

DISTRICT OF COLUMBIA 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 a new section 943 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Transportation Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for transportation services provided 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 for transportation services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on February 7, 2003 (50 DCR 1243). Comments on the proposed rules were received. No substantive changes have been made. Section 943.9 (c) has been amended to clarify that each provider only operate vehicles meeting Washington Metropolitan Area Transit Commission requirements.

Amend Title 29 DCMR by adding the following new section 943 to read as follows:

SECTION 943 TRANSPORTATION SERVICES

- 943.1 Transportation services shall be reimbursed by the Medicaid Program 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.
- 943.2 Transportation services shall be provided to enable clients to gain access to waiver and other community services, activities and resources specified in the client's individual habilitation plan (IHP) or the individual support plan (ISP).
- 943.3 Transportation services shall be provided in addition to medical transportation required under 42 CFR 431.53 and transportation services provided under the District of Columbia State Plan for Medical Assistance, defined at 42 CFR 440.170 (a), and shall not replace these services.
- 943.4 Whenever feasible, the Mental Retardation and Developmental Disability Administration (MRDDA) shall use natural supports such as family, neighbors, friends and community agencies, which provide this service without charge, as an alternative to purchasing transportation services.

- 943.5 Transportation services shall be authorized and provided in accordance with each client's IHP or ISP.
- 943.6 Each provider of transportation services shall:
- (a) Be a non-profit, sole proprietor, 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 transportation services under the Waiver;
 - (c) Ensure that all transportation services staff are qualified and properly supervised; and
 - (d) Ensure that the service is provided consistent with the client's IHP or ISP.
- 943.7 Each person providing transportation services shall meet all of the following requirements:
- (a) Be at least eighteen (18) years of age;
 - (b) Be acceptable to the client;
 - (c) 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;
 - (d) Be able to communicate with the client;
 - (e) Be able to read and write the English language;
 - (f) Have a high school diploma or a general educational development (GED) certificate;
 - (g) Complete First Aid training and any other training required by MRDDA; and
 - (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Laws 12-238 and 14-98; D.C. Official Code § 44-551 *et seq.*) and implementing rules.
- 943.8 Each driver employed by a transportation services provider shall:

- (a) Possess and maintain a valid commercial driver's license issued by the District of Columbia or by the jurisdiction where the person provides services;
- (b) Obtain certification in cardiopulmonary resuscitation (CPR) and renew the certification annually;
- (c) Pass an annual drug test and submit to random drug testing, as required by 49 U.S.C. § 31306; and
- (d) Submit a certified copy of a ten (10) year driver's record from the District of Columbia, Department of Motor Vehicles to the driver's.

943.9

Each transportation provider shall:

- (a) Ensure that each vehicle used to transport a client has valid license plates;
- (b) Ensure that each vehicle used to transport a client has the minimum level of motor vehicle insurance required by law;
- (c) Possess a valid certificate of authority from the Washington Metropolitan Area Transit Commission (WMATC) and operate only vehicles meeting WMATC requirements;
- (d) Present each vehicle used to transport a client for inspection by a certified inspection station every six months and provide proof that the vehicle has passed the inspection by submitting a copy of the certificate of inspection to the Medical Assistance Administration (MAA);
- (e) Ensure that each vehicle used to transport a client is maintained in safe, working order;
- (f) Ensure that each vehicle used to transport a client is constructed for the transportation of individuals;
- (g) Ensure that each vehicle used to transport a client has seats fastened to the body of the vehicle;
- (h) Ensure that each vehicle used to transport a client has operational seat belts; and
- (i) Ensure that each vehicle used to transport a client has temperature conducive to comfort.

943.10

All transportation providers shall ensure that each client is:

- (a) Properly seated while the vehicle is in operation;
- (b) Provided with an escort on the vehicle, as needed;
- (c) Transported to and from each appointment in a timely manner; and
- (d) Securely fastened in age-appropriate and weight-appropriate seat belts, as required by law.

943.11 Each transportation provider shall ensure that each vehicle used to transport clients with mobility needs shall be adapted to provide safe access and use of the van.

943.12 Each transportation provider shall ensure that each vehicle used to transport clients in wheelchairs shall be equipped with floor-mounted seat belts and wheelchair lock-downs for each wheelchair that it transports.

943.13 Transportation services shall be reimbursed in accordance with the rate schedules set forth in section 955 of Chapter 9, Title 29 DCMR.

943.99 **DEFINITIONS**

When used in this section, 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.

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

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

Medical Assistance Administration- The administration within the Department of Health that administers the District's Medicaid Program.

Mental Retardation and Developmental Disability Administration (MRDDA) – The administration within the Department of Human Services that provides services to residents of the District of Columbia with mental retardation.

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. Sec. 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 of the District of Columbia Municipal Regulations (DCMR) entitled "Reimbursement of Intermediate Care Facilities for the Mentally Retarded" (ICF/MR Reimbursement Rules). These rules amend the ICF/MR Reimbursement Rules by authorizing the District of Columbia Medicaid Program ("Medicaid Program") to increase the amount of reimbursement to an ICF/MR, on a client specific basis, as a result of a change in client acuity which may require an altered staffing level and result in additional costs not reflected in the per diem rate. The rules set forth the standards governing reimbursement and the methodology to increase the rate paid to a facility.

