

**DEPARTMENT OF HEALTH**  
**NOTICE OF PROPOSED RULEMAKING**

---

The Director of the Department of Health (“Department”), pursuant to section 302 (14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14) (2007 Repl.), Mayor's Order 98-140, dated August 20, 1998, the SafeRx Amendment Act of 2008, effective March 26, 2008 (D.C. Law 17-0131; 55 DCR 4462, published on April 25, 2008) (the Act), and Mayor’s Order 2008-94, dated July 3, 2008, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to chapter 83 of Title 17 (Business, Occupations and Professions) of the District of Columbia Municipal Regulations (DCMR),(Pharmaceutical Detailers) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The purpose of this amendment is to amend the definition of the term “conference” to include a scientific symposium accredited by a nationally recognized healthcare professional education accreditation body (e.g. ACCME, ACDE, ACPE, ANA, etc.).

**Chapter 83 (Pharmaceutical Detailers) of Title 17 (Business Occupations and Professions) is amended as follows:**

**Section 8399.1 is amended as follows:**

**a) The following term with the ascribed meaning is added to read as follows:**

Conference- A meeting, symposium, expo, exhibit, convention, assembly, or like gathering for the discussion of health-related issues consisting of multi-pharmaceutical company or labeler representation and targeting a regional, national or international audience; or a scientific symposium accredited by a nationally recognized healthcare professional education accreditation body (e.g. ACCME, ACDE, ACPE, ANA, etc.).

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to Kenneth Campbell, General Counsel, the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

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

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008; and in accordance with the provisions of section 801 (a) 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 § 1-608.01 (a)) (2006 Repl. and 2008 Supp.); hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. **The purpose of these rules is to amend section 807.1 of Chapter 8, Career Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), to remove the age requirements for original (new) firefighter appointments and reinstatements to firefighter positions in the Fire & Emergency Medical Services Department (FEMSD).**

Upon adoption, these rules will amend Chapter 8, Career Service, of Title 6 DCMR, published at 30 DCR 2555 (May 27, 1983) and amended at 30 DCR 4608 (September 9, 1983), 31 DCR 2715 (June 1, 1984), 32 DCR 1857 (April 5, 1985), 32 DCR 2473 (May 3, 1985), 32 DCR 2953 (May 24, 1985) (Errata), 33 DCR 4299 (July 18, 1986), 35 DCR 1087 (February 19, 1988), 36 DCR 6069 (August 25, 1989), 37 DCR 3952 (June 15, 1990), 37 DCR 7117 (November 9, 1990), 42 DCR 3520 (July 7, 1995), 45 DCR 451 (January 23, 1998), 45 DCR 1641 (March 20, 1998), 47 DCR 2419 (April 7, 2000), 48 DCR 8973 (September 28, 2001), 49 DCR 1859 (March 1, 2002), 49 DCR 6842 (July 19, 2002), 49 DCR 8368 (August 30, 2002), 49 DCR 9298 (October 11, 2002) (Errata), 51 DCR 9706 (October 15, 2004), 51 DCR 10410 (November 12, 2004), 53 DCR 3248 (April 21, 2006), 54 DCR 725 (January 26, 2007), 54 DCR 9556 (October 5, 2007), 55 DCR 7731 (July 18, 2008), and 56 DCR 002571 (April 3, 2009).

**CHAPTER 8****CAREER SERVICE**

*Chapter 8, Career Service, of Title 6 of the District of Columbia Municipal Regulations, is amended as follows:*

*Subsections 807.1 (b) and (c) are amended to read as follows:*

- 807.1 (b) For initial appointment to a firefighter/EMT or firefighter/paramedic position in the Fire and Emergency Medical Services Department (FEMSD), an applicant shall have reached his or her nineteenth (19<sup>th</sup>) birthday as of the date of application. There shall be no maximum age limit for appointment to a firefighter/EMT or firefighter/paramedic position in the FEMSD, as long as the applicant is found otherwise qualified and successfully passes a medical examination and any other examinations, background investigations or tests required by the FEMSD of candidates for employment;
- (c) There shall be no age limit for reinstatement to a rank no higher than the rank last

held by a former firefighter/EMT or firefighter/paramedic of the FEMSD, provided that the applicant for reinstatement meets the following requirements:

- (1) The applicant submits his or her request for reinstatement in writing to the Fire EMS Chief and the request is approved;
- (2) The applicant successfully passes a background investigation; and
- (3) The applicant is found to be otherwise qualified and successfully passes a medical examination and any other examinations or tests required by the FEMSD of any incumbent employee, except that no former member shall be required to take the entry-level written examination again;

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

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

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with sections 1351 through 1353 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 § 1-613.51 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. The purpose of these rules is to amend **Chapter 14, Performance Management, of Title 6 of the District of Columbia Municipal Regulations (DCMR)**, in its entirety. While a Notice of Proposed Rulemaking was published in the *D.C. Register* on January 30, 2009 (56 DCR 001064), comments were received during the 30-day public comment period. Based on the comments received, there is a need to revise the language in that rulemaking notice. Because of these revisions, a new rulemaking notice is being published to supersede the January 30, 2009 rulemaking notice. Upon adoption, these rules will amend Chapter 14, Performance Management, of Title 6 of the DCMR, published at 47 DCR 5560 (July 7, 2000), and amended at 48 DCR 301 (January 12, 2001), 49 DCR 1862 (March 1, 2002), 50 DCR 2851 (April 11, 2003), and 52 DCR 1302 (February 11, 2005).

**CHAPTER 14****PERFORMANCE MANAGEMENT**

*Chapter 14 of the D.C. Personnel Regulations is amended to read as follows:*

**1400 APPLICABILITY**

1400.1 The provisions of this chapter apply to all of the following:

- (a) Employees in the Career Service under the authority of section 801 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 § 1-608.01), including:
  - (1) Probationary employees, as specified in section 1416 of this chapter;
  - (2) Uniformed members of the Metropolitan Police Department (MPD) at the ranks of Lieutenant, Captain, Inspector, Commander, and Assistant Chief; and
  - (3) Uniformed members of the Fire and Emergency Medical Services Department (FEMSD) in the positions of Deputy Fire Chief, Battalion Fire Chief, Assistant Fire Chief (Operations), and Assistant Fire Chief;

- (b) Employees in the Excepted Service appointed under the authority of section 903 of the CMPA (D.C. Official Code § 609.03);
- (c) Employees in the Excepted Service appointed as Capital City Fellows, as specified in section 1417 of this chapter;
- (d) Employees in the Management Supervisory Service appointed under the authority of sections 951 through 958 of the CMPA (D.C. Official Code §§ 1-609.51 through 1-609.58), except for the provisions of section 1414 of this chapter; and
- (e) Employees in the Legal Service under the authority of sections 851 through 863 of the CMPA (D.C. Official Code §§ 1-608.51 through 1-608.62), appointed as supervisory attorneys in the Office of the Attorney General for the District of Columbia, non-supervisory attorneys who report directly to either the Attorney General for the District of Columbia or the Principal Deputy Attorney General, subordinate agency General Counsel, and other subordinate agency supervisory attorneys in the Legal Service.

#### **1401 EXCLUSIONS**

- 1401.1 The provisions of this chapter shall not apply to the following employees:
- (a) Uniformed members of the MPD at the ranks of Officer, Master Patrol Officer, Detective, Investigator, and Sergeant, who continue to be covered under the performance evaluation system in effect as of the effective date of these regulations;
  - (b) Uniformed members of the FEMSD in positions other than those listed in 1400.1 (a)(3) of this chapter; and
  - (c) Unionized employees in the Legal Service.

#### **1402 PURPOSE**

- 1402.1 The purpose of this chapter is to set forth the rules for the District government's performance management program.
- 1402.2 Performance management integrates the processes District government agencies use to do all of the following:
- (a) Communicate and clarify organizational and individual work goals to all employees;
  - (b) Identify individual and, where applicable, team responsibilities and accountability for accomplishing work unit, agency, and organizational goals;

- (c) Identify and address developmental needs for individuals and, where applicable, teams;
- (d) Provide feedback to employees about performance expectations and work accountability;
- (e) Assess and improve individual, team, and organizational performance;
- (f) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and
- (g) Use the results of the annual performance evaluation as a basis for appropriate human resources' actions, including training, promotion, demotion, administrative action, or other types of human resources' actions.

1402.3 The performance management program implemented by this chapter shall accomplish all of the following:

- (a) Create and set forth work expectations in relation to the strategic goals of a work unit, an agency and, where applicable, the District government as a whole;
- (b) Hold supervisors and employees accountable for performance, which shall include a direct relationship between the performance evaluation received pursuant to this chapter and the receipt of any periodic salary increases (including salary increases on both step and merit-based salary plans);
- (c) Objectively evaluate employees' work performance based on criteria that have been made known to the employees prior to the performance evaluation;
- (d) Improve employee performance through developmental plan and continuous employee skill development;
- (e) Recognize employees' accomplishments and identify employees' deficiencies so that appropriate rewards or assistance can be provided; and
- (f) Tie employee performance to work unit, agency, and where applicable, District government-wide outcomes.

### **1403 PERFORMANCE MANAGEMENT PERIOD**

1403.1 Except as provided in section 1417 of this chapter, the performance management period for all covered employees shall be from the beginning of each fiscal year (October 1<sup>st</sup>) to the end of the fiscal year (September 30<sup>th</sup>).

### **1404 PERFORMANCE RATINGS**

1404.1 An overall performance rating shall be a culmination of the ratings assigned to each

performance expectation. The overall performance rating indicates the level of an employee's actual performance of assigned competencies and S.M.A.R.T Goals during the performance management period.

- 1404.2 The overall performance rating shall be derived from the score on competencies for fifty percent (50%); and S.M.A.R.T Goals for fifty percent (50%).
- 1404.3 The rating levels for the performance management program shall be as follows:
- (a) Level 5, *Role Model* – Performance serves as a benchmark for other employees in the workplace. Regarded by colleagues as a person with great depth and breadth of knowledge in area of expertise, ideas and is willing to share it with others. Contributions, initiatives, and productivity reflect the highest degree of performance.
  - (b) Level 4, *Highly Effective Performer* – Performance consistently exceeds expectations in most areas and meets expectations in all other areas. Consistently adds value to the work of the agency. Demonstrates willingness to offer sound recommendations for improvement and is involved in the implementation of them.
  - (c) Level 3, *Valued Performer* – Performance expectations consistently meet and may occasionally exceed expectations, and therefore, meets the minimum requirements of the position. Contributions are essential to ensuring that agency goals are met.
  - (d) Level 2, *Marginal Performer*– Performance of most expectations needs improvement. Adequate performance of the expectations for the position requires further development of skills. Potential to improve is evident and demonstrates a willingness to improve skills.
  - (e) Level 1, *Inadequate Performer* – Performance of expectations is consistently inadequate, and therefore fails to meet the minimum requirements of the position. Potential to improve is not evident. .

#### **1405 PERFORMANCE PLANS**

- 1405.1 A Performance Plan shall set forth the performance expectations and development objectives that each covered employee is expected to accomplish during the performance management period.
- 1405.2 Only the Director, D.C. Department of Human Resources (or designee), or independent personnel authority, as applicable, may approve an agency's request for an extension of the annual Performance Plan submittal period.
- 1405.3 Except as otherwise provided in this chapter, each supervisor shall complete a Performance Plan outlining what is expected of each covered employee, as follows:

- (a) Within thirty (30) days of the beginning of each performance management period;
- (b) Within thirty (30) days of the date an employee is promoted, appointed, transferred, reassigned, or demoted to a new position or a position with significantly different duties and responsibilities;
- (c) Within thirty (30) days of the date an employee is officially detailed when the detail is for a period of more than ninety (90) days;
- (d) An employee who has been reassigned to a position with different duties and responsibilities within ninety (90) days of the end of the performance management period shall receive a Performance Plan for the following fiscal year within thirty (30) days of commencing the duties of the position to which reassigned; or
- (e) An employee who has been promoted or demoted during the ninety (90) days prior to the end of the performance management period shall receive a Performance Plan for the following fiscal year within thirty (30) days of commencing the duties of the new position.

