

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in sections 2(b) and 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (hereinafter "the Act"), effective February 24, 1984, D.C. Law 5-48, D.C. Official Code §§ 44-501(b) and 44-504(a), and in accordance with Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of the adoption of the following operating standards for home care agencies.

These rules set forth the standards under which licensed home care agencies must operate. In accordance with the Act, this rulemaking sets licensing fees, insurance standards and guidelines for the provision of each service offered by the licensee. In addition, the rulemaking prescribes personnel qualifications and required policies, and sets forth patients' rights. Enforcement actions for violation of any provision of this Chapter shall be implemented pursuant to 22 DCMR Chapter 31.

This rulemaking was first drafted in 1992, based on recommendations provided by a task force as required by the Act. The Department of Health has continued to seek input from home care providers as a part of the rulemaking process, and has shared revisions of the rulemaking for comment. Previous versions of these rules were published as proposed on July 27, 2001, at 48 DCR 6857, and on January 24, 2003, at 50 DCR 805. In response to public comments received after those publications, various changes were made. These rules were subsequently published as proposed on November 14, 2003, at 50 DCR 9586. No comments were received following this publication. Following the required period of Council review, the rules were deemed approved by the D.C. Council on February 18, 2004.

Title 22 DCMR is amended by adding the following new Chapter 39:

HOME CARE AGENCIES**3900 GENERAL PROVISIONS**

- 3900.1 These rules are implemented pursuant to and in accordance with the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (hereinafter "the Act"), effective February 24, 1984, D.C. Law 5-48, D.C. Official Code §§ 44-501(b) and 44-504(a).
- 3900.2 Each home care agency serving one or more patients in the District of Columbia shall be licensed, and shall comply with the requirements set forth in this Chapter

and with those set forth in Chapter 31 of Title 22 of the District of Columbia Municipal Regulations (DCMR), which contains provisions on inspections, licensing and enforcement actions pertaining to home care agencies and other facilities authorized under the Act. Each home care agency serving one or more patients in the District of Columbia under the auspices of the Medicare Program or the D.C. Medicaid Program shall also comply with all applicable requirements and conditions of participation of that program.

- 3900.3 Each home care agency serving one or more patients in the District of Columbia and having an office within the District of Columbia on the effective date of this Chapter shall apply for licensure no later than one hundred eighty (180) days after the effective date of this Chapter. Each home care agency serving one or more patients in the District of Columbia but not having an office within the District of Columbia on the effective date of this Chapter shall apply for licensure no later than one (1) year after the effective date of this Chapter.
- 3900.4 A licensed home care agency shall provide at least one of the following services:
- (a) Skilled nursing;
 - (b) Physical therapy;
 - (c) Occupational therapy;
 - (d) Speech language pathology;
 - (e) Intravenous therapy;
 - (f) Medical social services; or
 - (g) Home health aide or personal care aide services.
- 3900.5 Each home care agency serving one or more patients in the District of Columbia shall maintain an operating office within the District of Columbia. This office shall be staffed, at a minimum, eight hours per day, Monday through Friday.
- 3900.6 The operating office located within the District of Columbia shall contain, at a minimum, the patient records for all patients served within the District of Columbia and the agency's policies and procedures developed pursuant to this Chapter. All records and documents required under this Chapter and other applicable laws and regulations which are not maintained within this operating office shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the Department of Health.
- 3900.7 Each home care agency shall post its license in a conspicuous place within the District of Columbia operating office.
- 3900.8 Each home care agency shall comply with these regulations and with all other applicable federal and District laws and rules.

3901 INSURANCE

3901.1 Each home care agency shall maintain the following minimum amounts of insurance coverage:

- (a) Blanket malpractice insurance for all professional employees in the amount of at least one million dollars (\$1,000,000) per incident.
- (b) General liability insurance covering personal property damages, bodily injury, libel and slander in the amount of at least one million dollars (\$1,000,000) per occurrence.
- (c) Product liability insurance, when applicable.

3902 LICENSE FEES

3902.1 License fees for home care agencies shall be based upon an annual census of admissions of patients served in the District of Columbia. The fees shall be as follows:

- (a) Initial Application \$ 600
- (b) 1 - 150 Patients
 - Annual Fee \$ 400
 - Late Fee \$ 100
- (c) 151 - 750 Patients
 - Annual Fee \$ 700
 - Late Fee \$ 100
- (d) 751 - 1250 Patients
 - Annual Fee \$ 1100
 - Late Fee \$ 100
- (e) 1251 or More Patients
 - Annual Fee \$1300
 - Late Fee \$ 100
- (f) Duplicate of License \$ 50
- (g) Certification of Validity of License \$ 50

3902.2 Time periods for the submission of applications and fee payments shall be in accordance with Chapter 31 of Title 22 of the District of Columbia Municipal Regulations.

3903 GOVERNING BODY

3903.1 Each home care agency shall have a governing body that shall be responsible for the operation of the home care agency.

3903.2 The governing body shall do the following:

- (a) Establish and adopt by-laws and policies governing the operation of the home care agency;
- (b) Designate a home care Director who is qualified in accordance with section 3904 of this Chapter; and
- (c) Review and evaluate, on an annual basis, all policies governing the operation of the agency to determine the extent to which services promote patient care that is appropriate, adequate, effective and efficient. This review and evaluation must include the following:
 - (1) The evaluation shall include feedback from a representative sample consisting of either ten percent (10%) of total District of Columbia patients or forty (40) District of Columbia patients, whichever is less, regarding services provided to those patients.
 - (2) The evaluation shall include a review of all complaints made or referred to the agency, including the nature of each complaint and the agency's response thereto.
 - (3) A written report of the results of the evaluation shall be prepared and shall include recommendations for modifications of the agency's overall policies or practices, if appropriate.
 - (4) The evaluation report shall be presented to, and acted upon, by the governing body at least annually. The results of the action taken by the governing body shall be documented, maintained, and available for review by government officials.

3904 DIRECTOR

3904.1 The governing body shall appoint a Director who shall be responsible for managing and directing the agency's operations, serving as liaison between the governing

body and staff, employing qualified personnel, and ensuring that staff members are adequately and appropriately trained.

3904.2 The Director shall be a person who:

- (a) Is a licensed physician;
- (b) Is a licensed registered nurse; or
- (c) Has training and experience in health services administration, including at least one (1) year of supervisory or administrative experience in home health care or related health programs.

3905 POLICIES AND PROCEDURES

3905.1 Each home care agency shall have written operational policies and procedures that address the day-to-day operations of the agency. These policies and procedures shall be approved by the governing body and shall be available for review by appropriate government officials.

3905.2 Written policies and procedures shall be developed for, at a minimum, the following:

- (a) Contractor agreements;
- (b) Personnel;
- (c) Admission and denials of admission;
- (d) Discharges and referrals;
- (e) Records retention and disposal;
- (e) Patient rights and responsibilities;
- (f) Complaint process;
- (g) The provision of each service offered;
- (h) Infection control; and
- (i) Unusual incidents.

3905.3 Written policies and procedures should be readily available for use by staff at all times.

3905.4 Written policies and procedures shall be available to patients, prospective patients, and their designated representatives, upon request.

3906 CONTRACTOR AGREEMENTS

3906.1 If a home care agency offers a service that is provided by a third party or contractor, agreements between the home care agency and the contractor for the provision of home care services shall be in writing and shall include, at a minimum, the following:

- (a) A description of the services to be provided;
- (b) The location where services are to be provided;
- (c) The manner in which services will be controlled, coordinated and evaluated by the primary home care agency;
- (d) The procedure for submitting clinical and progress notes, periodic patient evaluation, scheduling of visits, and other designated reports;
- (e) The procedure for payment for services and payment terms for services furnished;
- (f) The procedures used for managing and monitoring the work of personnel employed on a contractual basis;
- (g) The duration of the agreement, including provisions for renewal, if applicable; and
- (h) Assurance that the contractor will comply with:
 - (1) All applicable agency policies, including the assurance that contract personnel meet the qualifications and fulfill the responsibilities of agency employees as set out in these rules;
 - (2) Insurance and bonding requirements as set out in section 3901 of these regulations; and
 - (3) All applicable federal and District laws and regulations.