Federal rules require as a Condition of Participation that each resident of an "Intermediate Care Facility for the Mentally Retarded" (ICF/MR) receive the services as identified in the Individual Habilitation Plan (IHP) or the Individual Support Plan (ISP). The Medicaid Program is increasing the amount of reimbursement to an ICF/MR, on a client specific basis, to cover the costs attributable for one-to-one services as prescribed in the client's IHP or ISP. Each ICF/MR shall be required to submit written documentation to support the need for one-to-one services. The Medicaid Program estimates an increase in annual expenditures of approximately \$3.4 million dollars.

A notice of emergency and proposed rulemaking was published in the *DC Register* on March 7, 2003 (50 DCR 2059). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *DC Register*.

Amend Chapter 9 (Medicaid Program) of Title 29 DCMR by adding the following new section 979 to read as follows:

979 ONE TO ONE SERVICES

- 979.1 Beginning one day after the effective date of these rules, in addition to the facility-specific per diem rate calculated in accordance with section 970, the Medicaid Program shall pay an additional amount to an ICF/MR for each resident receiving one-to-one services pursuant to the requirements set forth in subsections 979.1 through 979.36.
- 979.2 One-to-one services constitute an altered staffing pattern that allows for one person to provide services to one resident exclusively, for a pre-authorized length

- of time. Services shall be provided by a paraprofessional, a registered nurse or practical nurse, as appropriate.
- 979.3 One-to-one services shall be provided both within an ICF/MR and outside the facility, including day treatment, to the extent that the services do not duplicate those provided by other agencies.
- 979.4 The additional amount paid to an ICF/MR for one to one services is resident specific. If the resident moves to another facility, the additional amount of reimbursement attributable for one-to-one services shall be transferred to the new facility and discontinued from the resident's former facility. If the resident dies or no longer requires one to-one services, payment shall be discontinued.
- 979.5 The Department of Health, Medical Assistance Administration (MAA) shall authorize all requests for reimbursement for one-to-one services.
- 979.6 One-to-one services shall be ordered by and provided under the direction of the individual resident's interdisciplinary team.
- 979.7 The client's physician shall approve each request for professional one-to one services prior to submission to MAA.
- 979.8 Interventions for managing the resident's care shall be employed with sufficient safeguards and supervision to ensure that the safety, welfare, civil and human rights of the resident are adequately protected.
- 979.9 Techniques for managing inappropriate resident behavior or excessive restrictive measures shall never be used for disciplinary purposes, or the convenience of staff, or as a substitute for an active treatment program.
- 979.10 The use of clinically appropriate systematic interventions for managing maladaptive resident behavior, physical fragility or medical fragility shall be incorporated into the resident's individual habilitation plan (IHP) or individual support plan (ISP).
- 979.11 Services provided pursuant to standing orders or as needed programs to control inappropriate behavior, medical or physical fragility shall not be reimbursed.
- 979.12 To be eligible for reimbursement for paraprofessional one-to-one services, the resident shall be required to have a behavior support plan and meet at least one of the following characteristics:
- a. Exhibit elopement which places the resident at risk;
 - b. Exhibit behavior that poses serious bodily harm to self or others;
 - c. Exhibit destructive behavior that poses serious property damage, including fire-setting;
 - d. Be a sexual predator;

- e. Be physically fragile or have physical needs that does not require professional nursing staff but requires intensive staffing; or
 - f. Have any other intense behavioral problem that has been deemed to require one-to-one supervision.
- 979.13 To be eligible for reimbursement for professional one-to-one services, the resident shall meet at least one of the following characteristics:
- a. Be at risk of cardio-pulmonary failure;
 - b. Require monitoring and care of circulatory functions at least once every hour;
 - c. Require constant monitoring and care of gastro-intestinal complications;
 - d. Require constant monitoring and care of neurological functions;
 - e. Require monitoring and care of skeletal functions that requires turning and re-positioning at least once every hour as ordered by the physician;
 - f. Wound care as ordered by the physician four (4) or more times per day;
 - g. Require constant observation of urine, blood or body orifices for bleeding tendencies; or
 - h. Have any other intense medical condition that requires monitoring or care at least every hour or less.
- 979.14 The provider shall submit to the resident's case manager a written request for paraprofessional or professional one-to-one services.
- 979.15 The request for paraprofessional one-to-one services shall include all of the following information, if applicable:
- a. A concise statement that sets forth the presenting problem;
 - b. A behavior management plan that delineates the particular constellation of problems and/or disabilities that are presented by the resident. The plan shall be reviewed and up-dated at the time of the request. The plan also shall reflect goals directed toward eliminating behaviors(s) and methods to be used in all environments including day programming or day habilitation. The documentation also shall include a copy of any behavior management plan that was previously implemented.
 - c. Behavior data tracking sheet, reflecting data within thirty (30) days prior to the request;
 - d. Any incident reports involving the resident that are related to the need for the paraprofessional one-to-one services;
 - e. A copy of any court orders regarding one-to-one services;
 - f. A copy of any deficiency report issued by the Department of Health, Health Regulation Administration, which indicates that one-to-one services are required and are not being provided;