1405.4 A Performance Plan shall include all of the following:

- (a) Competencies;
- (b) S.M.A.R.T (*Specific, Measurable, Attainable, Realistic, Time-Related*) Goals; and
- (c) An Individual Development Plan.

1405.5 Modifications to the Performance Plan can only be made up to June 30th (ninety (90) calendar days before the end of the performance management period).

## **1406 COMPETENCIES**

1406.1 Competencies are a type of performance expectation that consists of the critical knowledge, abilities, skills, and personal characteristics necessary for satisfactory performance in a particular position. Competencies are linked to the specific duties performed in a particular work unit, but focus strongly on each employee individually.

1406.2 At the beginning of each performance management period, a supervisor or a reviewer, in the absence of the supervisor, shall discuss with the employee how each competency relates to the employee's job. At the end of the performance management period, the supervisor or a reviewer, in the absence of the supervisor, shall evaluate each competency based on the employee's performance during the period.

- 1406.3 There are five (5) core competencies for all employees covered by this chapter:
- (a) Accountability;
  - (b) Communication;
  - (c) Customer Service;
  - (d) Goal Attainment; and
  - (e) Job Knowledge.
- 1406.4 There are three (3) additional core competencies applicable to supervisors:
- (a) Leadership;
  - (b) Management of Others; and
  - (c) Operational and Strategic Planning.
- 1406.5 The supervisor may choose up to three (3) additional competencies, or develop an additional three (3) competencies in collaboration with the employee. The recommended additional competencies include but are not limited to the following:
- (a) Flexibility/Adaptability;
  - (b) Initiative;
  - (c) Innovation;
  - (d) Mechanical Ability;
  - (e) Negotiation;
  - (f) Problem Solving;
  - (g) Productivity;
  - (h) Teamwork;
  - (i) Technical Ability; and
  - (j) Use of Technology;

**1407 S.M.A.R.T GOALS**

- 1407.1 S.M.A.R.T Goals are a type of performance expectation that consists of goals that

- are “Specific, Measurable, Attainable, Realistic, and Time-Related.” A Performance Plan shall include at least three (3) and not more than five (5) S.M.A.R.T Goals.
- 1407.2 The use of S.M.A.R.T Goals may augment the use of performance standards for agencies to document performance objectives for employees. Wherever possible, and as applicable, agencies should incorporate the text normally found in performance standards in the employee’s S.M.A.R.T Goals.
- 1407.3 S.M.A.R.T Goals set in the Performance Plan shall be weighted, with the sum of all goal weightings equal to one hundred percent (100%).
- 1407.4 S.M.A.R.T Goals set in the performance plan shall include a timeframe for the accomplishment of each goal.
- 1407.5 At the beginning of each performance management period, a supervisor or the reviewer, in the absence of the supervisor, shall discuss with the employee how each S.M.A.R.T Goal relates to the employee’s job. At the end of a performance management period, the supervisor or the reviewer, in the absence of the supervisor, shall evaluate each S.M.A.R.T Goal based on the employee’s performance during the period.

#### **1408 INDIVIDUAL DEVELOPMENT PLAN**

- 1408.1 At the beginning of the performance management period, a supervisor, or the reviewer in the absence of the supervisor, shall prepare an Individual Development Plan for an employee, identifying areas for growth and development. The Individual Development Plan shall be prepared in collaboration with the employee. The Individual Performance Plan shall include at least one (1) and no more than three (3) objectives.
- 1408.2 Each Individual Development Plan is for developmental purposes only, and shall not be part of the evaluation at the end of the performance management period.
- 1408.3 Each Individual Development Plan may include but is not limited to the following objectives:
- (a) Specific objectives designed to improve the knowledge, skills, and abilities of the employee;
  - (b) Specific objectives for areas of ongoing professional development; or
  - (c) Objectives that address areas in which the employee received a review of “Marginal Performer” or below during the preceding review year.
- 1408.4 Each Individual Development Plan shall include a timeframe for the accomplishment of each objective.

**1409 MID-YEAR PROGRESS DISCUSSION**

- 1409.1 Each employee entitled to an annual performance evaluation under section 1411 of this chapter may participate in a mid-year progress discussion no less than three (3) months prior to the end of the performance management period. When used, the mid-year progress discussion is initiated by the employee's immediate supervisor or the reviewer, in the absence of the immediate supervisor; and serves as a mechanism for providing feedback to an employee and identifying areas that need improvement.
- 1409.2 The mid-year progress discussion shall be mandatory in the case of probationary employees. The mid-year progress discussion shall not impinge on a recommendation to terminate the probationary employee during his or her probationary period.
- 1409.3 An annual performance evaluation shall not be based solely on a mid-year progress discussion. An employee's performance during the entire review period must be used to determine how well the employee performed each performance expectation and the overall performance rating.

**1410 PERFORMANCE IMPROVEMENT PLAN**

- 1410.1 The provisions of this section shall apply to all employees described in 1400.1 of this chapter, except for Career Service probationary employees and Senior Executive Attorney Service attorneys' in the Office of the Attorney General.
- 1410.2 A Performance Improvement Plan (PIP) is a performance management tool designed to offer the employee placed on it an opportunity to demonstrate improvement in his or her performance.
- 1410.3 The purpose of a Performance Improvement Plan is to offer the employee placed on it an opportunity to demonstrate improvement. A Performance Improvement Plan issued to an employee shall last for a period of thirty (30) to ninety (90) days, and shall:
- (a) Identify the specific performance areas in which the employee is deficient; and
  - (b) Provide concrete, measurable action steps the employee needs to take to improve in those areas.
- 1410.4 A supervisor or, in the absence of that individual, the reviewer, shall complete a PIP when employee performance has been observed by the supervisor as being deficient. The last date on which a PIP may be issued is June 30 of each year.
- 1410.5 Within ten (10) calendar days of the end of the PIP period, the employee's immediate supervisor or, in the absence of that individual, the reviewer, shall make a determination as to whether the employee has met the requirements of the PIP. If the determination is that the employee has met the requirements of the Performance

Improvement Plan, the employee's immediate supervisor, or in the absence of that individual, the reviewer, shall so inform the employee, in writing. If the determination is that the employee failed to meet the requirements of the Performance Improvement Plan, the employee's immediate supervisor or in the absence of that individual, the reviewer, as appropriate, shall issue a written decision to the employee to:

- (a) Extend the Performance Improvement Plan for an additional thirty (30) and not to exceed ninety days total, to further observe the employee's performance;
  - (b) Reassign, reduce in grade, or remove the employee.
- 1410.6 Failure on the part of the supervisor, or, in the absence of that individual, the reviewer, to issue a written decision within the specified time period will result in the employee's performance having met the PIP requirements.
- 1410.7 Any reduction in grade or termination action as specified in section 1410.5 (b) of this section taken against a Career Service employee shall be taken pursuant to Chapter 16 of these regulations.
- 1410.8 Any reduction in grade or termination action as specified in section 1410.5.(b) of this section taken against a Legal Service employee as described in section 1400.1 (e) of this chapter who is not "at-will" shall be taken pursuant to Chapter 36 of these regulations.
- 1410.9 The Chief of Police may elect not to use a Performance Improvement Plan for officials above the rank of Captain

**1411 ELIGIBILITY TO RECEIVE AN ANNUAL PERFORMANCE EVALUATION**

- 1411.1 In order to be eligible to receive an annual performance evaluation, a Performance Plan shall be in place for at least ninety (90) calendar days prior to conducting an annual performance evaluation based on that performance plan at the end of the performance management period.
- 1411.2 An employee who has been reassigned, promoted or demoted during the ninety (90) days prior to the end of the performance management period shall receive a performance evaluation for that period.
- 1411.3 The performance evaluation pursuant to sections 1411.2 of this section shall be issued by the employee's previous supervisor as specified in those sections.
- 1411.4 An employee who was reinstated or restored to duty during the ninety (90) days prior to the end of the performance management period shall be rated at the end of the next performance management period.

- 1411.5 An employee who transfers to an agency under the Mayor's personnel authority from an independent personnel authority, or who is newly appointed during the ninety (90) days prior to the end of the performance management period, shall be rated at the end of the next performance management period.
- 1411.6 An employee reinstated, restored, newly appointed, or transferred shall automatically be considered as having been assigned a rating of Valued Performer, which shall remain the official rating of record until such time as replaced by another official rating.

## **1412 ANNUAL PERFORMANCE EVALUATION**

- 1412.1 An annual Performance Evaluation shall be issued to each eligible employee within three months of the end of the performance management period, the exact date of which will be established by the appropriate personnel authority.
- 1412.2 The annual Performance Evaluation shall be based on the employee's Performance Plan for that performance management period.
- 1412.3 Except as provided in section 1412.5 of this section, each employee entitled to be rated under section 1411 of this chapter shall be rated, based on his or her position of record, by his or her immediate supervisor or the reviewer, in the absence of the supervisor. In the absence of both the immediate supervisor and the reviewer, the agency head shall designate a higher-level official to complete the Performance Evaluation. In the absence of an electronic official performance evaluation, the employee's performance shall be deemed to be at the "Valued Performer" level.
- 1412.4 A supervisor leaving his or her position at any time within the last ninety (90) calendar days of the performance management period shall conduct a Performance Evaluation for each employee covered by this chapter prior to his or her departure.
- 1412.5 An employee serving on detail for more than ninety (90) days at the end of the performance management period shall be rated by the employee's immediate supervisor of the position to which detailed, with input from the supervisor of the employee's position of record.
- 1412.6 An agency may use multi-source feedback as an evaluation tool consistent with procedures and guidelines established by the appropriate personnel authority.
- 1412.7 In instances where employees perform shift work or have multiple supervisors during the year, input or completion of the employee's performance evaluation shall be provided by the appropriate supervisor(s).
- 1412.8 When an employee is evaluated on performance in his or her position of record in accordance with section 1412.3 of this section, appropriate consideration shall be given to work performed outside the position of record.
- 1412.9 Except when the agency head is the rating official, a Performance Evaluation issued

- by a rating official shall be subject to the review and approval of a reviewer prior to the supervisor's year-end discussion with an employee.
- 1412.10 The annual Performance Evaluation for an employee who is on approved extended leave at the end of the performance management period (during the period in which performance evaluations are finalized) shall be postponed until the employee returns to his or her official position of record.
- 1412.11 A signature on the annual Performance Evaluation is considered official when submitted electronically using an electronic system used to facilitate the performance planning and evaluation process outlined in this chapter.
- 1412.12 The personnel authority may approve an agency's request for an extension of the annual Performance Evaluation submittal period, consistent with 1412.1 of this section.

### **1413 SELF-EVALUATION**

- 1413.1 At his or her discretion, each employee eligible to receive an evaluation may submit a self-evaluation to his or her supervisor as input into the performance evaluation process.

### **1414 SALARY INCREASES**

- 1414.1 An annual overall performance rating of *Valued Performer* or higher shall constitute performance at an acceptable level of competence for purposes of eligibility for a periodic step increase or a merit-based salary increase (for employees paid from open range salary schedules), as applicable, under Chapter 11 of these regulations.
- 1414.2 Each time an employee fails to receive a rating of *Valued Performer* or higher shall result in the due date for the next scheduled periodic step increase or merit-based salary increase being delayed for an additional year.

### **1415 EMPLOYEE REQUEST FOR REVIEW**

- 1415.1 The provisions of this section shall apply to all employees described in 1400.1 of this chapter, except for Career Service probationary employees.
- 1415.2 Employees' requests for review of performance ratings shall be handled at the hiring agency level. Subordinate agencies must establish an internal Reconsideration and Resolution Committee (RRC) to formally review overall performance ratings of *Inadequate Performer* (Level 1) and *Marginal Performer* (Level 2). Agencies will conduct a "paper review" of overall ratings of *Valued Performer* (Level 3), and *Highly Effective Performer* (Level 4).
- 1415.3 The D.C. Department of Human Resources (DCHR) will serve in an impartial advisory capacity in the administration and disposition of performance rating review cases in subordinate agencies.

