

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2851.01 *et seq.* (2001), Section 2 of the Towing Vehicles Rulemaking Authority Continuation Temporary Act of 2002, effective April 2, 2003 (D.C. Law 14-277; D.C. Official Code §47-2850), and Mayor's Order 2003-78, dated June 26, 2003, hereby gives notice of the intent to adopt in not less than thirty (30) calendar days the following amendments to Chapter 4 of Title 16 of the District of Columbia Municipal Regulations (DCMR), Towing Service for Motor Vehicles, which were published as final rules on May 23, 2003 (50 DCR 3935). This proposed rulemaking supercedes the proposed rulemaking published in the *D.C. Register* on July 4, 2003 (50 DCR 5300).

Pursuant to Section 2 of the Towing Vehicles Rulemaking Authority Continuation Temporary Act of 2002, the proposed rulemaking is being transmitted to the Council of the District of Columbia for a 45-day period of review. The proposed rules will become effective in not less than thirty (30) days from the publication of this notice in the *D.C. Register*, or upon approval by the Council by resolution, whichever occurs later, and publication of the final rules in the *D.C. Register*. If the Council does not approve or disapprove the proposed rules, in whole or in part, within the forty-five (45) day period, the proposed rules shall be deemed disapproved.

The following sections of Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), Chapter 4 are amended to read as follows:

402 LICENSES REQUIRED FOR TOWING BUSINESSES AND TOWING SERVICE STORAGE LOTS

- 402.1 No person or entity may own or operate a towing business without having first obtained a Basic Business License and a Basic Business License Endorsement for a Towing Business as required by D.C. Official Code § 47-2851.01 *et seq.* (2001).
- 402.2 No person or entity may own or operate a towing service storage lot without having first obtained a Basic Business License and a Basic Business License Endorsement for a Towing Service Storage Lot as required by D.C. Official Code § 47-2851.01 *et seq.* (2001).
- 402.3 Each person or entity making application for a Basic Business License Endorsement for a Towing Business shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:
- (a) The trade name, primary location of business, and primary phone number of the towing business;

- (b) A list of all other locations from which the towing business will operate, and the phone numbers for such locations;
- (c) The name, address, and telephone number of each person or entity with an ownership interest in the towing business or towing service storage lot;
- (d) The primary storage location, year, make, model, Vehicle Identification Number (VIN), and license plate number of each tow truck that will be used by the towing business;
- (e) A list which includes the name, address, date of birth, driver's license number, and Social Security number of all tow truck operators, employees, agents and contractors who will be involved in the towing business;
- (f) The location and description of the towing service storage lot to be used for the storage of towed vehicles, together with a copy of a deed, lease, contract, or other proof of the right to use the space as a vehicle storage lot, a copy of the Site Plan or D.C. Surveyor's Plat and a copy of a valid Certificate of Occupancy permit for that use and location;
- (g) Proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00 which remains in effect or is renewable for the duration of the licensure period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written;
- (h) A bond in the minimum amount of \$5,000.00;
- (i) Two copies of the billing form that the towing business proposes to use, which reflects current rates for private tows and storage services, trade name(s), business address(es) and business telephone number(s);
- (j) A completed Basic Business License application;
- (k) A Certificate of Occupancy for the location of the business, if the business is not located on the same premises as the towing service storage lot;
- (l) A Clean Hands Before Receiving License or Permit Act of 1996 certification form as required by D.C. Official Code § 47-2861 *et seq.* (2001);
- (m) Certification that the business is registered with the Office of Tax and Revenue.

402.4

Each person or entity making application for a Basic Business License Endorsement for a Towing Service Storage Lot shall submit relevant information

requested by the Director, in a form and manner specified by the Director, which information shall include the following:

- (a) The trade name, location of business, and primary phone number of the towing service storage lot;
- (b) A list of all other locations from which the towing service storage lot owner/operator will operate, and the phone numbers for such locations;

- (e) Proof of current Garage Keeper's Insurance Policy of at least \$50,000.00 which remains in effect or is renewable for the duration of the license period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written; and

402.5 The Basic Business License, the Basic Business License Endorsement for a Towing Business, and the Basic Business License Endorsement for a Towing Service Storage Lot shall be valid for two (2) years from the date of issue, unless earlier revoked or voluntarily relinquished, as provided by D.C. Official Code § 47-2851.09 (2001).

402.6 Deleted.

403 TOW TRUCK LICENSES

403.1 No person may operate or use any tow truck in a towing business unless such tow truck has been identified in the application (or amended application) for the Basic Business License Endorsement for such towing business, and unless the Director has inspected, approved, and authorized issuance of a DCRA unique alphanumeric identifier for such tow truck.

404 REQUIRED TOW TRUCK EQUIPMENT AND MARKINGS

404.10 All tow trucks shall have the following equipment, in good working order:

- (g) A set of tools which includes a set of screwdrivers, a wrecking bar, a working flashlight, a set of lug wrenches, a jack, jumper cables, and a first-aid kit.

405 TOWING STORAGE LOT REQUIREMENTS

- 405.1 A towing storage lot shall be located on a secured lot in the District of Columbia, with appropriate and descriptive signage, and be in full compliance with all District of Columbia laws and regulations, including zoning regulations.

- 405.3 Prior to releasing a public tow vehicle, the operator of a storage lot shall contact the DPW by calling (202) 541-6075 and report the date and time of the scheduled release, the condition of the vehicle and to whom the vehicle is to be released.

- 405.4 The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall apportion the lot into storage lot sections and clearly identify or designate the towing business responsible for each apportioned section.

- 405.5 When a towing service storage lot is used by more than one towing business, the holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall clearly designate individual storage spaces for each vehicle and shall clearly identify the towing business assigned to each space.

- 405.6 The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall employ reasonable procedures and requirements to insure that vehicles are released to rightful owners or other authorized individuals.

- 405.7 A printed "Owner's Bill of Rights for Towed Vehicles" statement, issued by the Director, shall be given to the vehicle owner or operator by the tow truck operator before initiating the tow, if either the vehicle owner or operator is on the scene of the tow. The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall conspicuously post, at each towing service storage lot, the Owner's Bill of Rights for Towed Vehicles statement and, upon release of the vehicle, shall provide a copy of this statement to the person to whom the vehicle is released.

406 PUBLIC TOWS

- 406.8 Any loss or damage sustained by a vehicle as the result of a public tow by a towing business shall be the sole and entire responsibility of the towing business and not the Government of the District of Columbia, any department or agency thereof, or any government official who requested the tow. The towing business shall assume all liability for the vehicle and the property inside the vehicle, from

the point of hook-up until the vehicle is released to its owner or authorized representative. The towing business shall take all precautions necessary to protect persons or property against injury or damage, and shall provide personnel sufficiently trained and capable to perform tows in accordance with the vehicle manufacturer's directions for towing a particular vehicle.

- 406.9 When an authorized government official directs the towing of a vehicle to a towing service storage lot, the government shall notify the vehicle owner of record in accordance with DPW procedures, of the tow and storage, the storage location of the vehicle, and all other information required to be given under applicable District law.