- g. Documentation that the resident meets the requirements set forth in 979.12;
- h. A copy of the most recent IHP or ISP which shall include the following information:
 - 1. A statement signed by the members of the interdisciplinary team testifying to the fact that the interdisciplinary team has met and agreed to the need for one-to-one services, including the number of hours per day and the number of days per week that services are needed;
 - 2. An explanation of less restrictive methods that have been attempted and failed;
 - 3. The specific justification for the one-to-one services; and
 - 4. Delineation of the specific duties and responsibilities of the staff with respect to this resident and the presenting problem and supports to be provided.
- i. Job description of the person who shall provide the one-to-one services; and
- j. Any other information deemed necessary to support the need for one-to-one services.

979.16 The request for professional one-to-one services shall include all of the following information, if applicable:

- a. A concise statement that sets forth the presenting problem;
- b. Any incident report involving the resident that are related to the need for skilled, professional one-to-one services;
- c. Most recent laboratory or diagnostic results, if applicable;
- d. A current physician's order, as required in section 979.7 which specifies the need for professional one-to-one services and the treatment regimen(s) to be provided;
- e. A copy of any court orders, regarding one-to-one services;
- f. A copy of any deficiency reports issued by the Department of Health, Health Regulation Administration, which indicates that one-to-one services are required and are not being provided;
- g. Documentation that the client meets the requirements set forth in 979.13;
- h. A copy of the most recent IHP or ISP which shall include the following information:
 - 1. A statement signed by the members of the interdisciplinary team testifying to the fact that the interdisciplinary team has met and agreed to the need

- for one-to-one services, including the number hours per day and the number of days per week that services are needed;
2. The specific justification for the one-to-one services;
 3. The specific treatment regimen to be provided; and
 4. Delineation of the specific duties and responsibilities of the staff with respect to this resident and the presenting problem and supports to be provided.
- i. Job description of the person who shall provide the services; and
 - j. Any other information deemed necessary to support the need for one-to-one services.
- 979.17 The request by the provider to the resident's case manager for one-to-one services shall be an indication that the ICF/MR is unable to adequately support the care of the section with the existing staffing configuration.
- 979.18 Upon receipt of the request, the resident's case manager shall immediately convene a conference with the provider and the interdisciplinary team to re-evaluate the resident and, if necessary, update the IHP or ISP.
- 979.19 If the resident's individual interdisciplinary team determines that the facility is unable to support the care of the client who requires professional one-to-one services with the existing staff configuration, they shall recommend professional one-to-one services as an alternative to a new residential placement.
- 979.20 The addendum to the ISP shall reflect the interdisciplinary team's determination that there is a need for one-to-one services and include a statement that sets forth the reason for the one-to-one services, and the duties and responsibilities of the person who shall provide the service.
- 979.21 The case manager shall review the request for one-to-one services, including supporting documentation within two (2) business days of receipt to ensure that the provider has submitted all required documentation.
- 979.22 Upon completion of the review required in section 979.21, the case manager shall submit the interdisciplinary team's recommendation for services, the provider's request and supporting documentation to MAA for approval.
- 979.23 MAA shall review the submission from the case manager and approve or disapprove the request for one-to-one services within two (2) business days of receipt. If necessary, MAA may call the provider, case manager, or other interdisciplinary team member or perform an on-site visit to obtain additional information regarding the request for one-to-one services.
- 979.24 In an emergency, the case manager shall initiate a telephone conference call with MAA and core interdisciplinary team members to re-evaluate the resident's needs and make recommendations for one-to-one services. A full meeting of the

interdisciplinary team shall be convened within five (5) business days after the telephone conference call. MAA may authorize one-to-one services for a period not to exceed (10) business days pending receipt of all required documents.