- 1415.4 An employee may, within ten (10) calendar days of participating in a performance rating year-end discussion with the supervisor, request a review of the rating by submitting the request for review to the subordinate agency head (or designee).
- 1415.5 An employee's request for review of an official annual performance rating shall be in writing, and shall be submitted in accordance with procedures issued by the appropriate personnel authority.
- 1415.6 Pursuant to section 603 (a) of the CMPA (D.C. Official Code § 1-606.03 (a)), an employee may appeal a final agency decision affecting a performance rating which results in removal of the employee with the Office of Employee Appeals.
- 1415.7 Upon receipt of a request for review, the subordinate agency head (or designee) shall take either of the following actions:
- (a) Dismiss the employee's request for review on technical grounds (i.e., procedural or regulatory violation) and sustain the performance rating; or
  - (b) Accept the employee's request for review, and refer the request to the agency's RRC for review and disposition.
- 1415.8 Independent personnel authorities may establish a review process for their employees.
- 1415.9 The provisions of section 1415.6 of this section shall not apply to any performance rating that results in the removal of a Legal Service employee as described in section 1400.1 (e) of this chapter. The right of appeal of such an employee shall be governed by Chapter 36 of these regulations.
- 1415.10 Rating appeal rights of Metropolitan Police Department employees shall be in accordance with procedures established by the agency.

## **1416 PROBATIONARY EMPLOYEES**

- 1416.1 An employee serving a probationary period shall be subject to the performance management program established by this chapter. A Performance Plan shall be provided to each probationary employee, on which the probationer shall be evaluated.
- 1416.2 An acceptable performance rating during a probationary period in and of itself does not constitute passing of the probationary period or automatic movement to a permanent status.
- 1416.3 Neither the mid-year progress discussion nor the annual performance evaluation received by the probationary employee is appealable.

**1417 CAPITAL CITY FELLOWS**

- 1417.1 A Performance Plan as described in section 1404 of this chapter shall be completed for each Capital City Fellow, not later than thirty (30) calendar days after the beginning of each six-month (6-month) placement. Each Performance Plan shall outline what is expected from the Capital City Fellow.
- 1417.2 The goals for each six-month (6-month) placement shall be weighted, with the sum of all goal weightings equal to one hundred percent (100%) for each rating. Goals shall be set as follows:
- (a) Twenty five (25%) of the overall goals assigned to program-related activities and participation, to be set by the Director, D.C. Department of Human Resources (or designee); and
  - (b) Seventy five percent (75%) of the overall goals assigned to on-site performance, to be set by each agency supervisor to whom the Capital City Fellow is assigned.
- 1417.3 The performance of each Capital City Fellow shall be evaluated at the end of each six-month (6-month) placement as specified in this section, for a total of four (4) individual performance ratings during the two-year (2-year) program.
- 1417.4 Each Capital City Fellow may, at his or her discretion, submit a self-evaluation as input into the annual performance evaluation process.
- 1417.5 A rating of *Valued Performer* or higher shall constitute performance at an acceptable level of competence for purposes of salary adjustment.
- 1417.6 The provisions in section 1416 of this chapter shall apply to Capital City Fellows.
- 1417.7 Capital City Fellows' annual performance evaluations are not appealable.

**1499 DEFINITIONS**

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

**Annual performance evaluation** – a process for determining how well an individual employee has performed the performance expectations established in the performance plan for the review period.

**Competency** – a type of performance expectation that consists of the critical knowledge, abilities, skills and personal characteristics necessary for satisfactory performance. They are linked to the specific duties performed in a particular work unit but focus strongly on the individual employee.

**Electronic signature** – a technologically neutral term indicating various methods of signing an electronic message that: (a) identifies and authenticates a particular person as a source of the

electronic message; and (b) indicates such person's approval of the information contained in the electronic message. Examples of electronic signature include: Personal Information Numbers or "PINs," user identifications and passwords, digital signatures, and hardware and biometric tokens.

**Individual development plan (IDP)** – a development tool that identifies training and learning activities that will help an employee enhance the knowledge, skills, and abilities needed to perform work duties and prepare the employee for future career advancement.

**Mid-year progress discussion** – a formal meeting between a supervisor and employee to discuss the employee's performance and development at the midpoint of the review period.

**Multi-source feedback** – a tool used to assess employee performance that involves several sources (i.e., peers, employees, supervisors, customers) that have reliable information of an employee services or work products. This is commonly known as "*360 degree feedback*."

**Performance expectations** – S.M.A.R.T. goals and competencies that describe what and how work is to be performed. Performance expectations are established by the supervisor and employee at the beginning of a review period.

**Performance improvement plan (PIP)** – A performance management tool designed to offer the employee an opportunity to demonstrate improvement in his or her performance.

**Performance management** – the systematic process by which an agency involves its employees, as individuals and members of a group, to ensure the accomplishment of agency mission and goals.

**Performance management period** – the length of time covering the performance planning and evaluation process. It goes from the beginning to the end of the fiscal year.

**Performance plan** – the formalized process of identifying and communicating the organizational, work unit, and individual goals expected of the employee. The Performance Plan consists of the following: Competencies, S.M.A.R.T Goals, and an Individual Development Plan.

**Performance rating** – the value assigned to each performance expectation and the employee's overall performance based on a supervisor's or, in the absence of the supervisor the reviewer's, assessment of an employee's performance during the review period.

**Probationary employee** – a Career Service employee occupying a position subject to the completion of a probationary period, to include employees in term appointments.

**Rating official** – the final rating authority in the annual performance evaluation process, who is either the employee's supervisor, or, in the absence of the supervisor the reviewer.

**Request for review** – the process in which an employee requests a formal review of the overall performance rating received during the review period.

**Reviewer** – a supervisor, agency head, or agency head designee responsible for reviewing and approving the annual performance evaluation completed by a rating official.

**Self-evaluation** – the process in which the employee provides a self-assessment of the employee’s performance based on the established performance expectations during the review period.

**S.M.A.R.T. goals** – a type of performance expectation that consists of goals that are *Specific, Measurable, Attainable, Realistic, and Time-Related*.

**Supervisor** – an individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust employee grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. For the purposes of this policy, “supervisor” also means “manager”.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 330S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

**DEPARTMENT OF MENTAL HEALTH****SECOND NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Mental Health (“DMH”), pursuant to the authority set forth in sections 104, and 105 of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001, (D.C. Law 14-56; D.C. Official Code §§ 7-1131.04 and 7-1131.05), hereby gives notice of his intent to adopt a new Chapter 23 of Title 22A of the District of Columbia Municipal Regulations (“DCMR”), entitled “Home First Subsidies for Mental Health Consumers,” and to amend sections 2205, 2207, and 2299, and subsection 2201.3 of Chapter 22 of Title 22A, in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

The purpose of the new Chapter 23 of Title 22A DCMR is to provide standards for the Home First Subsidy program. The new chapter establishes application and eligibility criteria, provides standards to determine the amount of a Home First Subsidy, annual recertification, maintenance of a waiting list, voluntary transfer to a different unit, and termination of a Home First Subsidy. Finally, the new chapter sets forth rights and responsibilities of landlords, Core Service Agencies (“CSA’s”), eligible consumers, and DMH, and due process procedures for Home First Subsidy recipients. This rulemaking also amends Chapter 22 of Title 22A DCMR to require Housing Safety/Quality Checklists and Home Visit Reports to be conducted monthly, instead of quarterly.

This notice supersedes the Notice of Proposed Rulemaking that was published on October 10, 2008, at 55 *D.C. Register No. 41*. Several changes were made to these amendments in response to comments to clarify the date of placement of eligible consumers on the waiting list, and to give further details about requirements for the consumers and for the landlords. The Director gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**A new Chapter 23 is added to Title 22A to read as follows:**

**2300 HOME FIRST SUBSIDIES FOR MENTAL HEALTH CONSUMERS**

- 2300.1 These rules provide standards for the Department of Mental Health (“Department”) Home First Subsidy (“HFS”) program.
- 2300.2 The purpose of the HFS is to provide a temporary or “bridge” subsidy that will assist eligible consumers in obtaining safe and affordable permanent housing until the consumer is able to fund his or her housing through income alone, a permanent housing voucher, or other means.
- 2300.3 These rules shall not apply to temporary loan assistance granted by the Department for consumers residing in community residential facilities.

2300.4 Nothing in these rules shall be interpreted to mean that an HFS provided by the Department is an entitlement. The HFS program is dependent upon the availability of funds, the needs of individual consumers, and the priorities established by the Department.

2300.5 The Department may execute contracts and agreements and issue grants as necessary to carry out the provisions of this chapter.

2300.6 The Department may set aside HFS funds to use as project-based subsidies, for which these regulations may be waived pursuant to section 2301.1.

### **2301 WAIVER OF RULES**

2301.1 Upon determination of good cause, the Director may waive any provision under this chapter subject to the statutory limitations of other District laws. The Director shall provide each waiver in writing and shall support each waiver by documentation of the facts and the grounds upon which a waiver is based.

### **2302 ALLOCATION OF FUNDS**

2302.1 For each annual appropriation of funds for HFS, the Director is authorized to make HFS payments consistent with this chapter.

2302.2 The Department may only provide HFS to extent of the annual appropriations and the availability of funds for HFS, as determined by the Director.

2302.3 The Department shall maintain a system to ensure that HFS payments do not exceed the total appropriations available for HFS in any fiscal year. This system may include, but is not limited to, the following:

- (a) Providing notice of a temporary suspension of new subsidies for applicants and eligible consumers while an HFS financial audit is conducted:
  - (1) At each Core Service Agency (“CSA”);
  - (2) On the Department’s website; and
  - (3) To each eligible consumer on the waiting list;
- (b) If applicable, providing notice that the Department is no longer approving HFS for eligible consumers due to the unavailability of HFS funds:
  - (1) At each Core Service Agency (“CSA”);

- (2) On the Department's website; and
- (3) To each eligible consumer on the waiting list.

**2303 AUTHORIZED PERSONAL REPRESENTATIVE**

2303.1 A personal representative ("authorized personal representative") as defined in section 2399 may act on behalf of a consumer for purposes of this chapter.

**2304 APPLICATION PROCESS**

2304.1 Each application for an HFS shall be in writing on a form prescribed by the Department and signed by:

- (a) The consumer who is applying; or in the case of an authorized personal representative, the representative (hereafter known as "the applicant"); and
- (b) The Community Support Worker or other qualified practitioner at the CSA or other mental health provider agency where the consumer is actively engaged.

2304.2 Each application form shall include the Department's Consumer Rights Statement.

2304.3 Each applicant shall sign a document acknowledging receipt of the Department Consumer Rights Statement and a release of information that allows the Department to obtain or verify information necessary to determine eligibility for an HFS. The release of information shall be consistent with D.C. Official Code § 7-1201.01, *et seq.*

2304.4 Each applicant shall cooperate fully with the Department in establishing his or her eligibility, or, in the case of the applicant being a legal guardian, of the ward. The applicant shall provide documentation required by the Department, including, but not limited to, evidence of:

- (a) The consumer's serious and persistent mental illness ("SPMI");
- (b) Annual Income;
- (c) Registration, or verification of an appointment for registration, at the District of Columbia Housing Authority ("DCHA") for any permanent housing assistance for which the applicant may be eligible (unless the applicant is ineligible to register with DCHA); and
- (d) Enrollment with a CSA.