408 PAYMENT FOR SERVICES

- 408.1 The maximum rates that may be charged for all public tows initiated within the District of Columbia, and for all other services, including vehicle storage charges, related to public tows shall be as follows:

- (a) \$50 for providing Road Service for all vehicles, including all services provided to restore and or maintain operation of a vehicle, including services such as repairing tires, recharging batteries, and delivering gasoline;
- (b) For Standard Towing Services, which apply to any passenger vehicle or any other vehicle with a Gross Vehicle Weight of 8,000 pounds, or less:
 - (1) \$100.00 for Preparation, hoist and tow to location within the District (Roll-back or wheel lift use of dollies included);
 - (2) \$3.00 for Towing charge per mile for each mile beyond the District line (at owner's request); and
 - (3) \$20.00 for Storage, per 24-hour period, or part thereof.
- (c) For Heavy-Duty Towing, which applies to any vehicle with a Gross Vehicle Weight over 8,000 pounds:
 - (1) \$275.00 for Preparation, Hoist, and tow to a location beyond the District line (Rollback or wheel lift - use of dollies included);
 - (b) \$6.00 for Towing charge per mile beyond the District line (at owner's request); and
 - (2) \$20.00 for Storage per 24-hour period, or part thereof.
- (d) \$50.00 for Discontinuance Fee ("Drop Fee") that is charged when the

Operator of a vehicle that is to be towed asks that the tow be discontinued the police officer or other official who requested the tow agrees to discontinue the tow, in accordance with 16 DCMR § 408.6.

- 408.2 No rates charged by a towing business for private tows may exceed the rates set forth in the towing business's Basic Business License Endorsement application (including amendments thereto).
- 408.3 The holder of a Basic Business License for a Towing Business may collect extra charges on-site for the use of cranes, winches, dollies, or other equipment or services to perform a public tow under extraordinary circumstances or for the restoration or cleaning of an accident site. Within 72 hours after collecting extra charges, the towing business must submit documentary evidence of the extraordinary circumstances to the Director along with a written request for approval of the charges. If the Director does not provide a written response within 14 calendar days of receipt of the request for approval, the request shall be deemed approved. When the Director does not approve extra charges, the licensee of a towing business must provide a refund to the customer in the amount of the disapproved charges within 72 hours of receipt of the Director's notice of disapproval.
- 408.4 Storage charges may accrue for any day on which the facility is closed to the public so long as the facility is open for the reclaiming of vehicles at least ten (10) hours per day Monday through Friday, and at least five (5) hours on either Saturday or Sunday for the reclaiming of vehicles.
- 408.5 If a tow truck responds to a dispatch, and the police officer or other official who requested the public tow determines that services are no longer required, no charge shall be made by the towing business or service, except as may be authorized by a contract with a government agency. If a towing control number has been issued, the towing business shall notify DPW that the tow has been discontinued by calling (202) 541-6075.
- 408.6 If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, upon concurrence by the police officer or other official who requested the tow, (if present), the tow truck operator shall comply, upon payment by the vehicle owner or operator of the rates established for a discontinued public tow. If a towing control number has been issued, the towing business shall promptly notify DPW that the tow has been discontinued by calling (202) 541-6075.
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- 408.8 Towing businesses and towing services storage lots shall accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, and at least two (2) of the most widely-used, nationally recognized credit cards.

- 408.9 The owner or operator of the towing service storage lot shall provide to the person to whom the vehicle is released the following:
- (a) The towing control number;
 - (b) The Notice of Infraction, or other legal authority for removal of the car;
 - (c) An itemized statement of the charges due;
 - (d) A receipt for all monies paid; and
 - (e) A copy of the Owner's Bill of Rights for Towed Vehicles.

408.12 Not less than one year after publication of this final rulemaking, the schedule of maximum rates will be reviewed upon written request, which includes a cost justification, for consideration by the Director. Subsequent written requests for review of the schedule of maximum rates will be considered not less than 24 months after a prior rate review.

408.13 After considering a request for review of the schedule of maximum rates, the Director, in consultation with the DPW Director, shall determine if the schedule of maximum rates should be changed.

409 ITEMIZED STATEMENTS AND RECEIPTS

409.6 The owner of a towed vehicle shall be responsible for paying all charges for a public tow, and all related towing services charges, in an amount not to exceed the charges authorized by the Director pursuant to § 408.1.

409.7 Payment of all lawful towing and storage charges shall be made by the owner of the vehicle, an agent of the owner, or the insurer of the vehicle before the vehicle is released by the towing business, the tow truck operator, or towing service storage lot operator.

410 PROHIBITED ACTS

410.13 Prior to payment of fees and release of a vehicle, no towing service provider may refuse the right of physical inspection of the towed vehicle when requested by the owner, an authorized agent of the owner, the lien holder, or the insurer of the vehicle.

- 410.17 It shall be unlawful for any tow truck operator to tow any type of vehicle in a manner that is not in accordance with the vehicle manufacturer's instructions for the vehicle. In addition, it shall be unlawful for any tow company to utilize any tow truck or equipment in a manner that is not in accordance with the tow crane manufacturer's instructions for towing vehicles.
- 410.18 It shall be unlawful for any towing business or tow truck operator to tow vehicles in the District of Columbia without current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00.
- 410.19 It shall be unlawful for any towing business to refuse to provide a refund to customers within 72 hours of receipt of the Director's notice of disapproval, when charges described in § 408.3 are not approved by the Director.

411 PENALTIES AND ENFORCEMENT

- 411.10 The Tow truck operator shall report the presence and the location of debris believed to contain hazardous materials to the DPW Towing Control Center at (202) 541-6075. Failure to do so shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.11 Upon the request of any District government official, a towing business or a tow truck operator shall provide documentary proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00. Failure to do so shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.12 Failure to provide a refund as described in § 410.19 shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.13 If the person or entity licensed under § 402.3 is unable to use the towing storage lot identified in § 402.3(f) for any reason during the license period, then:
- (a) The licensee shall report this fact in writing to the Director at least ten (10) calendar days prior to the day when the towing service storage lot will become unavailable;
 - (b) The Basic Business License Endorsement for a Towing Business shall be automatically suspended by operation of law during the period that the towing service storage lot is unavailable for use by the licensee; and

- (c) The Basic Business License Endorsement for a Towing Business may be reactivated without charge for the remainder of the license period when written evidence of the availability of a substitute towing service storage lot is supplied to the Director by the licensee and verified by the Director, or his designee.

- 411.14 Instead of any criminal sanctions authorized by law, civil fines and penalties may be imposed as alternative sanctions for any infraction of these regulations.
- 411.15 Adjudication of any civil infraction shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, (D.C. Official Code §2-1801.01 *et seq.* (2001)).

499 DEFINITIONS

Section 499 is amended by deleting the definitions for 'Master Business License', 'Master Business License Endorsement for a Towing Business', and 'Master Business License Endorsement for a Towing Service Storage Lot', and by adding the following definitions:

Basic Business License – the single document designed for public display issued by the business license center that certifies District agency license approval and incorporates the endorsements for individual licenses included in the Basic Business License system.

Basic Business License Endorsement for a Towing Business – the individual license endorsement required for the conducting of a towing business in the District of Columbia.

Basic Business License Endorsement for a Towing Service Storage Lot - the individual license endorsement required for the maintenance of a towing service storage lot in the District of Columbia.