- 979.25 MAA shall send written notification of the approval or denial for any request for services to the resident's or resident's representative, the provider, and the resident's case manager.
- 979.26 If services are denied, the resident or his or her representative may submit to MAA a written request for reconsideration, including additional documentation in support of the request.
- 979.27 If the request for reconsideration is denied, MAA shall send written notification of the denial to the client or client's representative, the provider, and the client's case manager. The written denial letter shall comply with the requirements set forth in 42 CFR 431.200 et seq and include information informing the client or client's representative of the right to appeal the determination by contacting the Department of Human Services, Office of Fair Hearings orally or in writing.
- 979.28 Following the initiation of paraprofessional one-to-one services, the provider shall submit, on a quarterly basis, a status report to the case manager for review. Each status report shall indicate the resident's current condition, changes in the resident's condition since the last reporting period, interventions used and the resident's response to the interventions. The provider also shall submit documentation that reflects the need for continued one-to-one services and efforts made by the provider to eliminate the need for one-to-one services. Documentation may include progress reports from the resident's monitoring psychologist or other clinical staff.
- 979.29 Following the initiation of professional one-to-one services, the provider shall submit, on a monthly basis, a status report to the case manager for review. Each status report shall indicate the resident's current condition, changes in the resident's condition since the last reporting period, interventions used and the resident's response to the interventions. The provider also shall submit documentation that reflects the need for continued one-to-one services and discussions regarding the appropriateness of alternatives to one-to-one services, such as temporary hospitalization or nursing facility placement.
- 979.30 Each provider shall submit to the case manager, on a monthly basis, a summary of the total number of hours one-to-one services provided by each staff person. The summary shall be signed and dated by the provider.
- 979.31 Following the initiation of services, the case manager shall report to MAA, at least once every six months, the appropriateness and need for continued one-to-one services. The case manager shall also report any efforts that were undertaken to eliminate the need for services.

- 979.32 The case manager shall immediately notify MAA when services are no longer needed or if the provider fails to submit the required status report or monthly summary of services provided.
- 979.33 MAA may terminate payment for one-to-one services if the provider fails to submit the status report as required pursuant to sections 979.28 and 979.29.
- 979.34 The reimbursement rate for paraprofessional one-to-one services shall be \$11.50 per hour, which includes 15% benefits.
- 979.35 The reimbursement rate for professional one-to-one services shall be as follows:
Registered Nurse- \$22.00 per hour; or
Practical Nurse- \$20.00 per hour.
- 979.36 Each ICF/MR that has previously received an adjustment to the facility-specific rate for one-to-one services, prior to the effective date of these rules, shall comply with the requirements set forth in these rules. The facility-specific rate shall be adjusted in conformity with these rules.
- 979.99 **DEFINITIONS**

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

Case Manager- Shall have the same meaning as set forth in section 940 of Chapter 9 of Title 29 DCMR.

Individual Habilitation Plan (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 (ISP)-The successor 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 resident and participating in the development, implementation and monitoring of the resident's individual habilitation plan. The "core team" shall include the resident and resident's representative, the case manager, and relevant clinical staff.

Medical Fragility-A weakened medical state in which an individual is susceptible to disruptions in one's physical, emotional, and functional wellbeing.

Paraprofessional one-to-one services-Services provided by persons such as nurse's aides, counselors, and those qualified to provide personal care attendant services.

Practical Nurse- A person who is licensed or authorized to provide practical nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 et seq.) or licensed as a practical nurse in the jurisdiction where services are provided.

Professional one-to-one services-Services provided by a registered nurse or practical nurse.

Registered Nurse- A person who is licensed or authorized to provide registered nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 et seq.) or licensed as a registered nurse in the jurisdiction where services are provided.

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title IX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.01 *et seq.*) (2001) (the "CMPA"), as amended by § 3 (c) of the Technical Amendments Act of 2002, effective October 19, 2002 (D.C. Law 14-213; 49 DCR 8140) (the "Act"), hereby gives notice that final rulemaking action was taken to adopt the following rules. Section 3 (c) of the Act amended § 905 of the CMPA (D.C. Official Code § 1-609.05) (2001) to, among other things, specify that explaining the reasons for the termination of an Excepted Service employee in the 15-day advance written notice is discretionary. These rules amend Chapter 9 of the *D.C. Personnel Regulations*, Excepted Service, to incorporate this particular provision of the Act. In addition, the rules are amended to delete the amount previously specified as the limit allowed for the payment of relocation expenses, temporary housing allowances, or both; clarify the provisions regarding payment of performance incentives and performance management for Excepted Service; and other modifications to the chapter. No comments were received under the notice of proposed rulemaking published at 50 DCR 3059 (April 18, 2003). Final rulemaking action was taken on May 29, 2003.

CHAPTER 9**EXCEPTED SERVICE**

Chapter 9 of the D.C. Personnel Regulations is amended as follows:

900 APPLICABILITY

900.1 This chapter applies to all appointments in the Excepted Service under the authority of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.01 *et seq.*) (2001). Unless otherwise required by law, all Excepted Service appointments, other than those appointed under the authority of § 904 of the CMPA (D.C. Official Code § 1-609.04) (2001), serve at the pleasure of the appointing personnel authority.

901 EXCEPTED SERVICE CLASSIFICATION STANDARDS

901.1 Each position in the Excepted Service shall be classified as prescribed in Chapter 11 of these regulations, except that:

- (a) Statutory positions shall be classified in a manner consistent with their governing statutes; and
- (b) The personnel authority may adjust the grade or salary of a position to reflect the professional, scientific, or technical stature of an individual appointed as an expert or consultant.