- 2304.5 An applicant's CSA shall encourage and assist the applicant in applying for any public benefit for which he or she may be eligible.
- 2304.6 The application is complete when all of the information required by the Department is furnished to the Department.
- 2304.7 If requested by an applicant with a disability, or if the CSA or mental health provider is aware that the applicant needs assistance due to a disability, the CSA or mental health provider where an applicant is actively engaged shall assist the applicant with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit the application.
- 2304.8 An applicant or CSA may submit a completed application to the Department for review. The Department shall record the date that the completed application is received.
- 2304.9 If the Department determines that an application is not complete, the Department shall notify the applicant and the CSA or other mental health provider in writing within five (5) business days of receiving the incomplete application. The notice shall identify the additional information needed to process the application.
- 2304.10 The Department will retain the application for fifteen (15) business days following the notification that the application is incomplete. The CSA or applicant shall submit the required documents and/or information within fifteen (15) business days following the notification that the application is incomplete. After fifteen (15) days, the Department will consider the application canceled and the CSA and applicant must submit a new application.
- 2304.11 The Department shall determine each applicant's eligibility no later than fifteen (15) business days after the date a complete application is received. The Department shall not be responsible for delays caused by:
- (a) The applicant's failure to supply information to verify facts stated in the application, without which the Department is not able to determine eligibility;
  - (b) The inability to contact the applicant or authorized personal representative by written correspondence and by telephone;
  - (c) Evidence of misrepresentation in the application that may result in further investigation; or
  - (d) Any other delay in receipt of information or documentation necessary to complete the application over which the CSA, mental health provider, Department, or consumer has no control.

- 2304.12 If a housing emergency occurs during the application process, the CSA or other mental health provider, and the Department shall take reasonable steps to process the completed application within five (5) business days of receiving notification of the housing emergency. Examples of housing emergencies include, but are not limited to:
- (a) Incidents of domestic violence or abuse at the applicant's current housing arrangement;
  - (b) Witnessing or becoming the victim of crime at the housing location;
  - (c) Loss of housing pursuant to Title 14 DCMR, Section 115.1;
  - (d) Receipt of a notice to quit or vacate;
  - (e) A medical emergency or substantial change in medical condition that requires a change in unit location or configuration; or
  - (f) Any other situation that the Director on a case-by-case basis qualifies as an emergency, based upon the consumer's health or safety issues, or as required to comply with applicable laws.
- 2304.13 Once an applicant is determined eligible for an HFS pursuant to section 2305, and an HFS becomes available, the Department shall send a written eligibility determination to the applicant, CSA or other mental health provider, and a representative payee, if appropriate. The eligibility determination shall include, at a minimum:
- (a) A statement of the eligibility determination;
  - (b) Written approval to search for housing in accordance with section 2317;
  - (c) The amount of financial contribution that the eligible consumer is required to contribute per month; and
  - (e) The contact name and telephone number of a Department representative.
- 2304.14 If an applicant is determined eligible, but no HFS is available, the Department shall send a written eligibility determination to the applicant, CSA or other mental health provider. This eligibility determination shall include, at a minimum:
- (a) A statement of the eligibility determination;
  - (b) A statement identifying the date that the eligible consumer will be placed on the waiting list; and

(c) The contact name and telephone number of a Department representative.

2304.15 If an applicant is determined eligible, but no HFS is available due to a lack of funding, the Department shall place the eligible consumer on a waiting list pursuant to section 2306.

2304.16 If an applicant is determined ineligible, the Department shall send written determination of ineligibility to the applicant, CSA or other mental health provider. This ineligibility determination shall include, but is not limited to:

- (a) A statement of the denial of eligibility;
- (b) A statement of the factual basis for the denial;
- (c) A statement of the applicant's right to request that the Department review the determination pursuant to section 2323; and
- (d) The contact name and telephone number of a Department representative.

## **2305 ELIGIBILITY CRITERIA**

2305.1 The Department may determine an applicant is eligible to receive an HFS, if he or she:

- (a) Is a consumer of mental health services, or is the authorized personal representative of a consumer of mental health services as defined in D.C. Official Code § 7-1131.02(2) who is actively engaged with a CSA, or other mental health provider that is supported by the Department;
- (b) Has a serious and persistent mental illness (“SPMI”);
- (c) Is eighteen (18) years of age or older or is the legal guardian of a child receiving mental health services as defined in D.C. Official Code § 7-1131.02(18) and is residing with the child;
- (d) Demonstrates that his or her household income does not exceed the amount specified in section 2305.2;
- (e) Demonstrates that the applicant has registered for, or has a verifiable appointment to register for permanent housing assistance through DCHA, unless the applicant is ineligible to register with DCHA; and
- (f) Has a demonstrable need for the HFS because no other suitable housing options are available for the consumer.

2305.2 The eligible individual's adjusted income, as defined in section 2399, in the sixty (60) day period immediately preceding the date of application, shall not exceed thirty percent (30%) of the Area Median Income for the Metropolitan Washington D.C. Area, as defined by the U.S. Department of Housing and Urban Development.

2305.3 The Department may require the applicant or other household members to execute one or more Department Authorizations that authorize a federal, state or private source of information to release to the Department information necessary to verify eligibility.

## **2306 WAITING LIST**

2306.1 A determination of eligibility shall be sufficient to place an eligible consumer on the waiting list, in the manner described in this section.

2306.2 The Department shall place an eligible consumer on a waiting list when:

- (a) The eligible consumer does not submit the HFS Package identified in subsection 2309.4(d) to the Department within the required timeframe pursuant to subsection 2317.4;
- (b) A financial audit is conducted pursuant to section 2302;
- (c) The Department is no longer placing eligible consumers due to lack of available funds pursuant to section 2302; or
- (d) The eligible consumer is incarcerated, or hospitalized for inpatient treatment.

2306.3 An eligible consumer shall be placed on the waiting list in chronological order by the date the Department receives the consumer's completed application.

2306.4 If the Department establishes preferred selection pursuant to section 2307, the Department may place an eligible consumer who meets the preferred selection criteria at the top of the waiting list.

2306.5 The eligible consumer or CSA shall provide the Department with the eligible consumer's current mailing address and telephone number. Each change of address shall be reported in writing to the Department within five (5) business days of the change.

## **2307 PREFERRED SELECTION**

2307.1 Consistent with the Mental Health Establishment Amendment Act of 2001 and the legal requirements of the Department pursuant to D.C. Official Code § 21-501

*et seq.*, the Director may prioritize consumers who shall receive an HFS, as necessary.

## **2308 COMPUTATION OF PAYMENT**

2308.1 The Department shall determine the amount of each HFS payment made on behalf of an eligible consumer based on:

- (a) The eligible consumer's adjusted income reported in the application or the most recent re-certification; and
- (b) Rental rates established by the Department. The Department may approve an HFS in an amount not to exceed eighty percent (80%) of the annual Fair Market Rent Value calculated by the U.S. Department of Housing and Urban Development for the Metropolitan Washington D.C. area.

2308.2 An eligible consumer shall pay thirty percent (30%) of his or her adjusted income ("Total Consumer Rent Payment") toward the total rent due under the lease.

2308.3 For each approved HFS, the Department shall issue the HFS on a monthly basis to the landlord on behalf of the eligible consumer that is equal to the rent charged by the landlord, minus the Total Consumer Rent Payment, as determined by the Department in accordance with this chapter.

2308.4 The amount of the total rent due under a lease shall not exceed the limits set by the Department pursuant to subsection 2308.1(b). If utilities are included in the total rent, a higher rent may be considered for approval. The HFS, however, will be based on the rent limit set by the Department pursuant to subsection 2308.1(b) and not on the actual rent charged by the landlord which includes a utility fee. The difference between the Department limits and the higher rent will not exceed the amounts in the *U.S. Housing and Urban Development, Section 8 Housing Allowances for Tenant Furnished Utilities and Other Services* schedule, or its replacement schedule, as maintained by the District of Columbia Housing Authority, in effect at the time of lease-up.

2308.5 Rent rates established by the Department pursuant to subsection 2308.1(b) shall be effective for new leases and lease renewals that occur after the effective date of this chapter.

## **2309 HOME FIRST SUBSIDY PAYMENT**

2309.1 The Department shall not provide an HFS if permanent housing that does not require the eligible consumer to relocate is available. Permanent housing may include, but is not limited to, a Housing Choice Voucher or other permanent housing assistance pursuant to a federal or District housing subsidy program.

- 2309.2 Once the Department has identified funds for an HFS for an eligible consumer, the Department shall notify in writing the consumer, the CSA, and the consumer's personal representative, if applicable, of the availability of the subsidy.
- 2309.3 Upon written notification by the Department of the availability of HFS funds, the consumer will have ninety (90) days to submit a complete HFS package (described below in subsection 2309.5(d)). The consumer may request a thirty (30) day extension in which to submit a completed HFS package in accordance with subsection 2317.5.
- 2309.4 The Department may approve an HFS for an eligible consumer only after the following conditions are met:
- (a) A housing unit which complies with the requirements of this chapter is available;
  - (b) The amount of rent charged for the available unit is consistent with subsection 2308.1(b);
  - (c) The housing unit has a valid business license or certificate of occupancy, if required by applicable District law;
  - (d) The eligible consumer, CSA or other mental health provider submits to the Department an HFS Package, which includes:
    - (1) A Program Agreement signed by the eligible consumer;
    - (2) A Subsidy Approval Form signed by the landlord;
    - (3) A completed Housing Pre-Inspection Checklist; and
  - (e) The Department approves the HFS Subsidy Approval Form in writing.
- 2309.5 The Department shall render its initial response to the HFS package within ten (10) days of receipt.
- 2309.6 If the HFS package is approved, the Department shall notify the eligible consumer and CSA or other mental health provider that the HFS is approved by providing the eligible consumer a copy of the HFS Subsidy Approval Form signed by the Department.
- 2309.7 If the HFS package is not approved, the Department shall notify the eligible consumer and CSA or other mental health provider of the reason(s) for disapproval. The consumer and CSA or other mental health provider have ten (10) business days to provide the Department a completed HFS package or the

Department may deny the HFS package, and the consumer will be placed back on the waiting list.

- 2309.8 The Department may authorize payment of an HFS for an eligible consumer only after the eligible consumer, CSA or other mental health provider provides the Department with a copy of the executed lease agreement signed by the eligible consumer and the landlord.
- 2309.9 The Department shall issue an approved HFS in the form of non-cash payment directly to the landlord.
- 2309.10 The Department shall only provide an HFS for actual rent obligations incurred by the consumer in a manner consistent with this chapter.

### **2310 ANNUAL TENANT RE-CERTIFICATIONS**

- 2310.1 The Department or its designee shall examine and re-determine the eligibility status and annual income of each eligible consumer receiving an HFS at least annually, to ensure that HFS are provided to consumers who continue to meet the eligibility requirements.
- 2310.2 The annual re-certification date shall be the anniversary date of the first day of the month in which the eligible consumer began receiving an HFS. The Department may adjust the re-certification date as necessary, such as if a consumer has a change in income prior to his or her annual re-certification date.
- 2310.3 The Department shall re-determine the eligibility status and income of a consumer who is on the waiting list at the time an HFS becomes available for the consumer.
- 2310.4 The Department shall send written notice of the re-certification requirement to each eligible consumer and his or her CSA or mental health provider who is receiving an HFS, and his or her CSA or mental health provider, at least ninety (90) calendar days before the annual re-certification date.
- 2310.5 Each eligible consumer shall sign a Department Authorization to authorize the Department to obtain information necessary to verify continuing eligibility for the HFS.
- 2410.6 The Department shall continue providing HFS payments during the re-certification process.
- 2410.7 If the re-certification process is not completed within ninety (90) calendar days of the re-certification date due to a delay caused by an eligible consumer, the Department may suspend an HFS until the re-certification process is finished.

- 2310.8 The Department shall provide an eligible consumer written notice of a suspension. An eligible consumer may appeal the suspension pursuant to section 2324.
- 2310.9 If an HFS is suspended pursuant to subsection 2310.7, the Department shall not retroactively pay the suspended amount of the HFS when the re-certification process is finished.
- 2310.10 The Department shall provide written notification to each consumer whose HFS is terminated as a result of the annual re-certification. A consumer may appeal termination of a subsidy pursuant to section 2324.
- 2310.11 A re-certification that results in a decrease in the amount of the HFS shall be effective thirty (30) calendar days after written notice is provided to an eligible consumer. The eligible consumer may appeal the reduction in the amount of the HFS pursuant to section 2324.
- 2310.12 A re-certification that results in an increase in the amount of the HFS shall be effective the first day of the month following the completion of the re-certification process.