Extraordinary Circumstances – Conditions or events that are beyond what is usual, regular, or customary and which require special towing functions or services to commence or complete a tow.

Persons desiring to comment on these proposed regulations should submit comments in writing to Karen Edwards, General Counsel, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, N.E., Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the D.C. Register. Copies of the proposed rules can be obtained from the address listed above. A copying fee of one dollar (\$1.00) will be charged for each requested copy of the proposed rulemaking.

BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Executive Director of the D.C. Board of Education, pursuant to the authority set forth in D.C. Code, 2001 edition, Section 38-101 to republish this rulemaking to incorporate additional changes made by the District of Columbia Board of Education, and for other purposes, approved July 4, 2003 (50 DCR 5337) by expanding chapter 38 to enable the State Education Agency of the District of Columbia to comply with the Unsafe School Choice Option requirements of Public Law 107-110 (No Child Left Behind). These rules establish standards governing the identification of persistently dangerous schools and revise the definition of what makes a school persistently dangerous.

On July 4, 2003, a notice of emergency and proposed rulemaking was published in the DC Register (50 DCR 5337). These proposed rules supercede and replace the rules published on July 4, 2003, 50 DCR 5337, by expanding chapter 38 to enable the State Education Agency of the District of Columbia to comply with the Unsafe School Choice Option requirements of Public Law 107-110 (No Child Left Behind).

The Executive Director gives the notice to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 38 is amended by adding the following new section, to read as follows:

Chapter 38 STATE EDUCATION AGENCY FUNCTIONS OF THE BOARD OF EDUCATION

3804 Identification of Persistently Dangerous

- 3804.1 Pursuant to the requirements of P.L.107-110, the District of Columbia Public Schools acting as the State Educational Agency (SEA) shall identify, by July 1 of each year, all public schools within District of Columbia LEAs that are "persistently dangerous" pursuant to criteria established by the SEA and set forth in subsection 3804 (c).
- 3804.2 By July 1, the SEA also shall send a letter of concern to each LEA and school administrator whose statistics for the previous year indicate that his or her schools are at risk of being identified as persistently dangerous the following year.
- 3804.3 A school is determined to be persistently dangerous if the annual number of officially reported violent crimes against students, on the school

grounds, during school operating hours, over a period of two consecutive years is equal to or greater than:

- 1) five, for schools with enrollments of 500 ~~200~~ students or less, or
- 2) 1% ~~less than 2.5%~~ of the school's official membership, for schools with enrollments of 501 ~~200~~ students or more.
- 3) The above criterion is effective beginning with the 2004-2005 school year.

3804.4 Juvenile detention facilities are exempt from the provisions of this section.

3805 Persistently Dangerous Schools Transfer Option.

3805.1 A student who is enrolled at a school determined to be persistently dangerous shall have the right to transfer to a destination school within the District of Columbia's LEAs and remain there until the originating school is no longer identified as persistently dangerous, provided such transfer is consistent with all applicable laws, including IDEA.

3805.2 The destination school shall be a public school that

- 1) is not identified as persistently dangerous;
- 2) is not in school improvement, under corrective action, or restructuring;
- 3) is making adequate yearly progress (AYP), and
- 4) has space to accommodate the student.

3805.3 A student shall not be eligible to seek a transfer under §3805.1 if he or she is

- 1) in a court-ordered educational placement; or
- 2) in an alternative setting into which he or she has been placed by the LEA pursuant to expulsion from his or her school.

3805.4 The eligible student's right to seek a transfer pursuant to this section must be exercised within 21 days following parental notification of his or her school's designation as "persistently dangerous."

3805.5 A transfer for reasons under this section shall be in effect until the persistently dangerous school is no longer designated as such, at which point the LEA or the destination school administrator may return the student to his or her neighborhood school.

3806 Local Education Agency (LEA) Notification and Appeals Process

- 3806.1 No later than June 15 of each year, the SEA shall notify the LEA's about schools that are likely to be designated persistently dangerous and provide each school with the following data used by the SEA to base its designation:
- 3806.2 The school's official membership for the two most recent, consecutive school years, and
- 3806.3 The number of violent crimes against students on the school grounds, during school operating hours, for the two most recent, consecutive school years.
- 3806.4 The LEA shall have 10 days within which to review the data and submit to the SEA any evidence proving that a school is not persistently dangerous.
- 3806.5 If, after reviewing the evidence, the SEA determines that the designation is appropriate, it shall issue formal designation, pursuant to §3806, that a school is persistently dangerous.
- 3806.6 The LEA or the school administrator shall have the right to appeal a school's designation, in writing, to the Superintendent, acting in his or her capacity as the State Education Officer, within 7 days of notification by the SEA.
- 3806.7 Appeals shall be resolved as follows:
- 1) Upon receipt of a written appeal, the SEA shall convene representatives from its monitoring office and representatives of the LEA.
 - 2) At the meeting, the LEA shall present evidence challenging either the official membership numbers or specific reports of violent crimes, which may include a revised official membership audit for the affected school years, copies of official incident reports from the Metropolitan Police which clarify that the alleged violent crime(s) do not meet criteria established in §3806, or official findings that show the reported crime could not be substantiated.
 - 3) The monitoring officer will review the evidence and make a determination if the school's designation is still warranted.
- 3806.8 Appeals shall be resolved within 7 – 10 days by the Superintendent, or his or her designee, and he or she shall issue a finding on the LEA's status in writing to the LEA and the administrator of the school in question.
- 3807 Notification of Parents and Completion of Transfers**

- 3807.1 The LEA shall notify parents of students at affected schools of their school's status and the option to transfer no later than one month following a school's designation as persistently dangerous.
- 3807.2 The LEA shall notify parents who intend voluntarily to transfer a student into a school that has been identified as persistently dangerous of that school's designation and provide them with a list of alternate schools, if available, to which the student can apply.
- 3807.3 Pursuant to § 3807.1, the SEA will recommend that each LEA provide the parent of the student seeking admission to a school identified as persistently dangerous with a copy of the school's corrective action plan, pursuant to § 3808.1.
- 3807.4 Notices shall be provided in language that is understandable to all parents or guardians of students enrolled in the school, including either written translation or oral interpretation into the native language of the parents and provided by competent interpreters, unless it is clearly not feasible to do so.
- 3807.5 The LEA, pursuant to a parent's written request, shall affect student transfers within twenty-one (21) calendar days following parental notification by the LEA.

3808 Corrective Action for Persistently Dangerous Schools

- 3808.1 Each LEA must develop and submit to the SEA a corrective action plan for all schools within the LEA that have been identified as persistently dangerous within twenty (20) days of a school's final designation as persistently dangerous by the SEA.
- 3808.2 A school shall remain in corrective action for a period of two years, during which time the SEA will provide technical assistance to the school, pursuant to the availability of funds.
- 3808.3 The LEA shall report to the SEA and to parents semi-annually on the progress the persistently dangerous school is making toward the goals of its corrective action plan.
- 3808.4 The SEA shall remove a school's designation as persistently dangerous if the annual number of documented reported violent crimes against students on the school grounds, during school operating hours, over a period of two consecutive years following its designation is
- 1) five, for schools with enrollments of 500 ~~200~~ students or less; or

- 2) ~~1% less than 2.5%~~ of the school's official membership for schools with enrollments of 501 ~~200~~ students or more.
- 3) The above criterion is effective beginning with the 2004-2005 school year

3808.5 By August 1 of each year, the LEA shall notify parents of affected students when a school is no longer designated as persistently dangerous.