3907 PERSONNEL

- 3907.1 Each home care agency shall have written personnel policies that shall be available to each staff member and shall include the following:
- (a) The terms and conditions of employment, including but not limited to wage scales, hours of work, personal and medical leave, insurance, and benefits;
 - (b) Provisions for an annual evaluation of each employee's performance by appropriate supervisors;
 - (c) Provisions pertaining to probationary periods, promotions, disciplinary actions, termination and grievance procedures;
 - (d) A position description for each category of employee; and
 - (e) Provisions for orientation, periodic training or continuing education, and periodic competency evaluation.
- 3907.2 Each home care agency shall maintain accurate personnel records, which shall include the following information:
- (a) Name, address and social security number of each employee;
 - (b) Current professional license or registration number, if any;
 - (c) Resume of education, training certificates, skills checklist, and prior employment, and evidence of attendance at orientation and in-service training, workshops or seminars;
 - (d) Documentation of current CPR certification, if required;
 - (e) Health certification as required by section 3907.6;
 - (f) Verification of previous employment;
 - (g) Documentation of reference checks;
 - (h) Copies of completed annual evaluations;
 - (i) Documentation of any required criminal background check;
 - (j) Documentation of all personnel actions;
 - (k) A position description;

- (l) Results of any competency testing;
 - (m) Documentation of acceptance or declination of the Hepatitis Vaccine; and
 - (n) Documentation of liability insurance, if applicable.
- 3907.3 Each home care agency shall comply with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, D.C. Law 12-238, and subsequent amendments thereto, D.C. Official Code § 44-551 *et seq.*
- 3907.4 Each home care agency shall maintain its personnel records for all personnel serving patients within the District of Columbia in its operating office within the District of Columbia, or shall produce these records for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the Department of Health.
- 3907.5 Each employee shall have a right to review his or her personnel records.
- 3907.6 At the time of initial employment of each employee, the home care agency shall verify that the employee, within the six months immediately preceding the date of hire, has been screened for and is free of communicable disease.
- 3907.7 Each employee shall be screened for communicable disease annually, according to the guidelines issued by the federal Centers for Disease Control, and shall be certified free of communicable disease.
- 3907.8 No employee may provide home care services, and no agency may knowingly permit an employee to provide home care services, if the employee:
- (a) Is under the influence of alcohol, any mind-altering drug or combination thereof; or
 - (b) Has a communicable disease which poses a confirmed health risk to patients.
- 3907.9 Each employee who is required to be licensed, certified or registered to provide services shall be licensed, certified or registered under the laws and rules of the District of Columbia.
- 3907.10 Each home care agency shall document the professional qualifications of each employee or provider to ensure that the applicable licenses, certifications, accreditations or registrations are valid.

3907.11 Each home care agency shall ensure that each employee or contract worker shall present a valid agency identification prior to entering the home of a patient.

3908 ADMISSIONS

3908.1 Each home care agency shall have written policies on admissions, which shall include, at a minimum, the following:

- (a) Admission criteria and procedures;
- (b) A description of the services provided;
- (c) The amount charged for each service;
- (d) Policies governing fees, payments and refunds;
- (e) Advance directives;
- (f) Do Not Resuscitate orders;
- (g) Consent for services; and
- (h) Consent for interagency sharing of information.

3908.2 A written summary of the agency's admissions policies, including all of the items specified at subsection 3908.1, shall be made available to each prospective patient upon request, and shall be given to each patient upon admission.

3908.3 The agency shall evaluate each request for home care services according to the following criteria:

- (a) The ability of the program to provide or coordinate the services that the patient needs;
- (b) The patient's general health and the patient's psychosocial condition or functioning status pertinent to the services being requested, as determined in consultation with the patient's physician;
- (c) The adaptability of the patient's place of residence to accommodate the services being requested; and

- (d) The ability of the patient to participate in his or her own care, or the availability of an individual willing to assume the appropriate level of responsibility when the patient is unable to do so.

- 3908.4 The home care agency shall notify each entity referring a potential patient to the agency, and each individual requesting services from the agency, of the availability or unavailability of service, and the reason(s) therefor, within 48 hours after the referral or request for services.
- 3908.5 A home care agency shall maintain records on each person requesting services whose request is not accepted. The records shall be maintained for at least one year from the date of non-acceptance and shall include the nature of the request for services and the reason for not accepting the patient.
- 3908.6 Each home care agency shall conduct an initial assessment, including a home visit, based on information provided by the prospective patient or the patient's representative and on other pertinent data.

3909 DISCHARGES, TRANSFERS AND REFERRALS

- 3909.1 Each home care agency shall have written policies that describe transfer, discharge, and referral criteria and procedures.
- 3909.2 Each patient shall receive written notice of discharge or referral no less than seven (7) calendar days prior to the action. The seven (7) day written notice shall not be required, and oral notice may be given at any time, if the transfer, referral or discharge is the result of:
- (a) A medical or social emergency;
 - (b) A physician's order to admit the patient to an in-patient facility;
 - (c) A determination by the home care agency that the referral or discharge is necessary to protect the health, safety or welfare of agency staff;
 - (d) A determination, made or concurred in by a physician, that the condition that necessitated the provision of services no longer exists; or
 - (e) The refusal of further services by the patient or the patient's representative.
- 3909.3 Each home care agency shall document activities related to discharge planning for each patient in the patient's record.

3910 RECORDS RETENTION AND DISPOSAL

- 3910.1 Each home care agency shall maintain a clinical record system that shall include the following:
- (a) Written policies that provide for the protection, confidentiality, retention, storage, and maintenance of clinical records; and
 - (b) Written procedures that address the transfer or disposition of clinical records in the event of dissolution of the home care agency.
- 3910.2 If an agency is dissolved and there is no identified new owner, the clinical records shall be stored in a public warehouse within one hundred (100) miles of the District of Columbia or, with the approval of the patient, in the offices of the patient's physician.
- 3910.3 Each home care agency shall inform the Department of Health and each patient in writing, within thirty (30) days of dissolution of the agency, of the location of the clinical records and how each patient may obtain his or her clinical records.
- 3910.4 A home care agency shall maintain the clinical records of a patient for at least five (5) years after the date of discharge of the patient.

3911 CLINICAL RECORDS

- 3911.1 Each home care agency shall establish and maintain a complete, accurate, and permanent clinical record of the services provided to each patient in accordance with this section and accepted professional standards and practices.
- 3911.2 Each clinical record shall include the following information related to the patient:
- (a) Admission data, including name, address, date of application, date of birth, sex, agency case number, next of kin or responsible party, date accepted by the agency to receive services, and source of payment, if applicable;
 - (b) Source of referral, including date of discharge if from a hospital or extended care facility;
 - (c) Initial assessment and on-going evaluation;
 - (d) Plan of care for each service provided;
 - (e) Physician's orders;
 - (f) History of sensitivities and allergies;

- (g) Medication sheet;
- (h) Clinical, progress, and summary notes, and activity records, signed and dated as appropriate by professional and direct care staff;
- (i) Documentation of supervision of home care services;
- (j) Documentation of discharge planning, if appropriate;
- (k) Discharge summary, including the reason for termination of services and the effective date of discharge;
- (l) Documentation of coordination of services, if applicable;
- (m) Type and frequency of diagnostic services;
- (n) Type of medical equipment used by the patient;
- (o) Dates and times of collection of specimens;
- (p) Results of diagnostic services and dates of reporting;
- (q) Communications between the agency and all health care professionals involved in the patient's care;
- (r) Documentation of consent for specialized services; and
- (s) Documentation of training and education given to the patient and the patient's caregivers.

3912 PATIENT RIGHTS AND RESPONSIBILITIES

3912.1 Each home care agency shall develop a written statement of patient rights and responsibilities that shall be given, upon admission, to each patient who receives home care services.

3912.2 Each home care agency shall develop policies to ensure that each patient who receives home care services has the following rights:

- (a) To be treated with courtesy, dignity, and respect;
- (b) To control his or her own household and life style;

- (c) To be informed orally and in writing of the following:
 - (1) Services to be provided by the agency, including any limits on service availability;
 - (2) Whether services are covered by health insurance, Medicaid, Medicare, or any other sources, and the extent of uncovered expenses for which the patient may be liable;
 - (3) The amount charged for each service, and procedures for billing;
 - (4) Prompt notification of acceptance, denial or reduction of services;
 - (5) Complaint and referral procedures;
 - (6) The name, business address, and telephone number of the agency supervising the patient's care; and
 - (7) The telephone number of the Home Health Hotline maintained by the Department of Health;
- (d) To receive treatment, care and services consistent with the agency/patient agreement and with the patient's plan of care;
- (e) To participate in the planning and implementation of his or her home care services;
- (f) To receive services by competent personnel who can communicate with the patient;
- (g) To be informed of his or her condition by the health care provider in accordance with generally accepted professional standards;
- (h) To refuse all or part of any treatment, care, or service, and to be informed of the consequences of refusal;
- (i) To be free from mental and physical abuse, neglect, and exploitation by agency employees or contract personnel;
- (j) To be assured confidential handling of clinical records as provided by law;
- (k) To be educated about and trained in matters related to the services to be provided;

(l) To voice a complaint or other feedback in confidence and without fear of reprisal from the agency or any agency personnel, in writing or orally, including an in-person conference if desired, and to receive a timely response to a complaint as provided in these rules; and

(m) To have access to his or her own clinical records.

3912.3 Each home care agency shall inform all patients that they have the right to make complaints and/or to provide feedback concerning the services rendered by the agency to the Department of Health, in confidence and without fear of reprisal from the agency or any agency personnel, in writing or orally, including an in-person conference if desired.

3912.4 Each home care agency shall develop a statement of patient responsibilities regarding the following:

(a) Treating agency personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing the agency when instructions are not understood or cannot be followed; and

(d) Cooperating in making a safe environment for care within the home.