### **2311 CONSUMER PARTICIPATION**

- 2311.1 Each applicant and eligible consumer may exercise rights granted pursuant to applicable District laws and regulations, including but not limited to the Department of Mental Health Consumers' Rights Protection Act of 2001, D.C. Official Code § 7-1231.01 *et seq.*
- 2311.2 Each program participant shall:
- (a) Maintain registration for permanent housing assistance through the DCHA (unless ineligible);
  - (b) Comply with the terms of the lease as required by District law;
  - (c) Provide proof of annual income required pursuant to subsection 2304.4(b);
  - (d) Attend an orientation session scheduled by the Department within the first three (3) months of occupancy;
  - (e) Pay the Total Consumer Rent Payment for which he or she is responsible;
  - (f) Permit the CSA or other mental health provider access to his or her housing unit on a monthly basis as required for completing a Housing Safety/Quality Checklist and Home Visit Report pursuant to subsection 2207.3;

- (g) Notify the Department and CSA of any change in annual income or household composition within fifteen (15) calendar days of the change;
- (h) Report any damages or problems in the housing unit to the landlord and CSA immediately after occurrence;
- (i) Refrain from illegal activities or other acts that endanger the health or safety of the consumer or any other individual on the premises;
- (j) Maintain the unit in a clean, safe, and habitable condition;
- (k) Provide to the Department and the landlord at least thirty (30) calendar days in advance, a written notice of intent to terminate a lease or relocate from the premises, unless emergency conditions exist pursuant to subsection 2319.3;
- (l) Maintain active engagement with a CSA or other mental health provider while receiving an HFS;
- (m) Notify his or her representative payee of eligibility for and receipt of an HFS, if applicable; and
- (n) Execute and comply with a Program Agreement with the Department, which shall incorporate the rules in this chapter

2311.3 If an eligible consumer fails to comply with any paragraph of subsection 2311.2, the Department and CSA shall utilize all available means to engage the consumer and ensure compliance.

## **2312 CORE SERVICE AGENCY AND OTHER MENTAL HEALTH PROVIDER RESPONSIBILITIES**

2312.1 Each CSA or other mental health provider shall:

- (a) Designate at least one (1) staff member to coordinate activities for supportive housing and attend monthly housing meetings scheduled and facilitated by the Department's Housing Program;
- (b) Make available to the public HFS applications provided by the Department and accept applications from applicants who request an HFS;
- (c) Advise each applicant of the eligibility requirements before submitting an application;
- (d) Ensure that each applicant signs a Department Consumer Rights Statement and a release of information that allows the Department to obtain or verify

information necessary to process an application and determine eligibility. The CSA or other mental health provider shall include the signed Department Consumer Rights Statement and release of information form in the application package submitted to the Department;

- (e) Submit each completed application to the Department for review and processing;
- (f) Provide the Department with a monthly Housing Safety/Quality Checklist and Home Visit Report for each eligible consumer receiving an HFS no later than the fifteenth (15<sup>th</sup>) day of the subsequent month, in accordance with subsection 2207.3;
- (g) Ensure proper documentation is provided to the Department within fifteen (15) calendar days of notification by an eligible consumer of any change in benefits, income, or family composition;
- (h) Notify the Department when it becomes aware of any change in the consumer's benefits, income, or household composition;
- (i) Provide statistical data and reports related to the HFS as requested by the Department;
- (j) Inform the Department of any change in the applicant's or eligible consumer's CSA or other mental health provider and provide the Department a copy of the transition plan; and
- (k) Ensure supportive housing services are specific to each eligible consumer's rehabilitation needs and treatment or recovery plan.

2312.2 If requested by an eligible consumer, or if aware of the eligible consumer's need for assistance, each CSA or mental health provider shall:

- (a) Assist each applicant with applying for any public benefits for which he or she may be eligible;
- (b) Assist each applicant with registering for any housing assistance program for which he or she may be eligible, including but not limited to, the DCHA Housing Choice Voucher Program and Public Housing, if requested;
- (c) Assist each applicant with completing an HFS application form;
- (d) Assist each applicant with completing an HFS request for voluntary relocation form;

- (e) Assist an applicant with gathering documentation necessary to establish proof of:
  - (1) Annual Income; and
  - (2) Registration or an appointment to register at DCHA for a Housing Choice Voucher;
- (f) Submit in a timely manner a completed HFS package to the Department;
- (g) Accompany an eligible consumer to an orientation session scheduled by the Department;
- (h) Use community resources available to assist each eligible consumer in locating housing that complies with sections 2203 and 2318;
- (i) Assist each eligible consumer with moving into or relocating to an available housing unit after written approval is provided by the Department;
- (j) Accompany each eligible consumer to sign the lease; and
- (k) Intervene on the consumer's behalf to resolve disputes between the consumer and landlord whenever possible through non-adversarial process involving negotiation, mediation and conciliation. The CSA may refer the consumer and landlord to the Department for additional dispute resolution resources.

### **2313 LANDLORD PARTICIPATION**

- 2313.1 Each landlord who agrees to accept an HFS on behalf of an eligible consumer shall:
- (a) Execute a lease agreement with an eligible consumer that complies with applicable District laws;
  - (b) Execute a Subsidy Approval Form with the Department, and agree to comply with the rules in this chapter;
  - (c) Provide habitable housing in the District of Columbia in accordance with applicable federal and District laws relating to accessibility, health and safety;
  - (d) Agree to hold harmless and release the Department from any and all claims, actions, judgments and attorney fees arising from any damage or necessary repairs to the unit or property;

- (e) Accurately report to the Department the date of scheduled move in, move out, the contract rent of each eligible consumer, and if the eligible consumer stops paying rent, the date of the most recent rent payment;
- (f) Agree to allow DMH to conduct annual inspections of the unit;
- (g) Agree to make necessary repairs identified during the annual inspection within thirty (30) days to avoid abatement of the HFS;
- (h) Notify the Department within five (5) calendar days if an HFS recipient is no longer living in a unit;
- (i) Agree to accept an HFS from the Department as late as the 15<sup>th</sup> day of each month and waive penalties and fees for late payments if received by the 15<sup>th</sup> of each month; and
- (j) Participate in a mediation program before initiating a notice to quit, if an eligible consumer also agrees to participate.

- 2313.2 A landlord shall neither demand nor accept any rent payment from the eligible consumer in excess of the Total Consumer Rent Payment, i.e. the amount approved by the Department in writing.
- 2313.3 A landlord shall not take adverse action against an HFS recipient who is a tenant of the property while the Department and the landlord are actively working to resolve verification and payment issues.
- 2313.4 A landlord who accepts an HFS for a consumer who is no longer a tenant of the property, shall return the HFS to the Department within fifteen (15) calendar days of receipt.
- 2313.5 Nothing in this chapter shall be construed to create any rights, substantive or procedural, enforceable at law by a landlord in any matter, administrative, civil or criminal against the District.

## **2314 DEPARTMENT RESPONSIBILITIES**

- 2314.1 The Department shall:
- (a) Administer the HFS in accordance with this chapter;
  - (b) Facilitate a housing meeting with CSA's and other mental health providers at least monthly;

- (c) Provide application forms to each CSA, other mental health providers, and to the public;
- (d) Provide a determination of eligibility to each applicant within fifteen (15) business days of receiving a complete application, as described in section 2304;
- (e) Provide a written determination of eligibility to each applicant and his or her CSA or other mental health provider;
- (f) Provide a housing vacancy list at least monthly to each CSA, other mental health provider, and other agency acting on behalf of an eligible consumer, with the understanding by all recipients that the list is not exhaustive and consumers and mental health providers should not rely solely on the Department vacancy list to locate housing;
- (g) Inspect each unit prior to authorization of an HFS;
- (h) If requested and appropriate, refer a landlord, CSA, other mental health provider, or eligible consumer to available dispute resolution services;
- (i) Determine, in its sole discretion, whether to enter into or dissolve a Subsidy Agreement with a landlord;
- (j) Maintain a waiting list in accordance with section 2306;
- (k) Review and approve requests for reasonable accommodations; and
- (l) Process annual and interim recertifications, unless that task has been designated to another agency or designee.

## **2315 DAMAGE TO PROPERTY**

- 2315.1 Each eligible consumer shall be responsible for damages he or she causes to a unit or any common area, in accordance with the terms of the lease.
- 2315.2 An eligible consumer, CSA, or landlord may request that the Department arrange an inspection, by an agency other than the Department, to assess the nature and extent of the damage identified by the landlord or consumer.
- 2315.3 The Department's payment of an HFS shall not be deemed to create a relationship of partnership, joint venture, or agency between the Department, consumer, and participating landlord. The Department shall not be held liable as a result of the Department's payment of an HFS for the unit for any damage to the unit caused by the consumer.

**2316 UTILITY EXPENSE**

- 2316.1 The Department may approve an HFS for a unit that includes utility costs paid for by a landlord as part of the rent rate, only if payment of utilities by the landlord is evidenced by the lease agreement and the total rent rate does not exceed the Department approved rent rate pursuant to subsection 2308.5.
- 2316.2 Utility costs are the consumer's responsibility and will not be included in determining the consumer's obligation to pay 30% of household income towards the monthly rent.
- 2316.3 The Department shall not pay utility costs incurred by any consumer. These costs include(s) water, gas, electric, telephone and cable.

**2317 HOUSING SEARCH**

- 2317.1 An eligible consumer may only search for HFS-eligible housing after he or she receives written authorization to begin a housing search from the Department.
- 2317.2 The Department shall provide at least monthly each CSA and other mental health providers a list of vacant units, with the understanding by all recipients that the list is not exhaustive and consumers and mental health providers should not rely solely on the Department vacancy list to locate housing. Consumers and mental health providers are encouraged to utilize other resources within the public domain to identify appropriate and available housing.
- 2317.3 In addition to reviewing the list of vacant units provided by the Department, each eligible consumer, with the assistance of his or her CSA or other mental health provider, if requested, shall use other available community resources to find a unit of the size and rent that meets the criteria set forth in this chapter.
- 2317.4 If an eligible consumer does not locate housing within ninety (90) calendar days of receiving Department authorization to begin a housing search, the eligible consumer shall be placed on the waiting list in chronological order by the date the ninety (90) day timeline expires.
- 2317.5 A consumer, CSA, or authorized representative may request an extension of time to search for housing from the Department based on the eligible consumer's needs. An extension shall not exceed thirty (30) days. No more than two (2) thirty (30) day extensions may be granted. If the consumer does not submit an HFS Package to the Department by the extension deadline, the eligible consumer shall be placed on the waiting list in chronological order by the date the extension expired.

**2318 ELIGIBLE UNITS**

- 2318.1 The Department may only provide an HFS for units that comply with this section, sections 2203, 2204, and 14 DCMR, Subtitle A, Chapters 1-12, as applicable.
- 2318.2 The following units shall not be eligible for an HFS:
- (a) Units that do not comply with this section, sections 2203, 2204, and 14 DCMR, Subtitle A, Chapters 1-12;
  - (b) Units owned by the eligible consumer or authorized personal representative;
  - (c) Units owned by Department employees, employees of the Department's designee, or employees of any organization or entity that has administrative responsibility for the HFS;
  - (d) Units owned by an individual employee of a CSA;
  - (e) Units owned by a treating mental health provider as defined in section 2399;
  - (f) Units on the grounds of educational institutions or units that are available only to students, staff or faculty of an educational institution; and
  - (g) Nursing homes.

## **2319 VOLUNTARY RELOCATION**

- 2319.1 To request relocation to another housing unit, an eligible consumer shall submit a written request for relocation to their assigned CSA, other mental health provider, or Department. The Department shall approve or deny each request for relocation in writing no later than fifteen (15) business days after the date a complete written request for relocation is received.
- 2319.2 The Department may provide written approval of an eligible consumer's request to relocate with an HFS only if:
- (a) The request was submitted for approval before relocating;
  - (b) The consumer has not yet relocated;
  - (c) The consumer is not in arrears of the lease;
  - (d) The consumer will not incur penalties under the lease, or has reached agreement with the landlord for the relocation;
  - (e) The unit is not damaged and in need of repairs beyond normal

wear and tear;

- (f) The rental amount for the new unit is consistent with the Department's rates in accordance with subsection 2308.1; and
- (g) The HFS recipient is in good standing and is not currently in violation of any obligations under this chapter.