902 EXCEPTED SERVICE QUALIFICATION STANDARDS

- 902.1 A person appointed to a position in the Excepted Service, other than a person appointed to a statutory position, shall meet the minimum qualification standards for the position to which the appointment is to be made.
- 902.2 The qualification standards for a position in the Excepted Service, other than a statutory position, to which a personnel authority may make any such appointment, shall be established and published by the appropriate personnel authority in consultation with the Director of Personnel.
- 902.3 A noncitizen's failure to have a valid authorization to work issued by federal officials pursuant to Part 274a of Title 8 of the Code of Federal Regulations shall automatically disqualify an applicant for appointment to a position in the Excepted Service.
- 902.4 Pursuant to § 408 of the CMPA (D.C. Official Code § 1-604.08) (2001), each personnel authority shall designate a person to administer the oath of office to each new employee of an agency. The oath shall be as follows: "I, (employee's name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office of which I am about to enter."
- 902.5 Accordingly, each personnel authority shall determine whether an applicant or appointee is or has been involved in any activities that constitute a reasonable basis for concluding that the candidate would not faithfully discharge the duties of the position for which he or she is being considered.
- 902.6 For purposes of this chapter, no person shall be considered suitable for employment in the District of Columbia who advocates the overthrow of the governments of the United States or the District of Columbia by unconstitutional means.

903 AGE REQUIREMENTS

- 903.1 The minimum age for employment in the Excepted Service, unless a different age requirement is specifically provided in the law authorizing such appointment or position, shall be sixteen (16), except that the minimum age for a junior youth aide of the Department of Parks and Recreation and for summer employment shall be fourteen (14) for a person appointed to a transitional position.

904 EXCEPTED SERVICE POSITIONS

- 904.1 Statutory positions shall include those occupied by employees who by statute serve at the pleasure of the appointing authority, or as provided by statute for a term of years, subject to removal for cause as may be provided in their appointing statute, pursuant to § 908 of the CMPA (D.C. Official Code § 1-609.08) (2001).
- 904.2 Public employment positions shall include positions created under public employment programs established by law (§ 904 of the CMPA; D.C. Official Code § 1-609.04 (1)) (2001).
- 904.3 Transitional positions shall include positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including developmentally disabled or handicapped persons, ex-offender or other disadvantaged groups (§ 904 (2) of the CMPA; D.C. Official Code § 1-609.04 (2)) (2001).
- 904.4 Special category positions shall include the following:
- (a) Positions occupied by Federal, state, or local government employees under the mobility provisions of the Intergovernmental Personnel Act of 1970, approved January 5, 1971 (P.L. 91-648; 84 Stat. 1909; 5 U.S.C. § 3301 *et seq.*), or a temporary personnel exchange agreement as authorized under Chapter 27 of these regulations (§ 904 (3) of the CMPA; D.C. Official Code § 1-609.04 (3)) (2001);
 - (b) Positions established by personnel authorities, other than the D.C. Board of Education or the Board of Trustees of the University of the District of Columbia, under federal grant-funded programs that have a limited or indefinite duration and are not subject to state merit requirements (§ 904 (4) of the CMPA; D.C. Official Code § 1-609.04 (4)) (2001); and
 - (c) Professional, scientific, or technical expert or consultant positions (§ 904 (5) of the CMPA; D.C. Official Code § 1-609.04 (5)) (2001).
- 904.5 Training positions shall consist of positions established under cooperative educational and study programs, positions established under a predoctoral or postdoctoral training program under which employees receive a stipend, and positions occupied by persons who are graduate students under temporary appointments when the work performed is the basis for completing certain academic requirements for advanced degrees (§ 904 (6) of the CMPA; D.C. Official Code § 1-609.04 (6)) (2001).
- 904.6 Pursuant to § 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2002 Supp.), policy positions shall consist of the following:
- (a) Positions on the staff of the Mayor and paid from funds appropriated for the Office of the Mayor;

- (b) Not more than two hundred twenty (220) positions in subordinate agencies as designated by the Mayor, sixty (60) of which may be allotted to and designated by the Office of the Inspector General and, in a control year, up to twenty (20) shall be allocated to and designated by the Office of the Chief Financial Officer;
- (c) Positions occupied by all employees of the Council of the District of Columbia, except those permanent technical and clerical employees appointed by the Secretary or General Counsel;
- (d) The District of Columbia Auditor may designate four (4) positions;
- (e) Not more than twenty-five (25) positions selected by the D.C. Board of Education;
- (f) Positions occupied by persons appointed by the Board of Trustees of the University of the District of Columbia as officers of the University, those who report directly to the President, those who head major units of the University, academic administrators, and persons in a confidential relationship to any of the foregoing, exclusive of those appointed under § 801 (a) of the CMPA (D.C. Official Code § 1-608.01 (a)) (2001);
- (g) Not more than ten (10) positions selected by the District of Columbia Health and Hospitals Public Benefit Corporation;
- (h) Not more than six (6) persons appointed by the District of Columbia Lottery and Charitable Games Control Board who report directly to either the Executive Director or Deputy Director, or who head major units of the Board;
- (i) The Chief of Police may designate up to one percent (1%) of the total number of authorized positions within the Metropolitan Police Department, no more than ten (10) of which may be filled by sworn members or officers;
- (j) Notwithstanding any other law or regulation, the Chief of the Fire and Emergency Medical Services may designate up to eleven (11) positions, no more than four (4) of which may be filled by sworn members;
- (k) All employees of the Criminal Justice Coordinating Council;
- (l) The Advisory Commission on Sentencing may appoint six (6) persons; and
- (m) Not more than two (2) positions selected by each other personnel authority.