3912.5 Written policies on patient rights and responsibilities shall be made available to the general public.

3912.6 The home care agency shall take appropriate steps to ensure that all information is conveyed, pursuant to these rules, to any patient who cannot read or who otherwise needs accommodations in an alternative language or communication method. The home care agency shall document in the patient's records the steps taken to ensure that the patient has been provided with all required information.

3913 COMPLAINT PROCESS

3913.1 Each home care agency shall develop and implement policies and procedures for an internal complaint process that shall allow the patient or his or her representative to present a complaint to agency staff, contract personnel, or the home care Director.

3913.2 A written summary of the complaint process shall be disseminated as follows:

- (a) Given to the patient or his or her representative upon acceptance or denial of services; and
- (b) Given to all patients receiving service from a home care agency on the effective date of these rules.

- 3913.3 The telephone number of the Home Health Hotline maintained by the Department of Health shall be posted in the home care agency's operating office in a place where it is visible to all staff and visitors.
- 3913.4 A complaint may be presented orally or in writing.
- 3913.5 The home care agency shall respond to the complaint within fourteen (14) calendar days of its receipt, and shall document the response.
- 3913.6 If the patient indicates that he or she is not satisfied with the response, the agency shall respond in writing within thirty (30) calendar days from the date of the agency's initial response. The response shall include the telephone number and address of all District government agencies with which a complaint may be filed and the telephone number of the Home Health Hotline maintained by the Department of Health.

3914 PATIENT PLAN OF CARE

- 3914.1 Each home care agency shall develop, with the participation of each patient or his or her representative, a written plan of care for that patient.
- 3914.2 The plan of care shall be approved by the patient's physician.
- 3914.3 The plan of care shall include the following:
- (a) Physician orders for skilled services;
 - (b) Advanced practice registered nurse orders, when appropriate and permissible according to applicable law;
 - (c) The goals of the services to be provided, including the expected outcome, based upon the immediate and long-term needs of the patient;
 - (d) A description of the services to be provided, including: the frequency, amount, and expected duration; dietary requirements; medication administration, including dosage; equipment; and supplies;

- (e) Identification of agency personnel who are responsible for the provision of each service, including, if applicable, contract providers by job title or discipline;
- (f) Provisions relating to the reevaluation of services, discharge planning, referral of services and continuation or renewal of services;
- (g) Physical assessment, including all pertinent diagnoses;
- (h) Prognosis, including rehabilitation potential;
- (i) Activities permitted or precluded because of functional limitations;
- (j) Psychosocial needs of the patient;
- (k) Safety measures required to protect the patient from injury;
- (l) Identification of employees in charge of managing emergency situations;
- (m) Emergency protocols; and
- (n) Types and frequency of laboratory tests ordered, if applicable.

3914.4 Each plan of care shall be approved and signed by a physician within thirty (30) days of the start of care; provided, however, that a plan of care for personal care aide services only may be approved and signed by an advanced practice registered nurse. If a plan of care is initiated or revised by a telephone order, the telephone order shall be immediately reduced to writing, and it shall be signed by the physician within thirty (30) days.

3914.5 Each home care agency that provides more than one skilled service shall record, in the plan of care, evidence of coordination of care, and specific information related to the provision of each skilled service as set out in subsequent relevant sections of these regulations.

3915 HOME HEALTH AND PERSONAL CARE AIDE SERVICES

3915.1 A home care agency may offer home health or personal care aide services and shall employ or contract with qualified home health or personal care aides to perform those services.

3915.2 A home health aide or personal care aide shall be qualified by completing seventy-five (75) hours of classroom and supervised practical training, with at least sixteen

- (16) hours devoted to supervised practical training, and by passing a competency evaluation.
- 3915.3 Sixteen (16) hours of classroom training must be completed before an individual receives supervised practical training.
- 3915.4 A certified nurse aide shall be qualified as a home health aide upon satisfactory completion of a supplemental training program in home health care, consisting of at least twelve (12) hours of instruction in the following:
- (a) Infection control in the home;
 - (b) Meal preparation and special diets;
 - (c) Home safety;
 - (d) Duties of a home health aide;
 - (e) Maintenance of a clean, safe, and healthy environment; and
 - (f) Documentation of patient status and care rendered.
- 3915.5 Training may be provided by a community college or by another training program approved by the District of Columbia, by the National Foundation for Hospice and Home care, or by another state.
- 3915.6 After the first year of service, each aide shall be required to obtain at least twelve (12) hours of continuing education or in-service training annually, which shall include information that will help maintain or improve his or her performance. This training shall include a component specifically related to the care of persons with disabilities.
- 3915.7 Each home health or personal care aide shall be supervised by a registered nurse or other health professional for performing tasks specific to that profession. On-site supervision of skilled services shall take place at least once every two (2) weeks. On-site supervision of all other services shall take place at least once every sixty-two (62) calendar days.
- 3915.8 Home health or personal care service activities that are performed by an aide shall be explained to the patient by the registered nurse or other health professional, as authorized by a physician and in accordance with the plan of care.
- 3915.9 Each home care agency shall define the duties of home health aides and personal care aides.

3915.10 Personal care aide duties may include the following:

- (a) Basic personal care including bathing, grooming, and assistance with toileting or bedpan use;
- (b) Changing urinary drainage bags;
- (c) Assisting the patient with transfer, ambulation, and exercise as prescribed;
- (d) Assisting the patient with self-administration of medication;
- (e) Reading and recording temperature, pulse, and respiration;
- (f) Observing, recording, and reporting the patient's physical condition, behavior, or appearance;
- (g) Meal preparation in accordance with dietary guidelines, and assistance with eating;
- (h) Infection control;
- (i) Tasks related to keeping the patient's living area in a condition that promotes the patient's health and comfort;
- (j) Accompanying the patient to medical and medically-related appointments, to the patient's place of employment, and to approved recreational activities;
- (k) Assisting the patient at his or her place of employment; and
- (l) Shopping for items related to promoting the patient's nutritional status and other health needs.

3915.11 Home health aide duties may include the following:

- (a) Basic personal care including bathing, grooming, and assistance with toileting or bedpan use;
- (b) Changing urinary drainage bags;
- (c) Assisting the patient with transfer, ambulation, and exercise as prescribed;
- (d) Assisting the patient with self-administration of medication;

- (e) Reading and recording temperature, pulse, and respiration;
- (f) Observing, recording, and reporting the patient's physical condition, behavior, or appearance;
- (g) Meal preparation in accordance with dietary guidelines, and assistance with eating;
- (h) Infection control;
- (i) Tasks related to keeping the patient's living area in a condition that promotes the patient's health and comfort;
- (j) Simple dressing changes that do not require the skills of a licensed nurse;
- (k) Assisting the patient with activities that are directly supportive of skilled therapy services; and
- (l) Routine care of prosthetic and orthotic devices.

3916 SKILLED SERVICES GENERALLY

3916.1 Each home care agency shall review and evaluate the skilled services provided to each patient at least every sixty-two (62) calendar days. A summary report of the evaluation shall be sent to the patient's physician.

3916.2 Each home care agency shall develop written policies for documenting the coordination of the provision of different services. Written policies shall include, at a minimum, the following:

- (a) Ensuring that the person supervising the provision of each service delivered participates in the planning and development of the plan of care;
- (b) Communicating patient needs to agency personnel and identifying other agencies that can meet patient needs;
- (c) Coordinating services with other agencies actively involved in the patient's care, through written communication and/or interdisciplinary conferences, in accordance with the patient's needs; and
- (d) Utilizing interagency agreements to ensure the coordination of services between agencies.

3916.3 Skilled services shall be provided in accordance with a plan of care, as outlined in section 3914.

3917 SKILLED NURSING SERVICES

3917.1 Skilled nursing services shall be provided by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, and in accordance with the patient's plan of care.

3917.2 Duties of the nurse shall include, at a minimum, the following:

- (a) Initial assessment and evaluation;
- (b) Coordination of care and referrals;
- (c) Ensuring that patient needs are met in accordance with the plan of care;
- (d) Implementing preventive and rehabilitative nursing procedures;
- (e) For registered nurses, supervision of nursing services delivered by licensed practical nurses, including on-site supervision at least once every sixty-two (62) calendar days;
- (f) Supervision of services delivered by home health and personal care aides and household support staff, as appropriate;
- (g) Recording progress notes at least once every thirty (30) calendar days and summary notes at least once every sixty-two (62) calendar days;
- (h) Reporting changes in the patient's condition to the patient's physician;
- (i) Patient instruction, and evaluation of patient instruction; and
- (j) Discharge planning.

3917.3 Except as described further in this subsection, wound care and tube feeding shall be provided only by a registered nurse or by a licensed practical nurse. Simple wound care and gastrostomy tube feeding may be provided by a home health aide or personal care aide, provided that the aide receives adequate training prior to performing the service and provided that the service is monitored continuously, with on-site supervision by a licensed nurse at least every two (2) weeks.

