

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to section 2(c) and 2(i) of the Food Regulation Amendment Act of 2002, effective May 2, 2002, (D.C. Law 14-116; D.C. Official Code §48-101 *et seq.*) ("Act"), and pursuant to Mayor's Order 2002-103, dated June 18, 2002, hereby gives notice of the adoption of a new Title 25 (District of Columbia Food and Food Operations) in the District of Columbia Municipal Regulations (DCMR).

On July 5, 2002, the Notice of Proposed Rulemaking, was published in the D.C. Register at 49 DCR 6184 *et seq.*. The Department received one comment raising an issue, which was addressed in the proposed rules. Therefore, no changes were made to the proposed rules.

Sections 2(c) and 2(i) of the Food Regulation Amendment Act of 2002, requires a 45-day Council review period within which the proposed rules must be approved or disapproved, in whole or part, by resolution otherwise the proposed rules would be deemed disapproved. On November 7, 2002, the Council approved the proposed rules through Resolution 14-613, entitled "Food Code Approval Resolution of 2002."

These rules will take effect immediately upon publication of this notice in the D.C. Register. New food establishments licensed after September 6, 2003 must fully comply with these rules. Food establishments licensed before September 6, 2003 have a year from the effective date of these rules to come into compliance with section 2409, Backflow Prevention Device, and section 1105, Consumer Advisory. Food establishments licensed before September 6, 2003 must meet the equipment cooling requirements in section 1005.1(c) of the rules by December 30, 2009. The Department will institute the Certificate of Achievement (section 4408) and the Risk Based Inspection Schedule (section 4400) after June 6, 2004.

DEPARTMENT OF HEALTH

NOTICE OF FINAL 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 of an amendment to Chapter 9 of Title 29 DCMR, "Public Welfare," new section 907. These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for personal emergency response system services provided by professionals to participants with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize reimbursement rates for personal emergency response system services for persons with mental retardation and developmental disabilities. Notice of emergency and proposed rulemaking was published in the *D.C. Register* on February 21, 2003, at 50 DCR 1771. No comments were received in connection with the notice of emergency and proposed rulemaking, and no changes have been made since the date of publication of the previous notice.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of personal emergency response system services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of personal emergency response system services for persons with mental retardation and developmental disabilities.

This rulemaking was adopted on May 22, 2003, and will become effective on the date of publication of this notice of final rulemaking in the *D.C. Register*.

Title 29 DCMR is amended by adding a new section 907 to read as follows:

907 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS) SERVICES

- 907.1 The Medicaid Program shall reimburse for personal emergency response system (PERS) services for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section for persons with mental retardation and developmental disabilities.
- 907.2 PERS services shall provide access to emergency assistance through a two-way communication system that dials a twenty-four (24) hour

response center. The system shall include a console or receiving base, which is connected to the user's telephone, a portable emergency response activator and a response center that monitors calls.

- 907.3 PERS services eligible for reimbursement shall include:
- (a) In-home installation of all equipment necessary to make the system operational;
 - (b) Client and caregiver instruction on usage, maintenance, and emergency protocol;
 - (c) Equipment maintenance;
 - (d) Twenty-four (24) hour, seven (7) days per week response center monitoring by trained operators capable of determining if an emergency exists and notifying emergency services and the client's respondent; and
 - (e) Equipment testing and monitoring.
- 907.4 PERS services shall only be provided to clients who:
- (a) Live alone or are alone for significant parts of the day;
 - (b) Have no regular caregiver for extended periods of time;
 - (c) Would otherwise require extensive routine supervision; and
 - (d) Have and demonstrate the capacity to understand how properly to use the system.
- 907.5 PERS services shall:
- (a) Have activation by a remote wireless device, such as a portable "help" button to allow for mobility;
 - (b) Have hands-free voice-to-voice communication with the response center through the PERS console unit;
 - (c) Be repaired or replaced by the provider within twenty-four (24) hours after the provider has been notified of a malfunction;
 - (d) Have an emergency response activator that:

- (1) Is activated by breath or touch and is usable by persons who have vision or hearing impairments or have a physical disability; and
 - (2) Will operate during a power failure for a minimum of twenty-four (24) hours; and
 - (e) Submit to the appropriate MRDDA case manager within twenty-four (24) hours of an emergency signal response, a written report detailing, at a minimum, the date and time of each emergency signal response to a client receiving PERS services. Emergency signal responses do not include test signals or activations a client made in error.
- 907.6 All PERS equipment shall comply with all applicable Federal Communications Commission laws, rules, and standards and the Underwriter's Laboratories, Inc. standards.
- 907.7 The client shall choose the respondent that will answer emergency calls through the PERS. Respondents may be relatives, friends, neighbors, or medical personnel.
- 907.8 Medical personnel the client selects to serve as respondents shall be licensed to practice medicine, registered nursing, practical nursing, or physician assistance 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, § 3-1201 *et seq.*); or be licensed to practice their respective professions within the jurisdiction where they provide a service.
- 907.9 PERS services shall be authorized by the interdisciplinary team and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).
- 907.10 Each provider of PERS services shall:
- (a) Be a non-profit organization, 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 PERS services under the Waiver;
 - (c) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 (Act), effective April 20, 1999 (D.C. Law 12-238; D.C. Official

Code § 44-551 *et seq.*), and any rules issued pursuant to the Act;
and

- (d) Have a plan (or access to necessary personnel) effectively to meet the needs of non-English speaking clients.