3809 Individual Student Victim Transfer Option

3809.1 A student shall also have the right to transfer to a destination school within the District of Columbia's LEAs if he or she has been the victim of

- 1) a violent crime committed on school grounds, during school operating hours, that has been substantiated by the LEA; or
- 2) a pattern of harassment or sexual harassment pursuant to §2503.2 (g) and (h) of this title, that has been perpetrated on school grounds, during school operating hours, and that has been substantiated by the LEA, pursuant to the filing of a grievance under §2405.4 or §2405.5 of this Title. For purposes of this subsection, a "pattern of harassment or sexual harassment" shall mean one substantiated incident of harassment that has created an intimidating, threatening or abusive environment, or two other substantiated harassment incidents.

3809.2 No later than 48 hours after an allegation pursuant to §3809.1 (1), the LEA shall provide parents with notice of the right to transfer pursuant to this section, the limitations on the right to exercise this option set forth in §3809.4.

3809.3 In the event of the alleged harassment or sexual harassment of a student enrolled in the District of Columbia Public Schools (DCPS), the notice required under §3809.2 shall also include notice of the right to file a grievance under §2405.4 or §2405.5.

3809.4 If the student is alleged to have been the victim of a violent crime perpetrated on school grounds during school operating hours, the LEA shall substantiate the alleged incident, and report its findings to the parent in no more than three days.

3809.5 If a student alleges a pattern of harassment or sexual harassment, the timeline and procedures for resolution of such grievances by the LEA provides in §2405.4 and §2405.5, shall apply.

- 3809.6 In the event that the LEA finds that a violent crime alleged under §3809.1(1) is not substantiated, the LEA's notice to parents shall include notification of the student's right to file a grievance pursuant to §2405.4.
- 3809.7 The parent shall have three weeks from the date of the completion of the LEA's substantiation of allegations made under §3809.1(1) or (2) to request a transfer under the provisions of this subsection.
- 3809.8 The LEA shall file a cumulative report of incidents reported under this section annually with the SEA.

Definitions:

Adequate Yearly Progress (AYP)

Making acceptable progress toward the goals defined by the State's accountability and assessment plan.

Corrective Action

Action taken to eliminate the conditions that have led to a school's designation as persistently dangerous.

Corrective Action Plan

A plan submitted by the LEA to the SEA describing the corrective action to be taken by a persistently dangerous school, which shall include, at a minimum analysis of the conditions under which the violent crimes occurred and specific activities planned to mitigate those conditions.

Official Membership

A school's official enrollment on October 5 of each year, as certified by the State Education Office.

School Operating Hours

The regular operating hours established by a school, when classes are in session and/or a school-sponsored event takes place on school grounds.

School Year

For purposes of this Regulation, the school year is defined as beginning on the first official day of school and ending on June first of the following year.

Students

Pre-K – 12 students who are currently enrolled in a school.

Violent Crime

Any of the following offenses, documented by an official police report, that is designated a "crime of violence" under Section 22-4501(f) of the DC Code: murder; manslaughter; first degree sexual abuse; second degree sexual abuse; malicious disfigurement of

another; abduction; kidnapping; any assault with intent to kill, commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse or robbery; assault with a dangerous weapon; assault with intent to commit any offense punishable by imprisonment; extortion or blackmail accompanied by threats of violence or aggravated assault.

School Grounds:

LEA-owned or leased building and land surrounding the school building.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be submitted to Mr. Russell Smith, Executive Director, District of Columbia Board of Education, 825 North Capitol Street, N.E., Washington, D.C. 20002. Copies of this rulemaking are available from the Board of Education by calling (202) 442-4289.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 2(a) of the "District of Columbia Uniform Controlled Substances Amendment Act of 1998", effective July 24, 1998 (D.C. Law 12-136; D.C. Official Code §48-902.01) ("Act"), and Mayor's Order 98-49, dated April 15, 1998, hereby gives notice of the adoption of the following amendments to Chapter 12 of Title 22 of the District of Columbia Municipal Regulations (DCMR). The amendments to the Schedule of Controlled Substances will add Gamma-Hydroxybutyric Acid (GHB) [other names include "gamma-hydroxybutyrate"; "4-hydroxybutyrate"; "4-hydroxybutanoic acid"; "sodium oxybate"; and "sodium oxybutyrate"] to Schedule I; add any drug product containing Gamma-Hydroxybutyric Acid, including its salts, isomers, and salts of isomers to Schedule III; reschedule Buprenorphine, marketed as Subutex® and Suboxone®, from Schedule V to Schedule III; and correct errors and reformat the listing of some substances in 22 DCMR Chapter 12. All of the enumerated scheduling of controlled substances are included in this rulemaking to provide the public with a single reference to the regulatory provisions governing controlled substances in the District as required by D.C. Official Code §48-902.01. The sections affected by this rulemaking are highlighted in boldface type.

The emergency rules are necessary for the immediate preservation of the public health, safety and welfare of District residents. In recent years, the abuse of GHB has increased substantially. GHB is classified as a central nervous system depressant, and is abused to produce euphoric and hallucinogenic states, and for its alleged role as a growth hormone releasing agent to stimulate muscle growth. GHB can produce drowsiness, dizziness, nausea, visual disturbances, unconsciousness, seizures, severe respiratory depression and coma. Overdose usually requires emergency medical treatment, including intensive care for respiratory depression and coma. GHB is not approved for marketing as a medicine in the United States, although FDA-authorized studies are in progress to examine its potential use in the treatment of cataplexy associated with narcolepsy.

Emergency action is also necessary for Buprenorphine, a semi-synthetic opioid derived from thebaine, to be used in addiction treatment. In December 2001, the U.S. Department of Health and Human Services recommended rescheduling buprenorphine to Schedule III based on a reevaluation of buprenorphine's abuse potential and dependence profile in light of numerous scientific studies and years of human experience, and its current accepted medical use in the United States for the treatment of opioid dependence.

Thus, emergency action is necessary to expand the use of Buprenorphine, a semi-synthetic opioid, marketed as Subutex® and Suboxone®, a mono or single entity buprenorphine product (2 and 8 mg tablets), and (2) Suboxone®, a combination product in a 4:1 ratio of buprenorphine to naloxone (2: 0.5 and 8: 2 mg tablets). These products, high dose sublingual (under the tongue) tablets, are not available to physicians treating thousands of District residents who suffer with an opioid dependence. The Director is undertaking this emergency and proposed rulemaking after considering the eight (8)

factors set forth in section 201 of the Act (D.C. Official Code § 48-902.01), and based upon the scientific and medical evaluations and recommendations of the Secretary of the U.S. Department of Health and Human Services pursuant to 21 U.S.C. 811(a), (b), (c) and (d), and the data gathered and reviewed by the Administrator of the U.S. Drug Enforcement Administration.