3918 PSYCHIATRIC NURSING SERVICES

3918.1 If psychiatric nursing services are provided, they shall be provided in accordance with the patient's plan of care.

3918.2 Psychiatric nursing services shall be provided by a registered nurse with:

- (a) A master's degree in psychiatric or mental health nursing;
- (b) A Bachelor of Science in Nursing (BSN) and 1 year of related work experience in an active treatment program for adult or geriatric patients in a psychiatric health care setting;
- (c) A diploma or associate degree in nursing and 2 years of related work experience in an active treatment program for adult or geriatric patients in a psychiatric health care setting; or
- (d) American Nurses' Association certification in psychiatric or community health nursing.

3919 MONITORING SERVICES

3919.1 If monitoring services are provided, they shall be provided in accordance with the patient's plan of care.

3919.2 Monitoring services shall be provided by the following persons:

- (a) A registered nurse certified to perform cardiopulmonary resuscitation (CPR) and who has additional training and experience working with patients with disorders requiring fetal monitors, cardiac monitors, apnea monitors, or any other monitoring device or emergency intervention;
- (b) A physician certified to perform cardiopulmonary resuscitation (CPR) and who has additional training or experience working with patients with disorders requiring fetal monitors, cardiac monitors, apnea monitors, or any other monitoring device or emergency intervention;
- (c) A certified emergency medical technician who has additional training or experience working with patients with disorders requiring fetal monitors, cardiac monitors, apnea monitors, or any other monitoring device or emergency intervention; or
- (d) In the case of respiratory monitoring only, a licensed respiratory therapist.

3920 INTRAVENOUS THERAPY SERVICES

- 3920.1 If intravenous therapy services are provided, they shall be provided in accordance with the patient's plan of care and administered by a registered nurse or licensed practical nurse who shall have training or experience in intravenous therapy.
- 3920.2 The intravenous therapy service plan shall include, at a minimum, the following:
- (a) Type, amount, flow rate, duration, and mode of administration of nutritional formula or intravenous solution;
 - (b) Type, dosage, frequency, duration, and mode of administration of medication;
 - (c) Type and frequency of laboratory tests to be monitored;
 - (d) Information on use of an anticoagulant in connection with intermittent intravenous therapy; and
 - (e) Specific laboratory test limits.
- 3920.3 Each clinical record shall include, at a minimum, the following information related to intravenous therapy:
- (a) The intravenous therapy service plan, as ordered by the patient's physician;
 - (b) A copy of the consent form for intravenous therapy executed by the provider of the intravenous therapy product, or a copy of the consent form for intravenous therapy executed by the home care agency, including risks, benefits and alternatives;
 - (c) Documentation of training provided to the patient, patient's caregiver, or other responsible person in intravenous therapy;
 - (d) Information on composition, amount, rate, mode, duration, date, and time of administration of nutrition, medication, and intravenous solution;
 - (e) History of drug allergies and adverse reaction to medication therapy;
 - (f) Date and time of venous access insertion, and type and gauge of needle or catheter used;
 - (g) Information on change of solution, intravenous fluid administration, filter, tubing, and dressings;
 - (h) Observation of the patient and the access site;

- (i) Laboratory monitoring;
- (j) Information on all medication administered, including type, dosage, frequency, duration, route of administration, and toxic or side effects;
- (k) Progress notes at least every thirty (30) calendar days; and
- (l) A summary report at least every sixty-two (62) calendar days.

3920.4 The first dosage of an antibiotic or chemotherapy shall not be administered by a home care agency, unless an anaphylactic kit is immediately available for administration.

3920.5 The home care agency shall have written policies and procedures concerning intravenous therapy that address the following:

- (a) Patient selection criteria;
- (b) Monitoring of patients and emergency care;
- (c) Availability of care twenty-four (24) hours a day and continuity of care;
- (d) Preparation and storage of intravenous solutions, special nutrition formulas, and medications;
- (e) Infection control;
- (f) Disposal of sharps, catheters, tubing and dressings;
- (g) Equipment care and maintenance;
- (h) Administration guidelines, including adverse reaction protocol;
- (i) Obtaining medical supplies;
- (j) Blood transfusions; and
- (k) Adverse reactions.

3921 NUTRITIONAL SUPPORT SERVICES

3921.1 If a home care agency provides nutritional support services, it shall provide and monitor those services in accordance with the patient's plan of care.

- 3921.2 Nutritional support services shall be provided by or under the supervision of a licensed health professional qualified in accordance with HORA.
- 3921.3 Specialized nutritional services provided in accordance with a physician's plan of care for a patient with special needs shall be provided by a qualified dietitian or nutritionist who has a minimum of one (1) year's training or experience in nutrition associated with these services.
- 3921.4 Each patient's clinical record shall include the following information about nutritional support services, in addition to the basic requirements, as appropriate:
- (a) A signed and dated physician's plan of care which includes nutritional needs;
 - (b) Documentation of nutritional counseling and education of the patient to meet normal as well as therapeutic needs;
 - (c) Documentation of clinical monitoring and progress notes; and
 - (d) A summary statement to the physician every sixty-two (62) calendar days.

3922 OCCUPATIONAL THERAPY SERVICES

- 3922.1 If a home care agency provides occupational therapy services, it shall provide those services in accordance with the patient's plan of care.
- 3922.2 Occupational therapy services shall be provided by order of a physician by a licensed occupational therapist.
- 3922.3 Occupational therapy shall be designed to maximize independence, prevent further disability, and maintain health.
- 3922.4 The occupational therapist shall conduct an initial evaluation and shall prepare clinical and progress notes.

3923 PHYSICAL THERAPY SERVICES

- 3923.1 If physical therapy services are provided, they shall be provided in accordance with the patient's plan of care.
- 3923.2 Physical therapy services shall be provided by a licensed physical therapist.
- 3923.3 The licensed physical therapist shall:

- (a) Conduct an initial physical therapy evaluation and assessment of the patient prior to the provision of physical therapy services;
- (b) Monitor and assess the extent to which services meet the therapeutic goals that are established; and
- (c) Monitor and assess the degree to which therapy treats the identified physical dysfunction or the degree to which pain associated with movement is reduced.

3924 RESTRICTIONS ON SERVICE TO PATIENTS REQUIRING SPECIAL CARE

3924.1 A home care agency shall accept a ventilator-dependent patient only if:

- (a) The patient is ventilator stabilized;
- (b) A successful home equipment trial has been conducted; and
- (c) The agency has developed a plan for emergency services notification.

3925 SPEECH LANGUAGE PATHOLOGY SERVICES

3925.1 If speech language pathology services are provided, they shall be delivered in accordance with the patient's plan of care.

3925.2 Speech language pathology services shall be provided by order of a physician by a certified speech language pathologist.

3925.3 Speech language pathology services shall include, at a minimum, the following:

- (a) Screening to identify individuals who require evaluation to determine the presence or absence of a communicative disorder;
- (b) Evaluating and diagnosing speech and language disorders;
- (c) Delivering services relative to the treatment of speech and language disorders in accordance with the plan of care;
- (d) Planning, directing, and conducting rehabilitation programs; and
- (e) Discharge planning.

3926 SOCIAL SERVICES

- 3926.1 If social services are provided, they shall be provided in accordance with the patient's plan of care and in consultation with the patient.
- 3926.2 Social services shall be provided by order of a physician by a licensed independent clinical social worker, a licensed independent social worker, or a licensed graduate social worker, in accordance with HORA.
- 3926.3 Social services shall include:
- (a) Evaluating the social and emotional needs of a patient;
 - (b) Assessing whether supplemental services, such as household support, are adequate for the patient's needs;
 - (c) Delivering services in accordance with the plan of care; and
 - (b) Acting as a consultant to agency staff.

3999 DEFINITIONS

- 3999.1 For the purpose of this Chapter, the following terms shall have the meanings ascribed below:

Activity record - documentation of home health aide and personal care aide services as recorded by home health and personal care aides.

Advanced practice registered nurse - a person licensed or permitted to practice advanced registered nursing under HORA, also referred to as a "nurse practitioner".

Agency - a home care agency as defined in this section.

Caregiver - a person over the age of eighteen (18) years who has assumed responsibility for the care of the patient, voluntarily or by order of a court of competent jurisdiction.

Certified Nurse Aide - a person who performs nursing aide services, and who has obtained certification or credentials from the District of Columbia as being qualified to perform such services, pursuant to Chapter 32 of Title 29 of the District of Columbia Municipal Regulations.

Clinical record - a comprehensive compilation of medical and other data that identifies the patient and justifies and describes the diagnosis and treatment of the patient.

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.

Dietitian - a person licensed or permitted to practice dietetics in the District of Columbia pursuant to HORA.

Governing body - the group, agency, partnership or corporation designated to assume full legal responsibility for the policy determinations, management, operation and financial liability of the home care agency.

Health professional - a person licensed or permitted to practice as a health professional under HORA.

