal drug use or possession, physical symptoms of being under the influence of illegal drugs, or intoxicated by alcohol, a pattern of erratic behavior, work performance indicators of drug or alcohol abuse, or any other reliable indicators.

3908.4 Testing resulting from a reasonable suspicion referral shall be conducted as specified in sections 3905 and 3906 of this chapter.

3909 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: REQUIRED TRAINING

3909.1 Agencies with safety-sensitive positions shall be responsible for providing training in drug abuse detection and recognition; documentation; intervention; and any other appropriate topics, for supervisors and managers in agencies with covered employees.

3910 MANDATORY DRUG AND ALCOHOL TESTING FOR SAFETY-SENSITIVE POSITIONS: RECORD KEEPING AND CONFIDENTIALITY

3910.1 All matters relating to test results and applicants for employment and covered employees involved shall be confidential. All records relating to alcohol and drug testing shall be kept by the appropriate personnel authority in a place apart from employment applications or employees' official personnel folders.

3910.2 The results of a random test shall not be turned over to any law enforcement agency without the subject's written consent.

3999 DEFINITIONS

3999.1 When used in this chapter, the following terms shall have the meaning ascribed:

Alcohol – for the purposes of sections 3901 through 3910 of this chapter, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol, no matter how it is packaged or in what form the alcohol is stored, utilized or found.

Applicant – for the purposes of sections 3901 through 3910 of this chapter, a person who has filed a resume or written application for District government employment in a safety-sensitive position.

Appointee – for the purposes of sections 3901 through 3910 of this chapter, a person who has been made a tentative offer of appointment with the District government in a safety-sensitive position.

Breathalyzer/Evidential Breath Testing Device (EBT) – for the purposes of sections 3901 through 3910 of this chapter, method for measuring the level of alcohol present in an individual.

Children – for the purposes of sections 3901 through 3910 of this chapter, persons twelve (12) years of age and under.

Days – calendar days, unless otherwise specified.

Drugs – for the purposes of sections 3901 through 3910 of this chapter, illegal drugs for which tests are required under 49 C.F.R. part 40, such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates; but not authorized prescription medications.

Enzyme-Multiplied-Immunoassay Technique (EMIT) – for the purposes of sections 3901 through 3910 of this chapter, initial method that is used to test for drugs in urine samples.

Gas chromatography mass spectrometry (GCMS) methodology – for the purposes of sections 3901 through 3910 of this chapter, the only authorized confirmation-testing method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Personnel authority – a person or entity with the authority to administer all or part of a personnel management program as provided in D.C. Official Code § 1-604.01 *et seq.* (2006 Repl.).

Post-accident employee – for the purposes of sections 3901 through 3910 of this chapter, a District government employee in a safety-sensitive position who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on part of the employee.

Probable cause – for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee’s ability to perform his or her job is impaired.

Random testing – for the purposes of sections 3901 through 3910 of this chapter, drug or alcohol testing conducted on a District government employee in a safety-sensitive position at an unspecified time for purposes of determining whether the employee has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.

Reasonable suspicion – for the purposes of sections 3901 through 3910 of this chapter, a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee’s ability to perform his or her job is impaired.

Reasonable suspicion referral – for the purposes of sections 3901 through 3910 of this chapter, referral of an employee in a safety-sensitive position for testing by the District government for drug or alcohol use.

Safety sensitive position – for the purposes of sections 3901 through 3910 of this chapter, a position with duties and responsibilities that require the incumbent to provide services that affect the health, safety, and welfare of children or youth, including direct care and custody of children or youth, including but not limited to the duties and responsibilities listed in section 3903.1 (a) through (t) of this chapter.

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in section 301 (q) of the CMPA (D.C. Official Code § 1-603.01 (17)) (2007 Supp.).

Youth – for the purposes of sections 3901 through 3910 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.