2319.3 The Department may approve a transfer that does not meet the conditions specified in subsection 2319.2, if the Department determines that:

- (a) An emergency situation exists pursuant to subsection 2304.11;
- (b) The landlord is in violation of the lease, housing code, or requirements of this chapter, and continued occupancy in the unit jeopardizes the safety or health of the consumer; or
- (c) The Director determines that unusual circumstances warrant relocation.

2319.4 If a transfer or relocation request is approved, an HFS Package, completed in accordance with subsection 2309.2, for the eligible consumer's new location must be submitted to the Department and approved prior to the consumer moving to the new location.

## **2320 TEMPORARY ABSENCES**

2320.1 If an eligible consumer is absent from the unit for more than thirty (30) calendar days, he or she shall provide notification to the Department, CSA or other mental health provider as soon as possible, but no later than the thirtieth (30th) day of his or her absence.

2320.2 Upon receiving proper notification of an absence, the Department may continue to provide an HFS during a temporary absence of up to sixty (60) calendar days, if the absence is a result of:

- (a) Hospitalization;
- (b) Short-term inpatient treatment;
- (c) Incarceration; or
- (d) Family emergency.

2320.3 The Department may approve in writing an extension of no more than thirty (30) additional days of absence on a case by case basis.

- 2320.4 The Department may terminate an HFS if:
- (a) The Department does not receive notification of a temporary absence of more than thirty (30) days from a housing unit;
  - (b) The absence is for a period of time beyond sixty (60) calendar days, or the date a Department approved extension expires; or
  - (c) The absence does not result from the conditions set forth in subsection 2320.2.

2320.5 The Department shall provide written notification at least thirty (30) days before termination to each consumer whose HFS is subject to termination pursuant to subsection 2320.4. A consumer may appeal a written notice of termination of a subsidy pursuant to section 2324.

## **2321 EVICTIONS AND LEASE TERMINATIONS BY LANDLORDS**

2321.1 Landlords receiving an HFS may only terminate a program participant's tenancy in accordance with lease terms and applicable District law.

2321.2 The Department may terminate HFS payments to the Landlord when the tenancy is terminated by the Landlord in accordance with the lease and applicable District law. The consumer remains a program participant unless and until the Department terminates the HFS pursuant to sections 2322 - 2324.

## **2322 TERMINATION OF ASSISTANCE**

- 2322.1 The Department may terminate an HFS for an eligible consumer for any of the following reasons:
- (a) The consumer no longer meets the HFS eligibility requirements described in this chapter;
  - (b) The consumer was offered, and accepted, permanent housing assistance through any other federal or District program or private source;
  - (c) The consumer fails to permit the CSA or other mental health provider to conduct an in-home visit to his or her housing unit on a monthly basis as required for completing a Housing Safety/Quality Checklist and Home Visit Report, and repeated attempts by the CSA and Department to work with the eligible consumer to allow visits to his or her housing unit have failed;
  - (e) An eligible consumer is evicted through judicial means for the consumer's non-payment, or violation of the lease or District Tenant-Landlord law;

- (f) The tenant fraudulently misrepresents eligibility for assistance, annual income or other information, with the intention of obtaining unauthorized assistance;
- (g) The consumer is absent from the unit, as set forth in subsection 2320.3 or no longer resides in the unit; or
- (h) The death of a consumer.

2322.2 The Department shall provide a consumer written notice of termination, effective sixty (60) calendar days from the date the Department issues the notification. A consumer may appeal a written notice of termination pursuant to section 2324, unless the termination is for the reason stated in subsection 2322.1(e).

2322.3 Termination of the subsidy is effective immediately upon notification of a consumer's death.

2322.3 If the Department suspects tenant fraud, it may refer the case to the proper authorities for investigation.

### **2323 RIGHT TO REVIEW**

2323.1 The Department may afford an applicant the opportunity to seek review of the Department's decision to deny eligibility for an HFS.

2323.2 An applicant may request a review within fifteen (15) business days of the Department's denial of eligibility.

2323.3 Each request for a review shall contain a concise statement of the reason why the applicant should be determined eligible to receive an HFS, with supporting documentation, if available.

2323.4 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the applicant's request.

2323.5 The Director shall issue a written decision which sets forth his or her evaluation and resolution of the denial and describes the actions required of the Department and actions required of the applicant in implementing the decision.

### **2324 RIGHT TO A HEARING**

2324.1 A consumer who is receiving an HFS may request a hearing from the Department within thirty (30) business days of receiving written notice of reduction or termination of an HFS.

- 2324.2 A timely request for a hearing shall automatically stay the Department's decision to terminate or suspend an HFS pending the completion of a hearing.
- 2324.3 Each request for a hearing shall contain a concise statement of the reason why the HFS should not be reduced, terminated or suspended.
- 2324.4 During the course of the hearing, the appellant shall have the right to:
- (a) Present any testimony, witnesses or other evidence, both orally and in writing;
  - (b) Cross-examine any witness presented by the Department; and
  - (c) Be represented by counsel, a relative, or other authorized personal representative at the appellant's expense.
- 2324.5 The recommendation of the hearing officer shall be issued in writing within thirty (30) business days of the hearing and shall include findings of fact based exclusively on evidence presented at the hearing and conclusions of law.
- 2324.6 The Director shall review the recommendations of the hearing officer and render a final decision within fifteen (15) business days of receiving the hearing officer's recommendations. The Director shall describe the actions required of the Department and actions required of the consumer in implementing the decision.
- 2324.7 The Director may overrule the hearing officer in instances where he or she does not agree with findings, conclusions or recommendations presented for decision. In such cases, the reasons for the Director's decision shall be specified in writing.

## **2399 DEFINITIONS**

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

Actively Engaged - a consumer interacts with or is provided services from a CSA or other mental health provider at least once every thirty (30) days, or in accordance with the consumer's individual recovery plan.

Application - the Department's Home First Subsidy Application, which determines whether or not a consumer is eligible to receive a home First Subsidy

Authorized personal representative - either of the following:

- (a) An individual, whether or not an attorney, designated by a consumer of mental health services to represent the consumer's personal interests with

regard to his or her mental health and housing needs, for whom the Department has received a completed and signed Department Authorization to Use or Disclose Protected Health Information; or

- (b) An individual specifically authorized by a court of competent jurisdiction as the legal representative or guardian of a consumer, for whom the Department has received a copy of the court authorization.

Annual Income - annual income as defined in Title 24 of the Federal Code of Regulations, Subtitle A, Part 5, Subpart F.

Adjusted Income - adjusted income as defined in Title 14, DCMR subsection 6099.1.

Community Residence Facility - a licensed residence which provides twenty four (24) hour on-site supervision, lodging, and meals in a supportive, homelike environment for individuals who require supervision within a structured environment that can include specialized services such as medical, psychiatric, nursing, behavioral, vocational, social, or recreational services.

Consumer - a person 18 years of age or older eligible to receive mental health services and mental health supports as defined in § 102 of the Act (D.C. Official Code § 7-1131.02(18) and (19)).

Core Services Agency or CSA - a community-based provider of mental health services and mental health supports that is certified by DMH in accordance with rules published in the D.C. Municipal Regulations, and acts as the clinical home for consumers of mental health services by providing a single point of access and accountability for mental health rehabilitation services.

Department Authorization to Use or Disclose Protected Health Information or Department Authorization - a document prepared and distributed by the Department of Mental Health which is signed by a consumer to allow the Department and other service providers to share specific protected health information. For purposes of this chapter, the Department Authorization may be used to verify income and eligibility requirements necessary to apply for and receive an HFS.

Department Consumer Rights Statement - a document prepared and distributed by DMH to all Mental Health providers which describes all the consumer rights and protections available under federal and District laws and regulations.

Director - The Director of the District of Columbia Department of Mental Health.

District of Columbia Housing Authority or DCHA - The agency of the District of Columbia to whom authority and responsibility for the implementation and enforcement of Title 14 has been delegated by the Mayor.

DMH or Department - the District of Columbia Department of Mental Health.

Eligible consumer - a consumer who the Department determines is eligible for an HFS pursuant to section 2305.

HFS Application Package – the documents necessary to apply for participation in the DMH housing subsidy program to become an “eligible consumer.”

HFS Approval Package – the documents necessary to initiate payment of the subsidy to the landlord, once the eligible consumer has been notified that a subsidy is available.

Landlord - any person who, alone or jointly or severally with others, meets either of the following criteria:

- (a) Has legal title to any building arranged, designed, or used (in whole or in part) to house one or more habitations; or
- (b) Has charge, care, or control of any building arranged, designed or used (in whole or in part) to house one or more habitations, as owner or agent of the owner, or as a fiduciary of the estate of the owner or any officer appointed by the court. Any persons representing the actual owner shall be bound to comply with the terms of this chapter, and any notice or rules and regulations issued pursuant to this chapter, to the same extent as if he or she were the landlord.

Other mental health provider - a subprovider, specialty provider, or free standing mental clinic that is certified by and receives funds from the Department of Mental Health, or a mental health professional or mental health entity that enters into a written agreement with the Department which describes each party’s responsibilities specific to housing.

Program Agreement – a document signed by the Program participant which outlines the responsibilities of the consumer receiving an HFS.

Program Participant - a consumer currently receiving an HFS.

Project-based subsidy - a subsidy that is attached to a specific unit, regardless of who resides in that unit.

Serious and Persistent Mental Illness or “SPMI” – a diagnosable mental, behavioral or emotional disorder which substantially impairs the mental health of

the person or is of sufficient duration to meet diagnostic criteria with the Diagnostic and Statistical manual of Mental Disorders – IV (“DSM-IV”) or its International Classification of Diseases, Ninth Revision, Clinical Modification (“ICD-9-CM”) equivalent with the exception of DSM-IV “V” codes, substance abuse disorders, mental retardation and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

Specialty provider - a community-based organization MHRS provider certified by DMH to provide specialty services either directly or through contract. Each specialty provider shall enter into an affiliation agreement with each DMH-certified CSA.

Subprovider - a community-based organization certified by DMH to provide one or more core service(s) through an affiliation agreement with a CSA.

Unit - any habitable room or group of habitable rooms located within a residential building and forming a single unit which is used or intended to be used for living, sleeping, and the preparation and eating of meals.

Utility - water, electricity, gas or other fuels, sewer or refuse service.

**Subsection 2201.3 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:**

- 2201.3 Each CSA providing housing support, either directly or through a specialty or subprovider, shall notify, in writing, each consumer receiving housing support of the need for the CSA to conduct initial, and thereafter monthly, inspections in compliance with the requirements of this rule. This notification must include provision of a copy of the DMH provided Housing Safety/Quality Checklist and Home Visit Report that is used to evaluate housing. Other housing inspection forms, such as those required for subsidy programs, may be substituted at the sole discretion of DMH.

**Section 2205 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:**

**2205 TRAINING**

- 2205.1 DMH shall provide training to persons who are responsible for completing the DMH Housing Safety/Quality Checklist and Home Visit Report.
- 2205.2 Each person who completes the checklist and report shall attend mandatory DMH Housing Safety/Quality Training prior to monitoring housing and shall attend annual refresher training.