Home Health Aide - a person who performs home health aide services, and who is qualified to perform such services pursuant to Chapter 51 of Title 29 of the District of Columbia Municipal Regulations.

Home care agency - an agency, organization, or distinct part thereof, other than a hospice, that provides, either directly or through a contractual arrangement, a program of health care, habilitative or rehabilitative therapy, personal care services, household support services, chore services, or other supportive services to sick or disabled individuals living at home or in a community residence facility. The term "home care agency" shall not be construed to require the regulation and licensure of non-medical services delivered by or through a religious organization on a small-scale, volunteer basis.

HORA - the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Household support services - services provided to supplement a patient's capabilities in such areas as light housekeeping, home management, meal planning and preparation, shopping, and care of dependent children.

Intravenous therapy - the provision, administration and monitoring of medical and nutritional substances taken by intravenous infusion through a peripheral vein, a direct central line, or a central line through a peripheral vein, with filters, and with or without intravenous pumps or controllers.

Licensed practical nurse - a person licensed or permitted to practice practical nursing under HORA.

Monitoring services - services utilizing mechanical appliances by which certain conditions or phenomena can be observed and recorded, including, but not limited to, diagnostic x-rays, electrocardiographs, apnea monitors, and emergency response systems.

Nutritional services - services prescribed in accordance with a plan of care that assesses and addresses the nutritional needs of a patient.

Nutritionist - a person licensed or permitted to practice nutrition under HORA.

Occupational therapist - a person licensed or permitted to practice occupational therapy under HORA.

Occupational therapy - the evaluation and treatment of individuals whose ability to manage normal daily functions is threatened or impaired by developmental deficits, the aging process, poverty, cultural differences, physical injury or illness, or psychological and social disability, utilizing task-oriented activities to prevent or correct physical or emotional disabilities and to enhance developmental and functional skills.

Office - the primary business location within the District of Columbia of a home care agency licensed in the District of Columbia, that maintains published open business hours, a working staff, and records.

Personal Care Aide - a person who performs personal care aide services, and who is qualified to perform such services pursuant to Chapter 50 of Title 29 of the District of Columbia Municipal Regulations.

Physical therapist - a person licensed or permitted to practice physical therapy under HORA.

Physical therapy services - treatment of human disability, injury, or disease by supervised therapeutic procedures embracing the specific application of physical measures to secure the functional rehabilitation and maintenance of the human body, as well as patient and family education.

Physician - a person licensed to practice medicine under HORA.

Plan of care - a plan of action formulated by one or more health care professionals, based upon the nature of the patient's illness, the treatment prescribed by the physician and the assessment of the patient's needs. The plan shall include the patient's health care needs, how these needs can be met, methods and approaches recommended, and modifications necessary to ensure the best results.

Progress note - a dated, written notation by a member of the health care team that summarizes facts about care and the patient's response during a given period of time.

Psychiatric nursing - skilled nursing services provided in conjunction with the diagnosis, treatment or prevention of mental illness.

Registered nurse - a person licensed or permitted to practice registered nursing under HORA

Respiratory therapist - a person who has completed a two (2) year program in respiratory care accredited by the Joint Review Personnel Committee of Respiratory Therapy Evaluation of the American Medical Association (AMA) and who is licensed to practice respiratory therapy under HORA.

Respiratory therapy - the performance, in collaboration with a licensed physician, of actions responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

Skilled nursing services - nursing services that are required to be delivered by licensed nurses who operate within the scope of practice as outlined in HORA and rules implemented pursuant thereto.

Skilled services - health care services that are required to be delivered by licensed health-care professionals or under the direction of licensed health care professionals.

Social worker - a person licensed or permitted to practice social work under HORA.

Speech language pathologist - a person who:

- (1) Meets the education and experience requirements for a Certificate of Clinical Competence in speech language pathology granted by the American Speech and Hearing Association; or
- (2) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WEST TOWER
WASHINGTON, DC 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO
THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND
PROCEDURE

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,¹ of its final rulemaking action taken on March 5, 2004, in Order No. 13121, approving amendments to Chapter 26 of Title 15 of the District of Columbia Municipal Regulations. The amendments change rules for the enforcement and interpretation of agreements required by the federal Telecommunications Act of 1996 (specifically 47 U.S.C. § 252) and the District Telecommunications Competition Act of 1996 (D.C. Code, 2001 Ed. § 34-2001 *et seq.*).

2. On January 16, 2004, amendments to Chapter 26 of the Commission's Rules were published as a Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.² No comments were filed in response to the NOPR. By Order No. 13121, the Commission approved the amendments proposed in the NOPR without change, making them effective upon publication in the *D.C. Register*. The final version of the rules follows.

**CHAPTER 26 RULES IMPLEMENTING SECTION 252 OF THE
 FEDERAL TELECOMMUNICATIONS ACT OF 1996**

2600 APPLICABILITY

The provisions of this Chapter shall apply to negotiations, mediations, and arbitrations of agreements or amended agreements among telecommunications carriers pursuant to Section 252 of the federal Telecommunications Act of 1996 (47 U.S.C. § 252) and the District Telecommunications Competition Act of 1996 (D.C. Code, 2001 Ed. § 34-2002). The provisions of this Chapter shall also apply to interpretation and enforcement of these agreements.

¹ D. C. Code, 2001 Ed. § 2-505.

² 51 *D.C. Reg.* 795 (January 16, 2004).

2601 NOTICE OF REQUESTS FOR VOLUNTARY NEGOTIATION OF AGREEMENTS PURSUANT TO SECTION 252 OF THE ACT

Any telecommunications carrier requesting voluntary negotiation pursuant to 47 U.S.C. § 252(a)(1) shall notify the Commission, in writing, of its request within one (1) business day of the date that it notifies the local exchange carrier of its request for negotiation, renegotiation, or extension of the negotiation time period.

2602 FILING NOTICES PURSUANT TO SECTIONS 2601

2602.1 The Commission's procedural rules shall not apply to notices submitted under section 2601, except as provided in this Chapter.

2602.2 All notices shall be signed by a duly designated representative of the telecommunications carrier filing the notice.

2602.3 An original and fifteen (15) copies of each notice shall be filed with the Office of the Commission Secretary.

2602.4 Any telecommunications carrier shall serve the notice on any other telecommunications carrier or carriers involved in the negotiation that is the subject of the notice.

2603 FILING NEGOTIATED AGREEMENTS WITH THE COMMISSION

2603.1 Within five (5) business days of the date that any telecommunications carrier executes a binding negotiated agreement pursuant to 47 U.S.C. § 252(a), the parties to the negotiated agreement shall jointly file an original and fifteen (15) copies of the negotiated agreement and any supporting documentation with the Office of the Commission Secretary.

2603.2 All negotiated agreements filed with the Commission pursuant to this section shall include a detailed schedule of itemized charges for interconnection and for each service or network element included in the negotiated agreement.

2604 COMMISSION PROCEEDINGS FOR REVIEW OF NEGOTIATED AGREEMENTS

Within ninety (90) calendar days of the date that a negotiated agreement is filed with the Commission, the Commission shall either approve or reject the negotiated agreement, or any portion thereof, in accordance with the standards set forth in 47 U.S.C. § 252(e)(2). The Commission shall make

written findings as to any deficiencies in the negotiated agreement if the negotiated agreement is rejected.

2605 FILING REQUESTS FOR MEDIATION PURSUANT TO 47 U.S.C. § 252(a)(2)

2605.1 Pursuant to 47 U.S.C. § 252(a)(2), any telecommunications carrier, including the incumbent local exchange carrier, participating in voluntary negotiation pursuant to 47 U.S.C. § 252(a)(1), may, at any point in the negotiation, file a request for the Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

2605.2 A request for mediation shall be in writing and shall include, at a minimum, the following:

- (a) The name, address, and main telephone number of the telecommunications carrier requesting mediation;
- (b) The name, title, business address, telephone number, fax number, and e-mail address (if available) of the person(s) who will be representing the requesting carrier during the mediation process;
- (c) A complete list of all telecommunications carriers that participated in the negotiation that is the subject of the request for mediation;
- (d) A statement of any issues that are unresolved by the mediating parties;
- (e) A statement of any issues that have been resolved by the mediating parties;
- (f) A statement of those issues for which the requesting carrier requests mediation; and
- (g) A statement outlining the positions of each mediating party regarding the unresolved issues, listing any areas of potential compromise.

2605.3 An original and fifteen (15) copies of a request for mediation shall be filed with the Office of the Commission Secretary. A request for mediation shall be served on the telecommunications carrier or carriers that participated in the negotiation that is the subject of the request for mediation.

2605.4 The Commission's procedural rules shall not apply to the requests for mediation, except as provided in this Chapter.

2606 APPOINTMENT OF A MEDIATOR PURSUANT TO 47 U.S.C. § 252(a)(2)

The Commission shall appoint a mediator(s). The mediator may be a Commission staff member and/or any competent, impartial, and disinterested person. The requesting carrier and all participants in the negotiation for which mediation has been requested shall be notified by the Commission Secretary of the appointment of the mediator within five (5) business days of the date on which the request for mediation is filed.