907.11 The billable units of service shall be:

- (a) The initial installation; and
- (b) The monthly rental and service fee.

907.12 PERS services shall be reimbursed as follows:

- (a) Forty dollars (\$40.00) for the initial installation; and
- (b) Twenty-eight dollars and fifty cents (\$28.50) for the monthly rental and service fee.

907.13 Providers of PERS services shall maintain records related to the provision of PERS services for a period of not less than six (6) years.

907.99 **DEFINITIONS**

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

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.

Individual Habilitation Plan or IHP- that plan 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, 7-1304.03).

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

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLESNOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1425 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999, 45 DCR 4794 (D.C. Law 12-175; D.C. Official Code § 50-901 *et seq.*) (2001 Ed.), Mayor's Order 94-176, effective August 19, 1994; section 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121, D.C. Official Code § 50-1401.01(a) (200 Ed.)), and 18 DCMR 104.9, hereby gives notice of the adoption of the following rulemaking that amends Chapters 1, 3, 4, 7, 10, 26, and 30, of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The amendments provide that the Director may require an applicant for reinstatement to pass a breathalyzer test, establish grounds for the waiver of written and road tests for driver licenses, recognize road tests taken in Maryland or Virginia for applicants for motorcycle endorsements, place a new restriction on road tests in the District, require notification if a person develops certain medical conditions after license issuance, provide that persons applying to register their vehicle obtain a District of Columbia operator's permit when required to do so, and increase the traffic adjudication appeal transcript deposit fee to \$50. The rulemaking also corrects some inaccuracies in the traffic regulations resulting from recent legislative changes, including legislation regarding the tinting of motor vehicle windows. In addition, Section 3014 was rewritten to correct a codification error and to clarify the intent of the Director.

A notice of proposed rulemaking was published in the *D.C. Register* on April 18, 2003, at 50 DCR 3055. No comments were received regarding these proposed rules.

The Department chose to modify several portions of the proposed rulemaking. Section C of the proposed rules would have required a person to either obtain a D.C. operator's permit or non-driver identification card in order to register their motor vehicle. The requirement that a non-driver identification card be obtained was dropped because it was determined that such a requirement was not necessary where a person otherwise submits proof of residency. Section C was also clarified to provide that a person who has an out of state operator's permit must surrender that permit to obtain D.C. registration. Originally, the proposed rules required a person to submit a special identification card or D.C. driver's operator's permit. The goal in requiring a proof of a local permit was to prevent a resident from retaining their permit from another jurisdiction. Such retention makes it difficult to track violations and fails to ensure that a resident is subject to local permit suspension or revocation rules. The Department altered the language to better ensure that this does not come to pass.

In addition, the Section A of the proposed rulemaking provided that a driver developing a physical condition covered by §§ 105 or 106 had to immediately surrender their operator's permit and then come into compliance with the applicable regulations governing medical conditions that may impair driving ability. The final version instead gives the person ten days from the date they learn

of their condition to come into compliance with the regulations. Only after the ten-day period has expired and they still have not come into compliance with the applicable section must they surrender their permit. This will help ensure that driver's have an opportunity to establish that they do not represent a danger to the public before they must surrender their permit. This does not affect the ability of the Director, pursuant to § 302.2, to revoke or suspend a driver's license if it is clear that a driver jeopardizes the safety of persons or property.

Several minor grammatical changes were also made to the text of the proposed rule.

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

Title 18, DCMR, is amended as follows:

A. Chapter 1, ISSUANCE OF DRIVER'S LICENSES, is amended as follows:

1) Section 104, EXAMINATION OF APPLICANTS FOR DRIVER'S LICENSES, is amended as follows:

(a) By amending subsection 104.9 to read as follows:

104.9 Except as provided in section 111, the Director or his or her designee is authorized to exercise discretion and waive the written test or the road test to an applicant presenting an expired permit as follows:

- (a) The written examination may be waived if the applicant presents a District driver's license that has expired for a period of ninety (90) days or less;
- (b) Except as provided in (c), the road test may be waived if the applicant presents a driver's license issued by the District or any other jurisdiction, including a foreign country that has expired for period of one hundred and eighty (180) days or less; and
- (c) If the applicant, within two (2) years prior to date of the application, has been adjudicated or deemed liable for any moving violations for which points are assessable, and such points have not been waived, the road test may only be waived if the permit has been expired for a period of ninety (90) days or less.

(b) By amending subsection 104.10 by striking the phrase: "who are seventy-five (75) years of age or over".

(c) By adding a new subsection 104.12 to read as follows:

104.12 No road test shall be given to an applicant who drives himself or herself to the road test unaccompanied by a person with a valid driver's license. Any

applicant who violates this section shall not be permitted to take the road test for six (6) months.