**Section 2207 of Chapter 22 of Title 22A DCMR is deleted in its entirety and amended to read as follows:**

**2207 HOME INSPECTIONS BY CORE SERVICES AGENCIES**

- 2207.1 The CSA with which the consumer is enrolled for individual recovery planning shall evaluate all DMH supported housing by using the DMH Housing Safety/Quality Checklist before the consumer enters into the lease. If the consumer enters a lease prior to the CSA's knowledge, the CSA shall evaluate the housing as soon as it becomes aware that the consumer has entered a lease. The consumer, or parent or guardian for children and youth as appropriate, shall hold the lease for housing that receives DMH subsidized rents for any type of housing arrangement covered by these rules.
- 2207.2 Conversion to consumer held leases as new consumers are housed and as leases come up for renewal shall commence within six (6) months of adoption of these rules.
- 2207.3 Each CSA with which the consumer is enrolled shall complete the Housing Safety/Quality Checklist and Home Visit Report at least monthly beginning from the date that the lease is secured, or the date that mental health housing supports are initiated for a consumer already in housing, and on an as needed basis.
- 2207.4 Each CSA, in order to assist with developing and improving activities of daily living, shall monitor the housing of its enrolled consumers who live in housing directly provided by the CSA, receive a rental subsidy, receive assistance from the CSA in locating or arranging for the residence, receive community supports from or through the CSA in the consumer's home (other than a private family home or licensed community residence facility) or live in housing developed or provided by DMH funding.
- 2207.6 The completed Housing Safety/Quality Checklists and Home Visit Report shall be filed in the consumer's clinical record at the CSA.
- 2207.7 Each CSA shall submit copies of all completed Housing Safety/Quality Checklists with a brief summary cover sheet to the DMH Office of Accountability no later than fifteen (15) business days following the end of each quarter. Each quarter is based on the fiscal year which begins on October 1.
- 2207.8 Each CSA shall submit original Home Visit reports to the DMH Housing Office no later than ten (10) business days following the last day of the calendar month.

**Section 2299 of Chapter 22 of Title 22A DCMR is amended by deleting the definition of "Quarterly Reporting".**

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Suzanne Fenzel, Assistant Attorney General, Office of General Counsel for the Department of Mental Health at 64 New York Avenue, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002, or e-mail [Suzanne.Fenzel@dc.gov](mailto:Suzanne.Fenzel@dc.gov). Copies of the proposed rules may be obtained from [www.dmh.dc.gov](http://www.dmh.dc.gov) or from the Department of Mental Health at the address above.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 921, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR APPROVAL OF ITS FOURTH LEAST COST PLAN

and

FORMAL CASE NO. 1077, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR REMOVAL OF TARIFF LANGUAGE REFERENCING THE LEAST COST PLANNING SURCHARGE

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,<sup>1</sup> of its intent to act upon the Application of the Washington Gas Light Company (“WGL” or “Company”)<sup>2</sup> in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.

2. On April 27, 2009, WGL filed a revised tariff application removing language in its tariff referencing the Least Cost Planning Surcharge.<sup>3</sup> WGL states that it is removing the language from its tariff because the Company has fully recovered Least Cost Planning costs from its customers.<sup>4</sup>

3. Accordingly, WGL seeks authority to revise and put into service the following tariff pages contained in its April 27, 2009 tariff filing:

---

<sup>1</sup> D. C. Code, § 2-505 (2006 Repl.).

<sup>2</sup> *Formal Case No. 921, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Approval of its Fourth Least Cost Plan (“F.C. 921”) and Formal Case No. 1077, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division for Removal of Tariff Language Referencing the Least Cost Planning Surcharge (“F.C. 1077”), filed April 27, 2009.* The Commission notes that WGL’s Application was filed in *F.C. 921*, which is a closed case. As a result, the Commission opens *F.C. 1077* and will act on WGL’s Application in this matter.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

**WASHINGTON GAS LIGHT COMPANY, P.S.C. of D.C. No. 3****10<sup>th</sup> Revised Page No. 5****4<sup>th</sup> Revised Page No. 9B****3<sup>rd</sup> Revised Page No. 13****3<sup>rd</sup> Revised Page No. 13E****2<sup>nd</sup> Revised Page No. 27M****4<sup>th</sup> Revised Page No. 53****4<sup>th</sup> Revised Page No. 54****12<sup>th</sup> Revised Page No. 1**

4. The Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday, or may be viewed on the Commission's website at [www.dcpSC.org](http://www.dcpSC.org). Copies of the tariff pages are also available upon request, at a per-page reproduction cost.

5. Comments on the proposed Revised Tariff Application must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Reply comments may be filed within forty-five (45) days of the publication of the NOPR. Once the comment period has expired, the Commission will take final action on WGL's Revised Tariff Application.

## THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Acting State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)(2008 Supp.), and Sections 101 through 111 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 through § 38-2561.11) (2008 Supp.) hereby gives notice of her intent to repeal section 3813, chapter 38 of Title 5, “Certificates of Approval for Nonpublic and Contractual Providers Serving Students with Disabilities Funded by the District Government” of the District of Columbia Municipal Regulations (DCMR), and replace it in Title 5 of the DCMR with a new chapter A28, with the same title “Certificates of Approval for Nonpublic and Contractual Providers Serving Students with Disabilities Funded by the District Government” in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed new chapter creates uniform requirements for nonpublic special education schools that serve a District of Columbia “child with a disability” as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3).

**Section 3813 of Chapter 38 of Title 5 of the DCMR is deleted.**

**Chapter A28 of Title 5 of the DCMR is added to read as follows:**

**CHAPTER A28      CERTIFICATES OF APPROVAL FOR NONPUBLIC  
SCHOOLS SERVING STUDENTS WITH  
DISABILITIES FUNDED BY THE DISTRICT  
GOVERNMENT.**

**A2800      AUTHORITY, SCOPE, AND PURPOSE**

A2800.1      This Chapter is promulgated pursuant to the Sections 101 through 111 of the Placement of Students with Disabilities in Nonpublic Special Schools Act, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 through 38-2561.11 (2008 Supp.).

A2800.2      Pursuant to its responsibilities as the State Education Agency, the Office of the State Superintendent of Education (“the OSSE”), may issue a Certificate of Approval to a special education nonpublic school, including a residential facility operating an educational program, serving District of Columbia students with disabilities. The purpose of the Certificate of Approval process is to maintain oversight of special education nonpublic schools, including residential facilities, to ensure that every District of Columbia student with a disability is afforded a high quality education in the least restrictive environment.

- A2800.3 Any school defined within this Chapter as a nonpublic special education school or program shall not accept any referral or placement of a District of Columbia student with a disability funded by the District of Columbia government unless it receives and maintains a Certificate of Approval issued by the OSSE; except insofar as a student is placed at an uncertified school by order of a court of law, a due process hearing officer decision pursuant to 34 C.F.R. 300.513, or a Settlement Agreement entered into pursuant to 34 C.F.R. 300.510(d).
- A2800.4 A nonpublic special education school with a current Certificate of Approval issued by the OSSE shall adhere to the provisions of this chapter unless otherwise exempted by District of Columbia laws or regulations.
- A2800.5 A nonpublic special education school without a Certificate of Approval, that accepts a District of Columbia child placed by a court of law, a due process hearing officer decision, or a settlement agreement, must apply for a Certificate of Approval within ninety (90) days from the date of accepting that child, and must comply at a minimum with the following sections of this chapter: A2805 through A2823; A2831 through A2835; A2837; A2838; and A2845, unless otherwise exempted by the OSSE.

#### **A2801 AWARD OF A CERTIFICATE OF APPROVAL**

- A2801.1 In determining whether to grant or renew a Certificate of Approval, the OSSE shall review the school's program for compliance with the standards of this Section, the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* A nonpublic special education school or program shall not be granted a Certificate of Approval unless it obtains and maintains documentation verifying compliance with all applicable fire safety, building code, health and sanitation requirements.
- A2801.2 Approval does not relieve a nonpublic special education school of its obligation to comply with all applicable local or federal statutory or regulatory requirements. The OSSE reserves the right to withhold or deny approval consistent with the provisions of this chapter if, in its discretion, circumstances warrant such action.

#### **A2802 VALIDITY OF CERTIFICATE OF APPROVAL**

- A2802.1 A Certificate of Approval is valid for up to three years from the date of issuance. The expiration date shall be clearly indicated on the Certificate. In its discretion, the OSSE may grant a Certificate of Approval for a period shorter than three years. In such circumstances, the school or program shall be informed in writing of the reasons for the decision.
- A2802.2 A Certificate of Approval is considered void if:

- (a) The nonpublic special education school ceases operating educational programs;
- (b) It expires and an application has not been made within the applicable timelines for a renewed Certificate; or
- (c) It is revoked by the OSSE due to noncompliance with the standards set forth in this Section.

### **A2803 LEVELS OF APPROVAL**

- A2803.1 A nonpublic special education school may be placed by the OSSE on Full Approval status, Probationary status, or Provisional Approval status. In no case shall approval at any level be awarded unless the school can demonstrate to the satisfaction of the OSSE that the health and safety of students is protected and that the school is able to implement the provision of each student's individualized education program (IEP).
- A2803.2 If a nonpublic special education school meets all of the standards and requirements of this chapter, the OSSE may grant Full Approval status.
- A2803.3 The OSSE may place an approved school on Probationary status at any time during the validity of the school's Certificate of Approval if it becomes aware of circumstances which, in the OSSE's judgment, compromise the school's ability to provide a safe, healthy and appropriate educational environment, or to comply with the standards of this Section. A school in Probationary status must complete and document in writing specific corrective actions within timelines specified by the OSSE. Based on compliance with the corrective actions, the OSSE may reinstate full approval, maintain the school in Probationary status with specific timelines for correction, or revoke the Certificate of Approval.
- A2803.4 Provisional approval status may be granted for a time period not to exceed six months from an initial application for approval. If provisional approval is granted, the OSSE shall indicate the specific conditions that must be met to establish full approval and put forth a schedule by which it expects the school to have met those conditions.

### **A2804 PUBLICATION OF A CERTIFICATE OF APPROVAL INFORMATION BY THE OSSE**

- A2804.1 The OSSE shall produce at least one monitoring report for each approved nonpublic special education school during the period of the school's Certificate of Approval, which shall not contain personally identifiable student information and shall be made available to the public.

A2804.2 The OSSE shall publish and make available the list of approved special education nonpublic schools and the current level of approval of each school.

**A2805 CERTIFICATE OF APPROVAL STANDARDS**

A2805.1 Each nonpublic special education school approved by the OSSE shall provide a program of instruction that promotes each student's academic achievement and developmental growth.

A2805.2 Instruction shall be designed to accommodate and foster each student's abilities, interests, educational and vocational needs, and to transition each student with an IEP into a more integrated environment as soon as possible.

**A2806 CURRICULUM REQUIREMENTS**

A2806.1 Students with disabilities in attendance at an approved nonpublic special education school seeking a high school diploma shall receive instruction leading to the achievement of the District of Columbia's learning standards, consistent with Title 5 of the District of Columbia Municipal Regulations, Chapter 22, including compliance with any amendments to these respective policies, procedures and regulations.

A2806.2 Students with disabilities in attendance at an approved nonpublic special education school pursuing a certificate of attainment shall receive instruction leading to the achievement of the District of Columbia's learning standards to the extent of their ability and as indicated by their IEP, consistent with Title 5 of the District of Columbia Municipal Regulations, Chapter 22, including compliance with any amendments to these respective policies, procedures and regulations.

A2806.3 The approved nonpublic special education school shall ensure that all teaching staff has a sufficient understanding and knowledge of the District of Columbia learning standards to prepare students effectively for the DC-CAS and/or the DC-CAS ALT where appropriate.

**A2807 LEARNING TIME**

A2807.1 The school year of an approved nonpublic special education school or program shall include a minimum of one hundred eighty (180) regular instructional school days.

A2807.2 Each regular instructional school day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six-hour minimum instructional school day requirement shall not

be applicable to any evening school program, prekindergarten program, or kindergarten program.

**A2808 RESOURCES AND MATERIALS**

A2808.1 An approved nonpublic special education school shall provide the facilities, textbooks, equipment, technology, materials and supplies needed to provide the special education and related services specified by the IEPs of enrolled students.

**A2809 INDIVIDUALIZED EDUCATION PROGRAMS**

A2809.1 An approved nonpublic special education school shall ensure that each District student with a disability referred by an LEA has a complete, up to date, IEP on file that:

- (a) Has been issued by the responsible Local Education Agency (LEA);
- (b) Has been agreed to in writing by the student's parent(s) (or student, where applicable);
- (c) Contains the special education and related services necessary to allow the student access to the general curriculum to the maximum extent appropriate; and
- (d) Meets the unique needs of the student.