2607 DUTIES OF THE MEDIATOR

2607.1 The mediator functions to assist the parties to move toward a resolution of any differences arising in the course of the negotiation. The mediator may not compel agreement but shall provide assistance to the parties in reaching agreement.

2607.2 The mediator shall have the authority to schedule meetings of the parties; direct the parties to prepare for those meetings; determine the need for written submissions; conduct the dispute resolution process; hold separate caucuses when appropriate; upon request, assist the parties in preparing a written agreement resolving any differences; and terminate the dispute resolution process, if no agreement is reached after such period of time as the mediator deems reasonable.

2607.3 The mediator may take any actions deemed necessary to ensure the confidentiality of the mediation, including but not limited to excluding persons not parties to the mediation from the sessions and requiring that parties sign any confidentiality and/or proprietary agreement that is deemed reasonable by the mediator as a condition of participating in the mediation.

2607.4 Within seven (7) business days of the conclusion of the mediation, the mediator shall submit a report to the Commission that lists each issue submitted by the parties for mediation and states the disposition of each issue.

2608 MEDIATION PROCESS

2608.1 The parties to the mediation shall be the requesting carrier, the responding carrier, and any other telecommunications carrier that has agreed to participate in the mediation at the request of the requesting or responding party.

2608.2 Statements made during the mediation shall be confidential, unless the party making the disclosure waives the confidentiality of the disclosure. Any materials, which the submitting mediating party deems to be confidential and/or proprietary, shall be submitted under seal and shall not be used except in connection with the mediation. All materials submitted under seal shall be made available only to the mediator and to the mediating parties that have signed a confidentiality and/or proprietary agreement. Subsections 150.9 and 150.10 of the Commission's procedural rules shall apply to all documents submitted under seal during mediation.

2608.3 All parties to the mediation shall negotiate in good faith. Refusal to continue to negotiate during mediation may be considered a failure to negotiate in good faith pursuant to 47 U.S.C. § 252(b)(5) and may be considered by the Commission in its deliberations under 47 U.S.C. §§ 251 and 271.

2609 PETITIONS FOR ARBITRATION PURSUANT TO 47 U.S.C. § 252(b)

2609.1 Any telecommunications carrier, including the incumbent local exchange carrier, participating in voluntary negotiation pursuant to 47 U.S.C. § 252(a)(1), may, during the period between the 135th day and the 160th day (inclusive) after the date on which the incumbent local exchange carrier received the telecommunications carrier's request for negotiation, file with the Commission a petition requesting arbitration of any open issues.

2609.2 An original and fifteen (15) copies of the arbitration petition shall be filed with the Office of the Commission Secretary.

2609.3 All arbitration petitions filed with the Commission pursuant to 47 U.S.C. § 252(b)(1) shall be signed by a duly authorized representative of the petitioning carrier and shall include:

- (a) The name, address, and main telephone number of the petitioning carrier;
- (b) The name, title, business address, telephone number, fax number, and e-mail address (if available) of the person(s) who will be representing the petitioning carrier during the arbitration proceeding;
- (c) A complete list of all telecommunications carriers that participated in the negotiation that is the subject of the arbitration petition;
- (d) A statement of any issues that have been resolved by the negotiating parties;

- (e) A statement of any issues that have not been resolved by the negotiating parties;
- (f) A statement outlining the positions of each negotiating party regarding the unresolved issues;
- (g) All relevant documentation that supports the petitioning carrier's position concerning the unresolved issues;
- (h) Any request for an order for the production of information pursuant to 47 U.S.C. § 252(b)(4)(B); and
- (i) A statement as to whether the petitioning carrier requests an evidentiary hearing.

2609.4 The only parties to the arbitration shall be the petitioning carrier, the responding carrier, and any other carrier that participated in the voluntary negotiation that is the subject of the petition.

2609.5 Any petitioning carrier shall serve a copy of the arbitration petition and any supporting documentation on all other parties to the arbitration.

2609.6 The Commission may reject any arbitration petition that is not filed within the time period prescribed by subsection 2609.1. Rejected arbitration petitions shall be returned to the petitioning carrier.

2610 RESPONSES TO ARBITRATION PETITIONS

2610.1 Within three (3) business days of receipt of a timely and complete arbitration petition, the Commission Secretary shall notify, by facsimile, first class mail, or other method as the Commission Secretary deems appropriate, the other party(ies) of the date that the Commission received the arbitration petition and of the right to respond to the arbitration petition.

2610.2 A telecommunications carrier participating in the negotiation that is the subject of the arbitration may file a response to the arbitration petition. An original and fifteen (15) copies of the response shall be filed with the Commission Secretary within twenty-five (25) calendar days of the date that the Commission received the arbitration petition. The response shall be served on all telecommunications carriers that participated in the negotiation that is the subject of the arbitration petition.

- 2610.3 All responses to the arbitration petition shall include, at a minimum:
- (a) The name, address, and main telephone number of the responding carrier;
 - (b) The name, title, business address, telephone number, fax number, and e-mail address (if available) of the person(s) who will be representing the responding carrier during the arbitration proceeding;
 - (c) A statement of any issues that have been resolved by the arbitrating parties, if different from those stated in the arbitration petition;
 - (d) A statement of any issues that are unresolved by the arbitrating parties, if different from those stated in the arbitration petition;
 - (e) A statement outlining the positions of each participant in the negotiation regarding the unresolved issues, if different from those stated in the arbitration petition;
 - (f) All relevant documentation that supports the responding carrier's position concerning the unresolved issues;
 - (g) Any request for an order for the production of information pursuant to 47 U.S.C. § 252(b)(4)(B);
 - (h) A statement as to whether the responding carrier requests an evidentiary hearing; and
 - (i) A certificate of service attesting that a copy of the response and all supporting documentation has been served on all other parties to the arbitration.

2611 APPOINTMENT OF AN ARBITRATOR

2611.1 The Commission shall appoint either an arbitrator or an arbitration panel. The size and composition of the arbitration panel shall be based on the nature of the issues in dispute. If a panel is appointed, the Commission shall designate the chair for the panel. The Commission Secretary shall promptly notify the parties by facsimile, first class mail, or other appropriate communication methods of the appointment of the arbitrator or the arbitration panel.

2611.2 By agreement of the parties, the Commission may appoint the same person(s) who served as mediator(s) to act as arbitrator(s) if no mediated agreement was reached.

2612 POWERS OF THE ARBITRATOR

2612.1 Pursuant to 47 U.S.C. § 252(b)(4)(A), the arbitrator or arbitration panel shall consider only those issues set forth in the arbitration petition and any response thereto.

2612.2 The arbitrator or arbitration panel shall be delegated all powers necessary to conduct a fair, impartial, and expeditious proceeding, including but not limited to the power to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (c) Rule on motions;
- (d) Compel the production of information pursuant to 47 U.S.C. § (b)(4)(B);
- (e) Regulate the course of the proceeding consistent with this section;
- (f) Require conferences and evidentiary hearings, and set the time and place for such conferences and hearings;
- (g) Require the submission of legal memoranda and briefs;
- (h) Call and examine witnesses, including Commission staff;
- (i) Limit the number of witnesses offering testimony;

- (j) Exclude evidence and witnesses whose testimony is irrelevant, immaterial, or unduly repetitious;
- (k) Require written testimony; and
- (l) Prepare the arbitration decision in accordance with section 2617.

2613 ARBITRATION PROCEEDINGS

- 2613.1 If there is any conflict between the Commission's procedural rules and the rules of this Chapter, the rules of this Chapter shall supercede the Commission's procedural rules.
- 2613.2 Section 150 of the Commission's procedural rules shall apply to all arbitration proceedings conducted pursuant to this Chapter.
- 2613.3 *Ex parte* communications with the arbitrator or arbitration panel that do not relate to a matter of procedure are prohibited while the arbitration proceeding is pending. In the event of a prohibited communication, the arbitrator or arbitration panel shall be guided by section 108 of the Commission's procedural rules.
- 2613.4 The arbitrator or arbitration panel shall establish the procedural schedule.
- 2613.5 If the arbitrator or arbitration panel determines that a hearing is necessary, the hearing shall be conducted in a fair and impartial manner, in accordance with the following procedures:
- (a) The arbitrator or chair of the arbitration panel shall provide reasonable notice to the arbitrating parties of the time and place of the hearing;
 - (b) The arbitrator or chair of the arbitration panel shall give each arbitrating party an opportunity, which may be waived, to make an opening statement;
 - (c) The arbitrator or chair of the arbitration panel shall afford each arbitrating party an opportunity to present oral or written testimony and documentary evidence, and shall determine the order of the presentation of the evidence;
 - (d) In ruling on evidentiary questions, the arbitrator or chair of the arbitration panel shall be guided by, but need not strictly adhere to, the Federal Rules of Evidence;

- (e) The arbitrator or chair of the arbitration panel shall require all witnesses to testify under oath or affirmation;
- (f) The arbitrator or chair of the arbitration panel may permit the arbitrating parties to cross-examine witnesses;
- (g) The arbitrator or chair of the arbitration panel may postpone any hearing upon a joint request of the arbitrating parties, *sua sponte*, or for good cause shown in a motion filed by any party to the proceeding at least two (2) business days before the date of any hearing;
- (h) Each arbitrating party shall have the opportunity, which may be waived, to present a closing argument;
- (i) The arbitrator or chair of the arbitration panel may conduct the hearing in the absence of any arbitrating party or representative who, after proper notice, fails to be present or request a postponement;
- (j) The arbitrator or chair of the arbitration panel shall make a stenographic, audio, or video tape recording of the arbitration hearing;
- (k) The evidentiary record will close following closing arguments or the first business day following the deadline set for the receipt of written briefs, or at such time as the arbitrator determines; and
- (l) The arbitrator or chair of the arbitration panel shall take necessary action to avoid delay in the disposition and conduct of the hearing.