904.7 A statutory or policy position described in § 904.1 or § 904.6 and occupied by a person holding an appointment to an attorney position shall be treated solely as a statutory or policy position, as the case may be.

905 METHOD OF MAKING EXCEPTED SERVICE APPOINTMENTS

- 905.1 A person may be appointed to any position in the Excepted Service by the appropriate personnel authority non-competitively, so long as the individual appointed meets the qualification standards established for the position.
- 905.2 An appointment to a statutory position shall be made as specified in the law authorizing the position.
- 905.3 An appointment to a special category position under a federal grant-funded program shall be either for an indefinite period or a time-limited appointment, reflecting the duration of the grant.
- 905.4 An appointment to a policy position shall be subject to the following provisions:
- (a) Each person holding an appointment to a policy position should be an individual whose duties include policy determination or are of a confidential or policy advocacy character;
 - (b) Each personnel authority authorized to make appointments to policy positions shall ensure that the position to which the appointment is to be made, together with the position qualifications, standards, and salary range, is published in the *D.C. Register*;
 - (c) The position shall become a position in the Excepted Service automatically upon being filled by a policy appointment, and shall remain an Excepted Service position only for so long as filled by a policy appointment; if a Career or Educational Service employee holds a position converted to an Excepted Service position, and the employee is not afforded or does not accept a policy appointment to that position, the employee shall have all rights and remedies available under Chapter 24 of these regulations;
 - (d) An appointment to a policy position may be either for an indefinite or time-limited period;
 - (e) Each personnel authority, within forty-five (45) days of filling any such designated position by a policy appointment, shall publish in the *D.C. Register* the name of the person accepting the policy appointment, and the position to which appointed; and
 - (f) The authority to make policy appointments may be delegated or redelegated in whole or in part.

906 EXCEPTED SERVICE APPOINTMENT OF PERSONS FROM CAREER OR EDUCATIONAL SERVICE

- 906.1 Any person holding a position in the Career or Educational Service may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned to a position

that would otherwise be in the Excepted Service without losing his or her existing status in the Career or Educational Service.

- 906.2 To effect an appointment to a position in the Excepted Service without a break in service, a person holding a position in the Career or Educational Service must have been informed of the conditions of employment under the new appointment.
- 906.3 Any person tendered an appointment to a position in the Excepted Service who declines or refuses to accept such appointment shall continue to be subject to the rules applicable to the service in which he or she has existing status as provided in § 906.1.

907 EMPLOYEE RIGHTS

- 907.1 A person appointed to a position in the Excepted Service shall not acquire permanent Career status.
- 907.2 A person appointed to the Excepted Service shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time, with or without a stated reason, except as provided in this section.
- 907.3 A person holding an appointment in a statutory position, who is appointed pursuant to a statute that provides for a term of years subject only to removal for cause, may be removed only as provided for in the applicable statute.
- 907.4 Except as provided in § 907.3, a person holding an appointment in the Excepted Service shall be entitled to advance written notice of at least fifteen (15) days when termination is contemplated. The notice may explain the reason for the termination.
- 907.5 The fifteen-day (15-day) notice shall not be required for termination on the date previously anticipated for termination, such as in the case of an employee with a not-to-exceed (NTE) date or other date of anticipated termination included on the appointing personnel action form.
- 907.6 Any person holding an appointment in the Excepted Service to a policy position, whose position ceases to be authorized as a policy position by reason of a notice published in the *D.C. Register* in accordance with § 905.4, shall be terminated not later than thirty (30) days from the date of the published notice, except that the minimum advance written notice provision of § 907.4 shall apply if applicable.

908 RESTRICTIONS ON SUBSEQUENT APPOINTMENT TO THE CAREER, MANAGEMENT SUPERVISORY, OR EDUCATIONAL SERVICES

- 908.1 Except as provided in § 908.2, no person holding an Excepted Service appointment pursuant to § 904.1 or § 904.6 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the six-month (6-month) period immediately preceding a Mayoral election.

908.2 Upon termination, a person holding an Excepted Service appointment pursuant to § 904.1 or 904.6 who has Career or Educational Service status may retreat, at the discretion of the terminating personnel authority, within three (3) months of the effective date of the termination, to a vacant position in such service for which he or she is qualified.

908.3 The provisions of §§ 908.1 and 908.2 shall not apply to employees of the Council of the District of Columbia.

909 RESIDENCY REQUIREMENTS

909.1 The residency requirements imposed by law and Chapter 3 of these regulations shall apply to all persons appointed to positions in the Excepted Service.