The emergency rulemaking was adopted on November 17, 2003 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty days until March 15, 2004, or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Director also gives notice of intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 12 of Title 22 of the DCMR is amended to read as follows:

CHAPTER 12

CONTROLLED SUBSTANCES ACT RULES

1200 PURPOSE

1200.1 This chapter shall comprise all the enumerated schedules of controlled substances under the District of Columbia Uniform Controlled Substances Act of 1981 (Act), effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code §48-902.01), and all final rulemakings made by the Mayor or designee which add, delete, or reschedule a controlled substance under the authority of section 201 of the Act (D.C. Official Code §48-902.01).

1201 SCHEDULE I ENUMERATED

1201.1 The controlled substances listed in this section are included in Schedule I of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) *Opiates*: Unless specifically excepted or unless listed in another schedule, any of the following opiates including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation;

- (1) Acetylmethadol;
- (2) Allyprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;

- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Diampromide;
- (14) Diethylthiambutene;
- (15) Difenoxy;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetylbutyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacymorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Propriam;
- (42) Racemoramide;
- (43) Thiophene;
- (44) Trimeperidine;
- (45) Acetyl-Alpha-Methylfentanyl;
- (46) Alpha-Methylfentanyl;
- (47) Alpha-Methylthiofentanyl;
- (48) Beta-hydroxyfentanyl;
- (49) Beta-hydroxy-3-Methylfentanyl;
- (50) 3-Methylfentanyl;

- (51) 3-Methythiofentanyl;
- (52) MPPP;
- (53) Para-fluorofentanyl;
- (54) PEPAP;
- (55) Thiofentanyl;
- (56) Tilidine;

(b) **Opium Derivates:** Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochlorine salt);
- (11) Diacetylated morphine (heroin);
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myorphine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon;

(c) **Hallucinogenic Substances:** Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, its salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

- (1) 4-Bromo-2,5-dimethoxyamphetamine;
 - (2) 2,5-Dimethoxyamphetamine;
 - (3) 4-Methoxyamphetamine;
 - (4) 5-Methoxy-3,4-methylenedioxyamphetamine;
 - (5) 4-Methyl-2,5-dimethoxyamphetamine;
 - (6) 3,4-Methylenedioxyamphetamine;
 - (7) 3,4,5-Trimethoxyamphetamine;
 - (8) Bufotenine;
 - (9) Diethyltryptamine;
 - (10) Dimethyltryptamine;
 - (11) Ethylamide analog of phencyclidine, PCE;
 - (12) Ibogaine;
 - (13) Lysergic acid diethylamide;
 - (14) Mescaline;
 - (15) Peyote;
 - (16) N-Ethyl-3-piperidyl benzilate;
 - (17) N-Methyl-3-piperidyl benzilate;
 - (18) Psilocybin;
 - (19) Psilocyn;
 - (20) Pyrrolidine analog of phencyclidine, PCPY;
 - (21) Thiophene analog of phencyclidine;
 - (22) (Repealed by section 2(a)(3) of the "Uniform Controlled Substances Amendment Act of 1999", D.C. Law 13 (47 DCR 791; 2000));
 - (23) Parahexyl;
 - (24) 4-Bromo-2,5-dimethoxyphenethylamine; and
 - (25) 3,4-Methylenedioxymethamphetamine;
- (d) **Depressants:** Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:
- (1) Gamma-Hydroxybutyric Acid [other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium xybutyrate];
 - (2) Mecloqualone;
 - (3) Methaqualone; and
- (e) **Stimulants:** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a

stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Fenethyline; and
- (2) N-ethylamphetamine.

1202 SCHEDULE II ENUMERATED

1202.1 The controlled substances listed in this section are included in Schedule II of the Act unless removed therefrom pursuant to section 201 of the Act:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis;

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextophan, nalbuphine, naltrexone, and their respective salts, but including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid extracts;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Codeine;
- (H) Ethylmorphine;
- (I) Ethorphine Hydrochloride;
- (J) Hydrocodone (K);
- (K) Metopon;
- (L) Morphine;
- (M) Oxycodone;
- (N) Oxymorphone;
- (O) Thebaine;
- (P) Hydromorphone;
- (Q) Dihydrocodeine;
- (R) Sufentanil;
- (S) Alfentanil;
- (T) Carfentanil;

- (2) **Opium:** Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (1) of this paragraph, but not including the isoquinoline alkaloids of opium;
 - (3) Opium poppy or poppy straw;
 - (4) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;
 - (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy);
 - (6) Hashish;
 - (7) Synthetic Tetrahydrocannabinols: Chemical equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 - (A) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 - (B) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
 - (C) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (compounds of these structures, regardless of numerical designation of atomic positions covered); and
- (b) **Opiates:** Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Benzitramide;
- (4) Biphedamine;
- (5) Diphenoxylate;
- (6) Eskatrol;
- (7) Fentanyl;
- (8) Fetamine;
- (9) Isomethadone;
- (10) Levomethorphan;
- (11) Levorphanol;
- (12) Metazocine;
- (13) Methadone;
- (14) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (15) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (16) Pethidine (meperidine);
- (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (20) Phenazocine;
- (21) Piminodine;
- (22) Racemethorphan;
- (23) Racemorphan;

(c) **Stimulants:** Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamines, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, its salts, isomers, and salts of isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate and its salts; and
- (5) Repealed by section 2(b)(2) of D.C. Law 8-138 (37 DCR 2638; June 13, 1990);
- (6) Amphetamine/methamphetamine immediate precursor; Phenylacetone (Phenyl-2-propanone), P2P;

(d) **Depressants:** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a

depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specifically chemical designation:

- (1) Methaqualone;
- (2) Amobarbital;
- (3) Secobarbital;
- (4) Pentobarbital;
- (5) Phencyclidine;
- (6) Phencyclidine immediate precursors:
 - (A) 1-Phenylecyclohexylamine; and
 - (B) 1-Piperidinocyclohexanecarbonitrile (PCC);
- (7) Dronabinol;
- (8) Nabilone; and
- (9) Glutethimide.

1203 SCHEDULE III ENUMERATED

1203.1 The controlled substances listed in this section are included in Schedule III of the Act unless removed therefrom pursuant to section 201 of the Act:

- (a) Schedule III shall consist of the following controlled substances:
 - (1) **Stimulants:** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric), and salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - (A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971 as excepted compounds under §1308.32 of the Code of Federal Regulations (CFR), and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;
 - (B) Benzphetamine;
 - (C) Chlorphenetermine;

- (D) Chlortermine;
- (E) Mazindol; and
- (F) Phendimetrazine;

(2) **Depressants:** Unless listed in another schedule, any material compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital; or any salt thereof and 1 or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

- (i) Chlorhexadol;
- (ii) Rescheduled to Schedule II;
- (iii) Lysergic acid;
- (iv) Lysergic acid amide;
- (v) Methyprylon;
- (vi) Sulfondiethylmethane;
- (vii) Sulfonethylmethane;
- (viii) Sulfonmethane;
- (ix) Tiletamine & Zolazepam Combination Product;
- (x) Vinbarbital; and

(D) Any drug product containing gamma-hydroxybutric acid including its salts, isomers, and salts of isomers.