2613.6 Notwithstanding any other provision of this Chapter, the arbitrating parties may agree on different arbitration procedures, which may be accepted by the arbitrator or arbitration panel.

2613.7 If no hearing is held, then the evidentiary record shall close on the day following the date set by the arbitrator or arbitration panel as the final date for receipt of submissions from the arbitrating parties, or at some other date that the arbitrator or arbitration panel determines.

2613.8 If the arbitrator or arbitration panel directs an arbitrating party to provide information and that party fails or refuses to respond within the time limit set, the arbitrator or arbitration panel may reach a decision on the issues in the arbitration proceeding based on the best information available, from whatever source derived, as provided in 47 U.S.C. § 252(b)(4)(B).

2613.9 If the act or omission of an arbitrating party impedes the expeditious resolution of the issues, an arbitrator or arbitration panel may make such orders in regard to the act or omission as are just, including, but not limited to, an order limiting a party's claims, defenses and/or evidence; striking pleadings or parts thereof; dismissing the petition; or granting judgment by default. The arbitrator may also determine that the act or omission constitutes a failure to negotiate in good faith pursuant to 47 U.S.C. § 252(b)(5), and shall notify the Commission of that determination. The Commission may consider a determination that a party failed to negotiate in good faith in its deliberations pursuant to 47 U.S.C. § § 251 and 271.

2614 CONSOLIDATION OF PROCEEDINGS

2614.1 In order to reduce administrative burdens on telecommunications carriers and/or the Commission, the Commission may, *sua sponte*, or upon the motion of a party in any arbitration, interpretation, or enforcement proceedings, consolidate arbitration, interpretation, or enforcement proceedings, in whole or in part, pursuant to 47 U.S.C. § 252(g).

2614.2 In a consolidated arbitration proceeding, all petitioning and responding carriers participating in the separate arbitration, interpretation, or enforcement proceedings shall participate as parties in the consolidated proceeding.

2615 PROPOSED FINAL RESOLUTION

2615.1 At the time that the arbitrator or arbitration panel determines, each arbitrating party shall file with the Commission Secretary an original and fifteen (15) copies of its proposed final resolution of each issue identified in the petition and response and the proposed schedule for implementation of those terms and conditions. The proposed final resolution shall meet the requirements of 47 U.S.C. § 251, including the regulations promulgated by the Federal Communications Commission pursuant to that section.

2615.2 Any arbitrating party filing a proposed final resolution shall serve a copy of the resolution on all other arbitrating parties no later than the date on which the petition is filed with the Commission. The proposed final resolution shall be accompanied by a certificate of service.

2616 VOLUNTARY TERMINATION OF ARBITRATION PROCEEDINGS

If after the initiation of an arbitration proceeding, the arbitrating parties reach a negotiated agreement that resolves all of the issues submitted for

arbitration, the arbitrating parties shall file a joint request to dismiss the arbitration petition. The Commission may review and grant this request.

2617 ARBITRATION DECISIONS

2617.1 Within thirty (30) days of the close of the record, the arbitrator or arbitration panel shall issue an arbitration decision. The arbitrator or arbitration panel shall consider all evidence presented by the parties. The arbitration decision shall explain the reasons for the decision on each issue submitted for arbitration and shall establish a deadline for executing an arbitration agreement.

2617.2 The arbitrator or arbitration panel shall use final offer arbitration, except as otherwise provided in this section. The final offer of each arbitrating party shall be the final resolution filed with the Commission pursuant to section 2615.

2617.3 The arbitrator or arbitration panel shall adopt the proposed final resolution of one of the arbitrating parties for each issue submitted for arbitration.

2617.4 If the arbitrator or arbitration panel determines that any final resolution does not satisfy the requirements of 47 U.S.C. § 252(c), the arbitrator or arbitration panel may take any action designed to result in an arbitration agreement that satisfies 47 U.S.C. § 252(c).

2617.5 The arbitrator or chair of the arbitration panel shall write the arbitration decision, which must be signed by at least a majority of the panel. The arbitrator or chair of the arbitration panel shall submit the signed arbitration decision to the Commission Secretary.

2617.6 The Commission Secretary shall serve a copy of the arbitration decision on the arbitrating parties by registered mail or any other appropriate method no later than the first business day following receipt of the arbitration decision from the arbitrator or chair of the arbitration panel.

2618 COMMISSION ACTION ON THE THE ARBITRATION DECISION

The Commission shall review the arbitration decision and issue an order to adopt, reject, or modify the arbitration decision. If any arbitrating party chooses to appeal the arbitration decision, that arbitrating party shall file its appeal with the Commission within ten (10) calendar days after the filing of the arbitration decision. An original and fifteen (15) copies of the appeal must be filed with the Commission Secretary, with a copy served on the arbitrator or arbitration panel and the other arbitrating party(ies) on the same day that the petition is filed with the Commission. The

Commission shall have thirty (30) days to review the appeal. The Commission shall adopt, modify, or reject the arbitration decision by order no later than nine (9) months after the date on which the telecommunications carrier requested negotiation.

2619 ARBITRATION AGREEMENTS

2619.1 The arbitrating parties shall have thirty (30) days from a Commission order adopting an arbitration decision to file the arbitration agreement.

2619.2 If the arbitrating parties are unable to agree on whether a proposed provision conforms to the arbitrated decision, either party may request that the arbitrator or arbitration panel that issued the arbitration decision determine whether a proposed provision conforms to the arbitration decision.

2619.3 An original and fifteen (15) copies of a request to review a proposed provision shall be filed with the Office of the Commission Secretary.

2619.4 The arbitrator or arbitration panel may adopt any proposed provision that conforms to the arbitration decision. Unless the arbitrating parties otherwise agree, the proposed provision adopted by the arbitrator or arbitration panel shall be incorporated into the arbitration agreement.

2619.5 Within five (5) business days of the date that the arbitrating parties agree to execute a binding arbitrated agreement, the parties shall jointly file an original and fifteen (15) copies of the arbitration agreement and any supporting documentation with the Office of the Commission Secretary. The parties shall serve a copy of the arbitration agreement and any supporting documentation on the arbitrator or arbitration panel on the date the arbitration agreement is filed with the Commission.

2619.6 The date that an arbitration agreement is filed with the Commission shall be deemed the date that the arbitration agreement was submitted for approval for the purposes of 47 U.S.C. § 252(e)(4).

**2620 COMMISSION PROCEEDINGS FOR REVIEW OF
ARBITRATION AGREEMENTS**

Within thirty (30) calendar days of the date that an arbitration agreement is submitted to the Commission, the Commission shall either approve or reject the arbitration agreement, or portions thereof, in accordance with the standards of 47 U.S.C. § 252(e)(2). The Commission shall make written findings as to any deficiencies in the arbitration agreement when the agreement is rejected.

2621 PUBLIC INSPECTION OF AGREEMENTS

Pursuant to 47 U.S.C. § 252(h), the Commission shall make a copy of each negotiated, mediated, or arbitrated agreement approved under this Chapter available for public inspection and copying within ten (10) days after Commission approval of the agreement.

2622 PETITIONS FOR INTERPRETATION OR ENFORCEMENT OF AGREEMENTS APPROVED PURSUANT TO 47 U.S.C. § 252(e)

2622.1 Any telecommunications carrier, including the incumbent local exchange carrier, may file with the Commission a petition requesting interpretation or enforcement of an agreement approved pursuant to 47 U.S.C. § 252(e) of the Telecommunications Act, D.C. Code, 2001 Ed. § 34-2002(h), and these rules.

2622.2 An original and fifteen (15) copies of the interpretation or enforcement petition shall be filed with the Office of the Commission Secretary.