910 DUAL COMPENSATION AND ANNUITY OFF-SET

910.1 A person holding an appointment in the Excepted Service shall be subject to the dual compensation and annuity off-set requirements of law and regulations.

911 PRE-EMPLOYMENT TRAVEL, RELOCATION, AND TEMPORARY HOUSING ALLOWANCE

911.1 An agency may pay to an individual reasonable travel expenses, up to a maximum of five thousand dollars (\$5000), incurred incidental to pre-employment interviews held for the purpose of ascertaining his or her qualifications for a hard-to-fill policy (§ 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a)) (2002 Supp.) position in the Excepted Service at grade level DS-11 or above.

911.2 An agency may pay reasonable relocation expenses for an individual and his or her immediate family when that individual is selected for or appointed to a hard-to-fill policy (§ 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a)) (2002 Supp.) position in the Excepted Service at grade level DS-11 or above, if relocation is to the District of Columbia from outside the Greater Washington Metropolitan Area.

911.3 In the case of an individual eligible for relocation expenses pursuant to § 911.2, an agency may pay reasonable temporary housing allowance for a period not to exceed sixty (60) days for the individual and his or her immediate family.

911.4 The personnel authority may designate a position as a hard-to-fill position on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

911.5 Payment of expenses under § 911.2 and § 911.3 may only be made after the selectee or appointee signs a notarized agreement to remain in the District government service for twelve (12) months after his or her appointment unless separated for reasons beyond his or her control which are acceptable to the agency head concerned.

911.6 Any expense incurred for which reimbursement is sought pursuant to this section must be supported by valid receipts or invoices, the originals of which must be submitted with the request for reimbursement.

911.7 If an individual violates an agreement under § 911.5, the money paid by the District government for expenses shall be a debt due the District government and shall be recoverable by set-off, in accordance with Chapter 29 of these regulations, against accrued pay or any other amount due the individual, and by other lawful collections actions.

912 PERFORMANCE INCENTIVES FOR EXCEPTED SERVICE

912.1 A personnel authority may authorize performance incentives for exceptional service by an employee in an Excepted Service policy position under § 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2002 Supp.).

912.2 A performance incentive may be paid only once in any fifty-two-week (52-week) period and only when the employee is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is to be paid.

912.3 When there is no annual performance contract as described in § 912.2, the employee's annual individual performance plan pursuant to Chapter 14 of these regulations shall be considered the annual performance contract for the purpose of authorizing a performance incentive.

912.4 A performance incentive shall not be paid unless the employee has served in the position for which the incentive is proposed for a continuous fifty-two week (52-week) period prior to the granting of the performance incentive.

912.5 A performance incentive shall not exceed ten percent (10%) of the employee's rate of basic pay. For the purposes of determining the percentage of a performance incentive, the amount of the incentive shall be calculated based on the employee's scheduled rate of basic pay during the performance rating period in which the exceptional service occurred, pursuant to Chapter 19 of these regulations. The percentage scale provided in Chapter 19, and the documentation required therein, shall also apply to performance incentives pursuant to this section.

912.6 Excepted Service employees are eligible for incentive awards pursuant to Chapter 19 of these regulations, except for monetary awards.

912.7 Performance incentives shall be submitted, processed and approved in accordance with Chapter 19 of these regulations.

912.8 A performance incentive awarded under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.

913 SEPARATION PAY

- 913.1 Subject to the provisions of this section, the personnel authority shall authorize an individual appointed to a policy (§ 903 (a) of the CMPA; D.C. Official Code § 1-609.03 (a)) (2002 Supp.) position or a statutory (§ 908 of the CMPA; D.C. Official Code § 1-609.08) (2001) position to be paid separation pay at his or her rate of basic pay upon separation for non-disciplinary reasons, as follows:
- (a) An individual at grade level DS-15 (or equivalent) or above shall be paid separation pay in increments of weeks up to a maximum of eight (8) weeks, unless the personnel authority specifies that separation pay of up to twelve (12) weeks is warranted; and
 - (b) An individual at grade level DS-14 (or equivalent) or below shall be paid separation pay in increments of weeks up to a maximum of four (4) weeks, unless the personnel authority specifies that separation pay of up to twelve (12) weeks is warranted.
- 913.2 The number of weeks of separation pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government.
- 913.3 Separation pay shall be provided at the time of separation as a lump-sum, one-time payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.
- 913.4 Separation pay shall not be payable to any individual who either:
- (a) Has accepted an appointment to another position in the District government without a break in service; or
 - (b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement benefit program under § 2605 of the CMPA (D.C. Official Code § 1-626.05) (2001).
- 913.5 An individual who receives separation pay pursuant to this section, but who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, shall be required to repay the amount of separation pay attributable to the period covered by such appointment. The pro-rated amount to be repaid shall be based on the entire amount of the separation pay, including all required deductions, and shall be paid to the General Fund of the District of Columbia.
- 913.6 Separation pay for any individual covered by this section shall not exceed four (4) weeks of his or her basic pay unless he or she has been a District government employee for at least one (1) year prior to the separation.