(3) Nalorphine; and

- (4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any other following narcotic drugs, or any salts hereof:
- (A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts;
 - (C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;
 - (D) Not more than 300 milligrams dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (E) Not more than 1.8 grams of dihydrocodeine per milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;
 - (G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

- (I) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:
 - (1) Buprenorphine

- (5) **Anabolic Steroids:** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progesterons, and corticosteroids) that promotes muscle growth and includes:
 - (A) Boldenone;
 - (B) Chlortestosterone (4-chlortestosterone);
 - (C) Clostebol;
 - (D) Dehydrochlormethyltestosterone;
 - (E) Dihydrotestosterone (4-dihydrotestosterone);
 - (F) Drostanolone;
 - (G) Ethylestrenol;
 - (H) Fluoxymesterone;
 - (I) Formebolone (formebolone);
 - (J) Mesterolone;
 - (K) Methandienone;
 - (L) Methandranone;
 - (M) Methandriol;
 - (N) Methandrostenolone;
 - (O) Methenolone;
 - (P) Methyltestosterone;
 - (Q) Mibolerone;
 - (R) Nandrolone;
 - (S) Norethandrolone;
 - (T) Oxandrolone;
 - (U) Oxymesterone
 - (V) Oxymetholone;
 - (W) Stanolone;
 - (X) Stanozolol;
 - (Y) Testolactone;
 - (Z) Testosterone;
 - (AA) Trenbolone; and
 - (BB) Any salts, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and

which has been approved by Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes such steroid for human use such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

- (6) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol] or (-)-delta-9-(trans)-tetrahydrocannabinol]; and
- (7) Ketamine;
- (b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiates the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

1204 SCHEDULE IV ENUMERATED

1204.1 The controlled substances listed in this section are included in Schedule IV of the Act unless removed therefrom pursuant to section 201 of the Act:

- (a) Schedule IV shall consist of the following controlled substances:
 - (1) **Depressants:** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - (A) Barbitol;
 - (B) Chloral betaine;
 - (C) Chloral hydrate;
 - (D) Chlordiazepoxide;

- (E) Clonazepam;
- (F) Clorazepate;
- (G) Dextropropoxyphene;
- (H) Diazepam;
- (I) Ethchlorvynol;
- (J) Ethinamate;
- (K) Flurazepam;
- (L) Lorazepam;
- (M) Mebutamate;
- (N) Meproamate;
- (O) Methohexital;
- (P) Methylphenobarbital (mephobarbital);
- (Q) Oxazepam;
- (R) Paraldehyde;
- (S) Petrichloral;
- (T) Phenobarbital;
- (U) Prazepam;
- (V) Alprazolam;
- (W) Bromazepam;
- (X) Camazepam;
- (Y) Clobazam;
- (Z) Clotiazepam;
- (AA) Cloxazolam;
- (BB) Delorazepam;
- (CC) Estazolam;
- (DD) Ethyl loflazepate;
- (EE) Fludiazepam;
- (FF) Flunitrazepam;
- (GG) Halazepam;
- (HH) Haloxazolam;
- (II) Ketazolam;
- (JJ) Loprazolam;
- (KK) Lormetazepam;
- (LL) Medazepam;
- (MM) Midazolam;
- (NN) Nimetazepam;
- (OO) Nitrazepam;
- (PP) Oxazolam;
- (QQ) Omitted;
- (RR) Pinazepam;
- (SS) Quazepam;
- (TT) Temazepam;
- (UU) Tetrazepam; and
- (VV) Triazolam;

- (2) *Fenfluramine*: Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine;
- (3) *Stimulants*: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
- (A) Diethylpropion;
 - (B) Phentermine;
 - (C) Pemoline (including organometallic complexes and chelates thereof);
 - (D) Cathine;
 - (E) Fencamfamin;
 - (F) Fenproporex;
 - (G) Mefenorex;
 - (H) Pipradrol;
 - (I) SPA;
- (4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:
- (A) Dextropropoxyphene (Alpha-(+)-4-demethylamino-1),2-diphenyl-1-3-methyl-2-propionoxybutane;
 - (B) Pentazocine; and
- (5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

1205 SCHEDULE V ENUMERATED

1205.1 The following controlled substances listed below are included in Schedule V of the Act unless removed therefrom pursuant to section 201 of the Act:

- (a) ***Narcotic drugs containing non-narcotic active medicinal ingredients:*** Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains 1 or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone;
 - (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
 - (2) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
 - (3) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
 - (4) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
 - (5) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; and
 - (6) Not more than 0.5 milligrams of difenopin and not less than 25 micrograms of atropine sulfate per dosage unit;
- (b) Cannabis;
- (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:
 - (1) Rescheduled to Schedule III.
- (d) Propylhexedrine;
- (e) Pyrovalerone.

All persons desiring to comment on these proposed rules must submit comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Environmental Health Administration, Office of Enforcement, 51 N Street, N.E., Room 6036, Washington, D.C. 20002. Copies of these rules may be obtained from the above address.

DEPARTMENT OF HEATH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307. 02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 927 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulation (DCMR), entitled "Attendant Care Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for attendant care services provided by qualified professionals to participants with mental retardation in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for attendant care services.

On April 11, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 2884). These emergency rules amend the previously published rules by adding a section to limit the number of hours a client may receive attendant care services during a one year period to ensure that total expenditures for all home and community-based services and other Medicaid services under the Waiver do not exceed the amount that would be incurred by the State's Medicaid program for these individuals in an institutional setting. This cost neutrality requirement is included in the Waiver application approved by the Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of attendant care services.

The emergency rulemaking was adopted on October 27, 2003 and will become effective one day after publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for one hundred and twenty days or until February 24, 2004, unless earlier superseded by another emergency rulemaking or by publication of a notice of final rulemaking in the *D.C. Register*.

The Director gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 927 (Attendant Care Services) to read as follows:

SECTION 927

ATTENDANT CARE SERVICES

- 927.1 Attendant care services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 927.2 Attendant care services shall consist of hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically handicapped individual. Supportive services are those services which substitute for the absence, loss, diminution, or impairment of physical or cognitive function.
- 927.3 Attendant care services eligible for reimbursement include, but are not limited to the following services:
- (a) Basic personal care including assistance with bathing and personal hygiene, dressing, grooming, lifting and transferring, feeding and bowel and bladder care;
 - (b) Household services including assistance with meal preparation, shopping, cleaning and laundry which are incidental to the performance of care;
 - (c) Cognitive services including assistance with money management, use of medications, and cueing with adaptive living skills;
 - (d) Mobility services including escort and transporting the client; and
 - (e) Health-related tasks including those medical tasks that can be performed by an unlicensed person or delegated to an unlicensed person by a licensed health professional to the extent permitted by State law.
- 927.4 Attendant care services eligible for reimbursement may be provided in the following settings:
- (a) An individual's home;
 - (b) A foster home;
 - (c) A supervised apartment;
 - (d) A non-institutional place of residence other than as described in (a) through (c) of this section as permitted by District law.
- 927.5 Attendant care services are not reimbursable when anyone else in the household is capable of performing these services.
- 927.6 Attendant care services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).

926.7 Each person providing attendant care services shall be supervised by one of the following:

- (a) A registered nurse subject to the requirements set forth in section 927.8;
- (b) The client subject to the requirements set forth in section 927.9; or
- (c) The client's case manager.

927.8 The frequency and intensity of supervision by the registered nurse shall be specified in the client's written plan of care.