2622.3 All interpretation or enforcement petitions filed with the Commission shall be signed by a duly authorized representative of the petitioning carrier and shall include:

(a) The name, address, and main telephone number of the petitioning carrier;

(b) The name, title, business address, telephone number, fax number, and e-mail address (if available) of the person(s) who will be representing the petitioning carrier during the interpretation or enforcement proceeding;

(c) A complete list of all telecommunications carriers that are parties to the approved agreement;

(d) A statement of the disputed issues that give rise to the interpretation or enforcement petition;

(e) A statement outlining the positions of each party to the approved agreement regarding the disputed issues;

(f) All relevant documentation that supports the petitioning carrier's position concerning the disputed issues; and

(g) A statement as to whether the petitioning carrier requests an evidentiary hearing.

2622.4 The only parties to the interpretation or enforcement proceeding shall be the parties to the approved agreement.

2622.5 Any petitioning carrier shall serve a copy of the interpretation or enforcement petition and any supporting documentation on all other parties to the approved agreement.

2623 RESPONSES TO INTERPRETATION OR ENFORCEMENT PETITIONS

2623.1 A party to the approved agreement that is the subject of the interpretation or enforcement proceeding may file a response to the interpretation or enforcement petition. An original and fifteen (15) copies of the response shall be filed with the Commission Secretary within twenty-five (25) calendar days of the date that the Commission received the interpretation or enforcement petition. The response shall be served on all telecommunications carriers that are parties to the approved agreement.

2623.2 All responses to the interpretation or enforcement petition shall include, at a minimum:

(a) The name, address, and main telephone number of the responding carrier;

(b) The name, title, business address, telephone number, fax number, and e-mail address (if available) of the person(s) who will be representing the responding carrier during the interpretation or enforcement proceeding;

(c) A statement of any disputed issues, if different from those stated in the interpretation or enforcement petition;

(d) A statement outlining the positions of each party to the approved agreement regarding the disputed issues, if different from those stated in the interpretation or enforcement petition;

(e) All relevant documentation that supports the responding carrier's position concerning the disputed issues;

(f) A statement as to whether the responding carrier requests an evidentiary hearing; and

(g) A certificate of service attesting that a copy of the response and all supporting documentation has been served on all other parties to the interpretation or enforcement proceeding.

2624 COMMISSION REVIEW OF INTERPRETATION OR ENFORCEMENT PETITIONS

- 2624.1 Upon receipt of the interpretation and enforcement petition and any response, the Commission or its designated agent shall determine the procedural schedule for the interpretation or enforcement proceeding.
- 2624.2 If the Commission determines that a hearing is necessary, then the Commission shall follow the procedures outlined in Section 2613.5. The Commission shall determine whether or not to schedule a hearing within thirty (30) days of the filing of the response to the interpretation or enforcement petition. Any hearing shall be scheduled within thirty (30) days of the date of this determination.
- 2624.3 Notwithstanding any other provision of this Chapter, the parties involved in the interpretation or enforcement proceeding may agree on different interpretation or enforcement procedures, which may be accepted by the Commission.
- 2624.4 If no hearing is held, then the evidentiary record shall close on the day following the date set by the Commission as the final date for receipt of submissions from the parties to the interpretation or enforcement proceeding, or at some other date that the Commission determines.
- 2624.5 If the Commission directs a party to the interpretation or enforcement proceeding to provide information and that party fails or refuses to respond within the time limit set, the Commission may reach a decision on the issues in the interpretation or enforcement proceeding based on the best information available, from whatever source derived.
- 2624.6 If the act or omission of a party to the interpretation or enforcement proceeding impedes the expeditious resolution of the issues, the Commission may make such orders in regard to the act of omission as are just, including, but not limited to, an order limiting a party's claims, defenses, and/or evidence; striking pleadings or parts thereof; dismissing the petition, or granting judgment by default or determine that the act or omission constitutes a failure to negotiate in good faith pursuant to 47 U.S.C. § 252(b)(5). The Commission may consider a determination that a party failed to negotiate in good faith in its deliberations pursuant to 47 U.S.C. § § 251 and 271.
- 2624.7 After review of the documentation presented by the parties to the interpretation or enforcement proceeding and the review of the hearing transcript, if any, the Commission shall issue an order that may include, but is not limited to: interpretations of provisions of the approved agreement; orders of specific performance of any provision in the

approved agreement; or amendment of the approved agreement. If the Commission designates an agent to schedule a hearing or hear testimony, the Commission's agent shall issue its interpretation or enforcement decision within thirty (30) days after the hearing date or the close of the evidentiary record, whichever is later. If the Commission chooses not to designate an agent, then the Commission shall issue an order within thirty (30) days after the hearing date or the close of the evidentiary record, whichever is later.

2624.8 If the Commission designates an agent, the Commission shall review any interpretation or enforcement decision by the Commission's agent and issue an order to adopt, modify, or reject the interpretation or enforcement decision within thirty (30) days of the issuance of the interpretation or enforcement decision. If any party to the interpretation or enforcement proceeding chooses to appeal the interpretation or enforcement decision to the Commission, that party shall file its appeal within ten (10) days after the issuance of the interpretation or enforcement decision. An original and fifteen copies of the appeal shall be filed with the Commission Secretary, with a copy served on the Commission's agent and the other parties to the interpretation or enforcement proceeding on the same day that the appeal is filed with the Commission. The Commission shall have thirty days from the submission of the appeal to review the appeal and issue an order adopting, modifying, or rejecting the interpretation or enforcement decision.

2624.9 If the Commission orders the amendment of the approved agreement, the parties shall submit a new agreement to the Commission for approval within thirty (30) days of the issuance of the Commission order requiring the amendment of the approved agreement.

2625 ASSESSMENT OF COSTS

2625.1 Pursuant to D.C. Code, 2001 Ed. § 34-912(b)(7)(A), the Commission may assess each participating carrier a portion of the actual costs of any mediation, arbitration, interpretation, or enforcement proceeding conducted pursuant to this Chapter. Costs shall be assessed on a nondiscriminatory basis.

2625.2 Pursuant to 47 U.S.C. § 252(h), the Commission may assess each participating party a portion of the costs for proceedings conducted pursuant to sections 2603 and 2604. Costs shall be assessed on a reasonable and non-discriminatory basis.

2626 WAIVER

The Commission may, for good cause, waive any rule under this Chapter unless the rule contains a provision that is expressly required by statute.

2699 DEFINITIONS

The following words and terms, when used in this Chapter, shall have the following definitions unless the context clearly states otherwise:

“Approved agreement” means an agreement approved by the Commission pursuant to Section 252 of the Telecommunications Act of 1996, D.C. Code, 2001 Ed. § 34-2002(h) and Section 2604.

“Arbitrating party” means one of the telecommunications carriers participating in the arbitration proceeding.

“Arbitration agreement” means the agreement or amended agreement reached by the arbitrating parties pursuant to the arbitration decision.

“Arbitration decision” means the signed decision of the arbitrator or the arbitration panel.

“Arbitration petition” means a petition filed by a telecommunications carrier requesting the Commission for arbitration pursuant to 47 U.S.C. § 252(b).

“Commission” means the Public Service Commission of the District of Columbia.

“Commission’s procedural rules” means the Commission’s Rules of Practice and Procedure that are contained in Chapter 1 of Title 15 DCMR.

“Days” means calendar days, unless otherwise specified.

“Enforcement petition” means a petition to enforce an approved agreement.

“Ex parte communication” means an oral or written communication between the arbitrator and a telecommunications carrier’s representative relating to the merits of the proceeding, which is made without providing all other telecommunications carriers participating in the arbitration proceeding the opportunity to participate.

“Incumbent local exchange carrier” means, with respect to an area, the local exchange carrier that provided local exchange service in such an area on the date of enactment of the federal Telecommunications Act of 1996 (P.L. 104-104).

“Interpretation petition” means a petition filed to interpret an approved agreement.

“Interpretation or enforcement decision” means a signed decision of the Commission’s agent in an interpretation or enforcement proceeding.

“Interpretation or enforcement proceeding” means a proceeding in which the Commission interprets or enforces an approved agreement.

“Local exchange carrier” means any person or entity that is engaged in the provision of telephone exchange service or exchange access. The term does not include a person or entity insofar as the person or entity is engaged in the provision of commercial mobile service.

“Mediating party” means a party participating in mediation.

“Negotiated agreement” means an agreement or amended agreement between a telecommunications carrier and an incumbent local exchange carrier pursuant to 47 U.S.C. § 252 arrived at through voluntary negotiation or mediation. A negotiated agreement includes an interconnection agreement that was opted into by telecommunications service providers either in the District of Columbia or another jurisdiction.

“Party” means a person, entity, individual, corporation, partnership, or association.

“Petitioning carrier” means a telecommunications carrier that files a request for arbitration pursuant to 47 U.S.C. § 252(b) or that files a petition for enforcement and interpretation of an approved agreement.

“Requesting carrier” means a telecommunications carrier that files a request for mediation pursuant to 47 U.S.C. § 252(a)(2).

“Responding carrier” means a telecommunications carrier that responds to a request for mediation or an arbitration, enforcement, or interpretation petition.

“Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

“Telecommunications carrier” means any provider of telecommunications services, except that the term does not include aggregators of telecommunications services as defined in 47 U.S.C. § 226.

“Telecommunications service” means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.