914 PERFORMANCE MANAGEMENT FOR EXCEPTED SERVICE

914.1 Employees in the Excepted Service shall be subject to the provisions of Chapter 14 of these regulations.

999 DEFINITIONS

999.1 In this chapter, the following terms have the meaning ascribed:

Attorney – a position that is classified as part of Series 905, except for a position that is in the Legal Service.

Consultant – a person who serves as an advisor to an officer or instrumentality of the District government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant gives views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions. The person is an expert in the field in which he or she advises, but need not be a specialist. A person's expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his or her ability and knowledge make his or her advice distinctively valuable to the agency.

Consultant position – a position requiring the performance of purely advisory or consultant services, not including performance of operating functions.

Days – calendar days, unless otherwise specified.

Excepted Service – positions identified as being statutory, transitional, public employment, special category, training, or policy positions, and authorized by §§ 901 through 908 of the CMPA (D.C. Official Code § 1-609.01 through 1-609.08) (2001). These positions are not in the Career, Educational, Management Supervisory, Legal or Executive Service.

Expert – an expert may be a person who performs or supervises regular duties and operating functions and shall include the following:

- (a) A person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field; and
- (b) Certain members of boards or commissions.

Expert position – (a) a position that, for satisfactory performance, requires the services of an expert in the particular field, as defined above, and with duties that cannot be performed satisfactorily by someone not an expert in that field; or (b) a position that is occupied by members of certain boards and commissions.

Greater Washington Metropolitan Area – the Consolidated Metropolitan Statistical Area, which includes Washington, D.C. (the "Washington-Baltimore, DC-MD-VA-WV CMSA"), as defined by the Office of Management and Budget June 30, 1998 (revised November 3, 1998), and which consists of the following:

- (a) The Baltimore, MD Primary Metropolitan Statistical Area (PMSA), consisting of Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne's County, and Baltimore City;
- (b) The Hagerstown, MD PMSA, consisting of Washington County; and
- (c) The Washington, DC-MD-VA-WV PMSA, consisting of the District of Columbia; Calvert County, MD; Charles County, MD; Frederick County, MD; Montgomery County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Culpeper County, VA; Fairfax County, VA; Fauquier County, VA; King George County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria City, VA; Fairfax City VA; Falls Church City, VA; Fredericksburg City, VA; Manassas City, VA; Manassas Park City, VA; Berkeley County, WV; and Jefferson County, WV.

Hard-to-fill position – a position designated as a hard-to-fill position pursuant to § 911.4 on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

Performance contract – an agreement between an employee in an Excepted Service policy position under § 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2002 Supp.) and the personnel authority that may be entered into and that clearly identifies measurable goals and outcomes.

Personnel authority – those personnel authorities listed in § 406 (b) of the CMPA (D.C. Official Code § 1-604.06 (b)) (2001).

Pre-employment travel expenses – expenses allowed for an individual pursuant to § 911.1, which may include such items as hotel accommodations, travel (commercial carrier, privately owned vehicle, *etc.*), and a per diem allowance.

Relocation expenses – expenses allowed for an individual and his or her immediate family pursuant to § 911.2, which may include such items as transportation of family, transportation of household goods and expenses related thereto, temporary storage expenses, relocation services company, property management services, and a per diem allowance.

Temporary housing allowance – subsistence expenses incurred by an individual and his or her immediate family while occupying lodging obtained for the purpose of temporary occupancy when authorized pursuant to § 911.3.

Time-limited appointment – an appointment with a specific time limitation consistent with the anticipated duration of the programs, projects, problems, or phases thereof, requiring such service.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

DOCKET NUMBER 02-126-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 rulemaking which amends the Vehicle and Traffic Regulations (18 DCMR). Final action to adopt this rulemaking was taken on May 6, 2003. No comments have been received and no changes have been made to the text of the proposal as published on January 31, 2003 at 50 DCR 1062. This final rulemaking will be effective when published in the D.C. Register.

A. Title 18 DCMR, Section 4020, NO STANDING RESTRICTION, Subsection 4020.1, (a), Northwest Section, is amended by deleting the following from the list of locations where parking will be limited as specified:

K Street, N.W.

From 30th Street to Thomas Jefferson Street on the north side, "No Standing or Parking, 7-9:30 A.M.: 4-6:30 P.M., Monday-Friday".

B. Title 18 DCMR, Section 4038, "NO STANDING OR PARKING RESTRICTIONS", is amended to establish a new subsection, 4038.2 to read as follows:

§ 4038.2 There shall be no standing or parking of any vehicles at any of the locations listed in this subsection at the specified times.

C. Title 18 DCMR, Section 4038, "NO STANDING OR PARKING RESTRICTIONS", Subsection 4038.2, (a) Northwest Section, is amended by adding the following to the list of locations where there shall be no standing or parking at the specified times:

K Street, N.W.

From 30th Street to Thomas Jefferson Street on the north side, "No Standing or Parking, 7-9:30 A.M.: 4-6:30 P.M., Monday-Friday".