927.9 If consumer directed care, supervision may be furnished by the client when the client has been trained to perform this function and when the safety and efficacy of consumer-provided supervision has been certified in writing by a registered nurse. The certification by the registered nurse shall be based on direct observation of the client and the specific attendant care provider, during the actual provision of care. Documentation of the certification shall be maintained in the client individual plan of care.

927.10 Each provider of attendant care services shall:

- (a) Be a non-profit, home health agency, social service agency, or other business entity;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for attendant care services under the Waiver;
- (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (d) Ensure that each person providing attendant care services is qualified and properly supervised;
- (e) Be available twenty-four (24) hours a day, seven (7) days a week;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
- (g) Provide training in infection control procedures consistent with the requirements of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 CFR 1910.1030.

927.11 Each person providing attendant care services for a provider under section 927.10 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;

- (c) Be certified in cardiopulmonary resuscitation (CPR) and thereafter obtain CPR certification annually;
- (d) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free from communicable disease;
- (e) Have the ability to communicate with the client;
- (f) Be able to read and write the English language;
- (g) Have a high school diploma or general equivalency development (GED) certificate;
- (h) Be able to recognize an emergency and be knowledgeable about emergency procedures;
- (i) Agree to carry out the responsibilities to provide attendant care services consistent with the client's IHP or ISP;
- (j) Complete pre-service and in-service training approved by MRDDA;
- (k) Prior to employment complete a forty (40) hour training including training on body mechanics, which is consistent with the training guidelines for Level 1 Home Care workers established by the National Home Caring Council; and
- (l) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 et seq.).

927.12 A family member other than a spouse or parent of a minor recipient may provide attendant care services. Each family member providing attendant care services shall meet all the requirements set forth in sections 927.10 and 927.11 of these rules.

927.13 Each provider shall notify the client's case manager and the client or client's representative, in writing, no less than seven (7) calendar days prior to discharge or referral. The seven (7) day written notice shall not be required and oral notice may be given, if the discharge is the result of:

- (a) A medical emergency;
- (b) A physician's order to admit the client to an inpatient facility;
- (c) A determination by the provider that the discharge or referral is necessary to protect the health, safety or welfare of agency staff; or
- (d) A determination by the ISP or IHP team that the condition that necessitated the provision of services no longer exists.

- 927.14 If the client seeks to change providers, the provider shall assist the client in selecting a new provider and cannot abandon the client until the transfer has been successfully completed.
- 927.15 Each provider shall develop contingency staffing plans to provide coverage for each client in the event the assigned attendant care aide cannot provide the services or is terminated.
- 927.16 The billable unit of service for attendant care services shall be one hour.
- 927.17 The reimbursement rate for attendant care services shall be \$13.50 per hour.
- 927.18 Attendant care services shall be limited to 1040 hours per client during any one (1) year period, which shall commence on the date that services are authorized.

927.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed.

Activities of Daily Living-The ability to get in and out of bed, bathe, dress, eat, take medication prescribed for self-administration and to engage in toileting.

Client-An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Communicable Disease- Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family- Any person related to the client by blood, marriage or adoption.

Individual Habilitation Plan (IHP) – That plan as forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP)- The successor to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Provider-Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Registered Nurse- A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code, § 3-1202 et seq.) or licensed as a registered nurse in the jurisdiction where the services are provided.

Supervised Apartment- A living arrangement for one to three clients with mental retardation that provides drop-in to twenty-four hour supervision and is funded by the department of Human Services, Mental Retardation and Developmental Disabilities Administration through a Human Care Agreement.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E. 5th Floor, Washington D.C.20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia (the District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 946 to Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for residential habilitation services provided by qualified professionals to participants with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement for residential habilitation services for person with mental retardation.

On July 11, 2003, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (50 DCR 5595). These emergency and proposed rules supercede and replace the rules previously published on July 11, 2003 by making several technical corrections, including clarifying that professional services may be provided by other service providers and requiring one year of experience for persons employed by the provider. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of residential habilitation services.

The emergency rulemaking was adopted on November 3, 2003 and will become effective on the date of publication of this notice of emergency and proposed rulemaking in the *D.C. Register*. The emergency rules will remain in effect for 120 days or until March 2, 2004 unless superceded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 29 (Public Welfare)(May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 946 to read as follows:

SECTION 946 RESIDENTIAL HABILITATION SERVICES

946.1 Residential habilitation services shall be reimbursed by the Medicaid Program for each participant with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and

- Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a group home for mentally retarded persons (GHMRP), that has at least four (4) but no more than six (6) clients.
- 946.3 Each GHMRP shall be licensed pursuant to 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.*), and comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations, except as set forth in these rules.
- 946.4 Residential habilitation services shall only be available to clients with a demonstrated need for continuous training, assistance and supervision, and shall be authorized and provided in accordance with the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 946.5 Each provider of residential habilitation services shall assist with the acquisition, retention and improvement in skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the client to reside in the community.
- 946.6 Consistent with the requirements set forth in section 3521 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client of the GHMRP receive training and habilitation, when appropriate, which shall include but not be limited to the following areas:
- (a) Eating and drinking;
 - (b) Toileting;
 - (c) Personal hygiene;
 - (d) Dressing;
 - (e) Grooming;
 - (f) Health care;
 - (g) Communication;
 - (h) Interpersonal and social skills;
 - (i) Home management;
 - (j) Employment and work adjustment;
 - (k) Mobility;
 - (l) Time management;
 - (m) Financial management;
 - (n) Academic and pre-academic skills;

- (o) Motor and perceptual skills;
- (p) Problem-solving and decision-making;
- (q) Human sexuality;
- (r) Aesthetic appreciation; and
- (s) Opportunity for social, recreational and religious activities utilizing community resources.

946.7 Consistent with the requirements set forth in section 3520 of Chapter 35, Title 22 DCMR, each provider of residential habilitation services shall ensure that each client receives the professional services required to meet his or her goals as identified in the client's IHP or ISP. Professional services shall be provided by programs operated by the GHMRP or personnel employed by the GHMRP or by arrangements between the GHMRP and other service providers, including both public and private agencies and individual practitioners. Professional services may include, but are not limited to the following disciplines or services:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational Therapy;
- (g) Physical Therapy;
- (h) Psychology;
- (i) Social Work;
- (j) Speech and language therapy; and
- (k) Recreation.

946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable the clients to gain access to Waiver and other community services and activities. Each provider of transportation services shall have a current District of Columbia Medicaid Provider Agreement that authorizes the provision of transportation services under the Waiver.