- 2) Section 105 is amended by adding new subsections 105.10 through 105.14 to read as follows:

- 105.10 Any permittee who develops glaucoma, cataracts or loses functioning in one eye shall, within ten (10) days of learning of the condition, appear at the Department with a medical eye report completed by an ophthalmologist on a medical form supplied by the Department.
- 105.11 Any permittee whose corrected visual acuity or field of vision becomes less than the minimum allowed under § 105.6 shall report to the Department for re-testing within ten (10) days of learning of the condition.
- 105.12 The Director may reissue a license with conditions or revoke the license of a permittee who no longer meets the visual acuity requirements of § 105.6 or who submits information pursuant to § 105.10 that indicates that the person is not physically qualified to operate a motor vehicle in a manner not to jeopardize the safety of individuals or property.
- 105.13 Failure to appear when required by §§ 105.10 or 105.11 may be grounds for revocation pursuant to § 302.2.
- 105.14 The Director may suspend a driver's permit if more time is required to evaluate the permittee and may, in his or her discretion, issue a temporary license to a permittee if consistent with public safety.

- 3) Section 106 is amended by adding new subsections 106.12 through 106.16 to read as follows:

- 106.12 Any permittee who develops a physical condition covered by this section shall, within ten (10) days of learning of the condition, appear at the Department, in accordance with the following:
- (a) Any permittee who develops diabetes shall furnish the medical report required by § 106.2, and shall be referred to the Medical Board if required by §§ 106.2 or 106.3; or
 - (b) Any permittee who experiences a loss of consciousness or a seizure shall furnish a medical report that meets the requirements of §§ 106.7 or 106.9.
- 106.13 Following review of the permittee's medical condition, the Director may either allow the license to remain in place, reissue the license with conditions necessary to ensure the safety of individuals and property, or

revoke the license if the person is not physically qualified to operate a motor vehicle in a manner not to jeopardize the safety of individuals or property.

106.14 Failure to appear when required by § 106.12 may be grounds for revocation pursuant to § 302.2.

106.15 The Director may suspend a driver's permit if more time is required to evaluate a permittee and may, in his or her discretion, issue a temporary license to a permittee if consistent with public safety.

4) Section 107, LICENSES ISSUED TO DRIVERS, subsection 107.13, is amended to read as follows:

107.13 Any person who has been issued a valid District of Columbia driver's license may have the license endorsed for the operation of motorcycles, upon successful completion of an examination required by the Director pursuant to § 104 and subject to the provision of § 103; except that if an applicant for a motorcycle license endorsement completed a motorcycle demonstration course in Virginia or Maryland, the demonstration requirement of § 104.3 may be waived by the Director, provided that (1) the course was completed within six (6) months of the person's application for a District of Columbia motorcycle endorsement, and (2) the person presents a certificate of successful completion of the course.

B. Chapter 3, CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES, Section 306, PERIOD OF SUSPENSION OR REVOCATION, is amended by adding a new subsection 306.9, to read as follows:

306.9 An applicant for reinstatement after a suspension or revocation for an alcohol-related offense may be required to pass a breathalyzer test, at the discretion of the Director.

C. Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, Section 412, REFUSAL OF REGISTRATION, subsection 412.1 is amended by adding new paragraphs (l) and (m) to read as follows:

(l) If a person holds an out-of-state operator's permit and fails to surrender that permit to the Department.

(m) If a person is not domiciled in the District of Columbia.

D. Chapter 7, MOTOR VEHICLE EQUIPMENT, section 734, is amended as follows:

1) Subsection 734.8 is amended to read as follows:

734.8 No motor vehicle may be operated or parked upon the public streets or spaces of the District of Columbia with window tinting in violation of D.C. Code § 50-2207.02 (2001 Ed.).

2) Subsections 734.9 through 734.19 repealed.

E. Chapter 10, PROCEDURES FOR ADMINISTRATIVE HEARINGS, Section 1016, STYLE OF PLEADINGS AND PETITIONS, subsection 1016.1 is amended by striking the words "Public Works" and inserting the words "Motor Vehicles".

F. Chapter 26, Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended to include in the list of fines the following:

Glazing Materials [D.C. Code § 50-2207.02 (2001 Ed.)]	\$50.00
Failure to correct, first occasion	\$1,000.00
Failure to correct, second or subsequent occasion	\$5,000.00

G. Chapter 30, ADJUDICATION AND ENFORCEMENT, is amended as follows:

1) Section 3014, APPEALS, subsection 3014.10, is amended to read as follows:

- 3014.10 The appeal shall be considered filed when all of the following conditions are satisfied:
- (a) The fines and penalties assessed by the hearing examiner have been paid by the respondent;
 - (b) The appeal fee, required by § 3015, has been paid by the respondent;
 - (c) The deposit for the transcript, required by § 3017, has been paid by the respondent; and
 - (d) A notice of appeal form has been completed and submitted.

2) Section 3017, TRANSCRIPTS OF HEARINGS, subsection 3017.3 is amended by striking the phrase "thirty dollars (\$30)" and inserting the phrase "fifty dollars (\$50)".