946.9 The minimum daily ratio of on-duty, direct care staff to clients in each GHMRP that serves severely physically handicapped clients, clients who are aggressive, assaultive or security risks, clients who manifest severely hyperactive or psychotic-like behavior, and other clients who require considerable adult guidance and supervision shall be not less than the following:

- (a) 1:4 during the waking hours of the day, approximately 6:00 a.m. to 10:00 p.m., when clients remain in the GHMRP during the day; and

- (b) 1:6 during sleeping, approximately 10:00 p.m. to 6:00 a.m.
- 946.10 The minimum daily ratio of on-duty, direct care staff to clients present in each GHMRP that serves clients who require training in basic independent-living skills shall be not less than the following:
- (a) 1:6 during the waking hours, approximately 6:00 a.m. to 2:00 p.m., when clients remain in the GHMRP during the day;
 - (b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m., and
 - (c) 1:6 during sleeping hours, approximately 10:00 p.m. to 6:00 a.m.
- 946.11 The minimum daily ratio of on-duty direct care staff to clients in each GHMRP that serves clients who are in day programs such as sheltered workshops, vocational training, supported or competitive employment programs, and who have acquired basic independent-living and survival skills shall not be less than 1:6 at all times that clients are in the GHMRP.
- 946.12 The minimum daily staffing levels set forth in sections 946.9 through 946.11 in each GHMRP shall be increased if required by the client, as indicated in the client's IHP or ISP.
- 946.13 Each provider of residential habilitation services shall:
- (a) Be a non-profit or other business entity;
 - (b) Be a member of the interdisciplinary team;
 - (c) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation services under the Waiver;
 - (d) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) for each client;
 - (e) Have a current Human Care Agreement with MRDDA for the provision of residential services;
 - (f) Ensure that all residential habilitation services staff are qualified and properly supervised;
 - (g) Ensure that the services provided are consistent with the client's IHP or ISP;
 - (h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
 - (i) Provide staff training in infection control procedures consistent with the standards established by the federal Centers for Disease Control and Prevention (CDC);

- (j) Ensure that each staff member or employee has been screened for communicable disease six months prior to providing services to any client, in accordance with the guidelines issued by the CDC, and that each employee or staff member is certified to be free of communicable disease; and
 - (k) Ensure compliance with all of MRDDA's policies governing reporting of unusual incidents, human rights, behavior management and protection of clients' funds.
- 946.14 Each person providing residential habilitation services for a provider under section 946.13 shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be screened annually for communicable disease, according to the guidelines issued by the CDC and demonstrate that he or she is free of communicable disease;
 - (c) Be able to read and write the English language;
 - (d) Agree to carry out the responsibilities to provide residential habilitation services consistent with the client's IHP or ISP;
 - (e) Have a high school diploma or general educational development (GED) certificate;
 - (f) Have a minimum of one year work experience; and
 - (g) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).
- 946.15 Each client's case manager shall monitor the delivery of services by conducting visits at least eight (8) times per calendar year to ensure that services are delivered in accordance with the IHP and ISP.
- 946.16 Each provider of residential habilitation services shall maintain progress notes monthly or more frequently if indicated, conduct periodic reviews of progress and maintain financial records of expenditures of public funds for each client.
- 946.17 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the client's date of discharge.
- 946.18 Residential habilitation services shall not be reimbursed when provided by a member of the client's family.
- 946.19 Reimbursement for residential habilitation services shall not include:

- (a) The cost of room and board;
 - (b) The cost of facility maintenance, upkeep and improvement; or
 - (c) Activities or supervision for which a payment is made by a source other than Medicaid.

- 946.20 The reimbursement rate for residential habilitation services shall be as follows:
 - (a) \$103.00 per diem, without an acuity adjustment; or
 - (b) \$135.00 per diem, including an acuity adjustment.

- 946.21 Each client shall be screened by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) using the Health Risk Screening Tool (HRST). If, the client's health care level is 3 or above as determined by the HRST, the rate shall include an acuity adjustment and reimbursement shall be made in accordance with section 946.20(b) of these rules.

- 946.22 If the reimbursement rate includes an acuity adjustment as set forth in section 946.20(b) of these rules, skilled nursing services and preventative, consultative and crisis support services shall be subject to the following limitations:
 - (a) Skilled nursing services shall not be billed in excess of the initial assessment and one (1) visit per quarter; and
 - (b) Preventative, consultative and crisis support services shall not be billed in excess of the initial assessment and one (1) visit per quarter.

- 946.23 Residential habilitation services shall not be billed concurrently with the following Waiver services:
 - (a) Environmental Accessibility Adaptation;
 - (b) Homemaker;
 - (c) Attendant care;
 - (d) Family Training;
 - (e) Independent Habilitation;
 - (f) Personal Care Services;
 - (g) Respite;
 - (h) Chore;
 - (i) Adult Companion; or
 - (j) Personal Emergency Response System (PERS).

946.24 Residential habilitation services shall not be billed when the client is hospitalized, on vacation or for any other period in which the client is not residing at the GHMRP.

946.25 MRDDA shall be responsible for payment of nursing services for the administration of medication to clients when the client is unable to self-administer or take medication independently. Nursing services attributable to the administration of medication shall not be billed as Waiver services.

946.99 DEFINITIONS

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

Client-an individual who has mental retardation and has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Communicable Disease-that term as set forth in Section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Direct Care Staff- individuals employed to work in the GHMRP who render the day-to-day personal assistance clients require in order to meet the goals of their IHP or ISP.

Group Home for Mentally Retarded Persons or GHMRP- a community residence facility, other than an intermediate care facility for persons with mental retardation, that provides a home-like environment for at least four (4) but no more than six (6) related or unrelated mentally retarded individuals who require specialized living arrangements and maintains necessary staff, programs, support services and equipment for their care and habilitation.

Health Risk Screening Tool- a mechanism for evaluating and identifying the diagnostic and training needs required by the client to ensure the client's health and safety in the least restrictive environment.

Individual Habilitation Plan or IHP-that term as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.3).

Individual Support Plan or ISP- the successor plan to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Interdisciplinary team- a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons which has the responsibility of performing a comprehensive evaluation of each client and participating in the development, implementation, and monitoring of the client's IHP or ISP.

Comments of the proposed rules should be sent in writing to Robert Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

DOCKET NO. 03-70-TS

The Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the adoption of the following emergency rulemaking which amends Chapter 40 of the Vehicles and Traffic Regulations (18 DCMR) to amend section 4002 of the District of Columbia Municipal Regulations by adding a new subsection 4002.4 which would specify that the No Trucks restrictions may apply at specified locations at all times. The rulemaking would also provide for all trucks to be restricted from the 31st Street, N.W. Bridge to be listed under the newly established subsection 4002.4.

Emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), was necessary to restrict all trucks due to the deterioration of the 31st Street, N.W. Bridge, and the threat of the bridge collapsing under the pressure of truck traffic. Therefore, since it is this Department's policy to protect the public from the possibility of a collapsing bridge an independent determination has been made by the District Department of Transportation to restrict all truck traffic from using this bridge, until the necessary repairs have been completed.

There are alternate routes that these trucks can use such as M Street, Thomas Jefferson Street, a through alley from Thomas Jefferson Street to 31st Street. Areas for trucks to turn around north of the Canal are Blue's Alley and Cannon's Alley. Trucks can be detoured to South Street.

This emergency action was taken to provide for the immediate preservation of the public health, safety and welfare. The emergency rulemaking was adopted on October 29, 2003, and became effective immediately upon that date.

The Director also gives notice of intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

These emergency rules will expire on February 26, 2004, or upon the publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Title 18 DCMR, Chapter 40, Section 4002, TRUCK RESTRICTIONS, Subsection 4002.4, (a) Northwest Section, is amended by adding the following to the list of locations where TRUCK RESTRICTIONS are installed:

“On the 31st Street, N.W. Bridge.”

All persons interested in commenting on the subject matter in this emergency and proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket No. 03-70-TS). Copies of this proposal are available, at cost, by writing to the above address.