A2809.2 An approved nonpublic special education school shall be provided access to the District of Columbia's Special Education Data System (SEDS) as appropriate, and shall maintain each District student's IEP in that data system, except that under no circumstances shall a nonpublic special education school issue a change in location using the SEDS..

A2809.3 An approved nonpublic special education school shall implement all items of specialized instruction and related services on each student's IEP, including any items of compensatory education, unless it has been specifically agreed by the IEP team that an entity other than the school will implement an item or items on the IEP (e.g. after-school tutoring).

A2809.4 Pursuant to 34 C.F.R. 300.325(c), compliance with the requirements of the IDEA for students served by nonpublic providers remains the responsibility of the sending LEA and the OSSE. An approved nonpublic special education school shall work with the LEA to maintain compliance with IDEA, as follows:

- (a) In the event that the approved nonpublic special education school becomes unable to implement any portion of the student's IEP, including compensatory education, the school shall immediately notify the LEA;

- (b) In the event that the approved nonpublic special education school becomes aware that the student's IEP is not being fully implemented due to factors beyond its control (e.g., transportation), the school shall immediately notify the LEA; and
- (c) If it appears to the school that a required timeline for an evaluation, reevaluation or any other timeline specified in the Individuals with Disabilities Act has lapsed or will imminently lapse, the school shall immediately notify the LEA;

A2809.5 In the event that the LEA has an agreement with the approved nonpublic special education school for the school to conduct or arrange for the provision of assessments:

- (a) The school shall conduct or arrange for an assessment when requested by the LEA, in compliance with the timelines for evaluation and reevaluation set by the IDEA and/or by any Hearing Officer Decision pursuant to 34 C.F.R. 300.513 or a Settlement Agreement entered into pursuant to 34 C.F.R. 300.510(d) governing the assessment;
- (b) The school shall submit an invoice for the assessment in the next invoicing period at the established rate; and
- (c) The school shall not conduct an assessment of a student without prior notification to and agreement of the LEA.

A2809.6 Pursuant to 34 C.F.R. 300.325(b), IEP meetings may be initiated and conducted by the approved nonpublic special education school at the request or discretion of the LEA.

A2809.7 As part of the IEP team process, staff members of the nonpublic special education school who are members of the student's IEP team shall ensure that each IEP:

- (a) Meets all the requirements of IDEA, Section 614(d) and 34 C.F.R. 300.324;
- (b) Includes specialized instruction and related services that are allocated with specific scope, frequency and duration within the Least Restrictive Environment (LRE) and are specific to the student's needs;
- (c) Contains a Functional Behavioral Assessment (FBA) and Behavior Implementation Plan (BIP), whenever appropriate, including a plan for crisis management, pursuant to IDEA, Section 614(d)(3)(B)(i);

- (d) For a student sixteen years or older, contains specific, measurable, achievable, relevant transition goals and services, in accordance with IDEA Section 614(d)(1)(A)(i)(VIII); and
- (e) Provides for Extended School Year (ESY) services only if the IEP team decides, on an individual basis, that they are necessary for the provision of a Free Appropriate Public Education (FAPE) to the student.

A2809.8 An approved nonpublic special education school shall ensure that the appropriate members of its staff attend all IEP meetings related to District of Columbia students.

A2809.9 An approved nonpublic special education school shall monitor how each student is making progress toward meeting the annual goals of the IEP and produce reports to the parent(s) and LEA on at least a quarterly basis.

A2809.10 An approved nonpublic special education school shall ensure that confidentiality of student records is strictly kept in accordance with the Family Educational Rights and Privacy Act (FERPA) and any other applicable laws and regulations.

#### **A2810 IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS**

A2810.1 An approved nonpublic special education school shall implement all services ordered by any Hearing Officer Decisions (HOD) pursuant to 34 C.F.R. 300.513 and/or a Settlement Agreement (SA) entered into pursuant to 34 C.F.R. 300.510(d) with respect to each attending student, including all assessments and any items of compensatory education, unless it is specifically agreed and documented by the IEP team that a service or services shall be provided by an entity other than the attending nonpublic special education school (e.g., after-school tutoring).

A2810.2 In the event that the approved nonpublic special education school becomes unable to implement any aspect of a student's HOD or SA, including by reason that the language of a HOD or SA is unclear, not sufficiently specific or not in accordance with subsequent decisions made by the IEP team, the school shall notify the LEA in writing.

A2810.3 An approved nonpublic special education school shall immediately notify the LEA, in writing, if it appears to the school that a required timeline for an evaluation, reevaluation or other compliance requirement of a Hearing Officer Decision or Settlement Agreement has lapsed or will imminently lapse.

#### **A2811 TRANSITIONS TO A MORE INTEGRATED SETTING.**

A2811.1 In accordance with the Least Restrictive Environment (LRE) tenets of IDEA, IEP planning and service delivery shall be designed to support a transition to a less restrictive setting as soon as possible. Consideration of a student's transition status shall occur at least annually as a component of IEP review.

A2811.2 An approved nonpublic special education school which believes that a District of Columbia student is ready for a more integrated setting shall promptly notify the LEA in order to convene the IEP team for a discussion of a change in location as soon as possible. An approved residential school shall include the LEA in transition planning relating to any District of Columbia student.

## **A2812 REPORTING SUSPECTED ABUSE OR NEGLECT**

A2812.1 An approved nonpublic special education school shall make reports of suspected abuse or neglect (including compliance with the law on compulsory school attendance) as required by all relevant federal, state and local law.

## **A2813 STATE-WIDE ASSESSMENTS**

A2813.1 In accordance with applicable law and regulations, an approved nonpublic special education school shall ensure that every District of Columbia student with an IEP participates in the annual District of Columbia Comprehensive Assessment System (DCCAS), or, when permitted, the DCCAS Alt or alternate assessment, according to the procedures issued by the OSSE's Office of Assessment and Accountability.

A2813.2 An approved nonpublic special education school shall ensure that State-wide assessments are administered according to the *Test Security Guidelines* published by the OSSE.

A2813.3 A student may only be administered the DCCAS Alt in the limited circumstances defined by the OSSE. Under no circumstances may the alternative assessment be administered in place of the DCCAS unless it is specifically provided for in the IEP, in compliance with all relevant procedures and guidance.

## **A2814 GRADES AND PROMOTIONS**

A2814.1 An approved nonpublic special education school shall adhere to the grades and promotion policies and procedures of the LEA in which each student is enrolled.

## **A2815 POSITIVE BEHAVIOR SUPPORT**

A2815.1 Behavior support programs and plans used by an approved nonpublic special education school shall be based on functional assessments of behavior and utilize school-wide and individualized positive behavioral supports.

A2815.2 All students attending an approved nonpublic special education school shall be free from demeaning, violent or coercive treatment, including the use of restraints or seclusion in any form other than in an emergency circumstance as defined below. Seclusion and restraint shall not be used, under any circumstances, as a means of coercion, discipline, convenience or retaliation by staff. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.

A2815.3 Pursuant to D.C. Official Code § 38-2561.03, an approved nonpublic special education school shall prohibit aversive intervention by policy and practice.

## **A2816 PHYSICAL RESTRAINT**

A2816.1 The use of physical restraint is prohibited in approved nonpublic special education schools except in an emergency circumstance, which is defined as a circumstance that meets all of the following criteria:

- (a) The intervention is necessary to protect the student or other person from imminent, serious physical harm;
- (b) Other less intrusive, nonphysical interventions have failed or been determined inappropriate; and
- (c) The student's behavior intervention plan and IEP describe the specific behaviors and circumstances in which physical restraint may be used.

A2816.2 Any physical restraint shall be applied only by school personnel who are trained in the appropriate use of specific, planned techniques.

A2816.3 The use of physical restraint shall be limited to the use of reasonable force and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student is no longer in imminent danger of causing physical harm to a person.

A2816.4 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a student's refusal to comply with a school rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.

A2816.5 No physical restraint shall be administered in such a way that the student's breathing or speaking is restricted. During the restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. The restraint shall be released immediately upon a determination by a staff member that the student is no longer at risk of causing imminent, serious physical harm to him or herself or others.

A2816.6 If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless the adult determines that such freedom appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer in imminent danger of causing physical harm to persons.

**A2817 MECHANICAL RESTRAINT.**

A2817.1 The use of mechanical restraint is prohibited in an approved nonpublic special education school unless the school is accredited by and meets the requirements of the Joint Commission for the Accreditation of Health Care Organizations.

**A2818. PRONE RESTRAINT**

A2818.1 The use of prone restraint is prohibited in an approved nonpublic special education school.

**A2819 SECLUSION.**

A2819.1 The use of seclusion is prohibited in an approved nonpublic special education school unless it is an emergency circumstance, which is defined as a circumstance that meets all of the following criteria:

- (a) The intervention is necessary to protect the student or other person from imminent, serious physical harm;
- (b) Other less restrictive interventions have failed or been determined inappropriate; and
- (c) The student's behavior intervention plan and IEP describe the specific behaviors and circumstances in which seclusion may be used;

A2819.2 A space used for seclusion shall, at a minimum, be free of objects and fixtures with which a student could self-inflict bodily harm; shall provide school personnel an adequate view of the student from an adjacent area; and shall provide adequate lighting and ventilation.

A2919.3 In the event of seclusion, school personnel shall view a student placed in seclusion at all times by remaining within sight of the student and shall provide the student with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.

A2919.4 Seclusion shall only be applied by school personnel trained in the appropriate use of seclusion.

A2919.5 School personnel shall continuously monitor a student placed in seclusion and

speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education or other senior member of the staff shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one hour.

A2919.6 If the space used for seclusion has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building's fire alarm system is activated.

**A2820 TIME OUT**

A2820.1 The use of time out is permitted in an approved nonpublic special education school as a means of allowing a student to regain self-control and not as a form of punishment.

**A2821 RESTRAINT/SECLUSION REPORTING AND FOLLOWUP**

A2821.1 If any form of restraint or seclusion is used, the approved nonpublic special education school shall file a written report.

A2821.2 A written incident report shall include the following information:

- (a) The student's name;
- (b) The date of the incident;
- (c) The beginning and ending times of the incident and beginning and ending times of actual restraint or seclusion;
- (d) A description of relevant events leading up to the incident;
- (e) A description of any interventions used prior to the implementation of restraint or seclusion;
- (f) A log of events during the restraint, including the restraint technique(s) used;
- (g) A log of events during the seclusion;
- (h) A description of any injuries (whether to students, staff or others) and/or property damage;
- (i) A list and signatures of the school personnel who participated in the Implementation, monitoring, and supervision of the restraint or seclusion event; and

- (j) A description of the planned approach to dealing with the student's behavior in the future.

- A2821.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion, and shall be placed in the student's permanent file within twenty four (24) hours of the incident.
- A2821.4 A copy of the written incident report shall be sent within twenty-four hours of the incident to the student's parent(s), the student's LEA and any other District of Columbia agency involved in the student's placement.
- A2821.5 The IEP team shall meet within ten (10) calendar days of the incident to consider the need for a functional behavioral assessment and behavior implementation plan and to discuss non-physical and non-restrictive de-escalation strategies.

## **A2822 ATTENDANCE AND TRUANCY**

- A2822.1 An approved nonpublic special education school shall require that District students enrolled in its program attend every official school day and remain in school until the official closure of the school day.
- A2822.2 An approved nonpublic special education school shall adhere to the attendance and truancy policies and procedures of the LEA and the attendance and truancy regulations of the District of Columbia set forth in Title 5 of the District of Columbia Municipal Regulations, including compliance with any amendments to these respective policies, procedures and regulations.
- A2822.3 Absence of a student from a nonpublic school due to hospitalization, incarceration, detention, or other absences of the student for thirty (30) or more consecutive days shall raise a presumption of termination of placement and District funding, unless the IEP team, including LEA representative, has made and documented a specific plan and timeline for the student to return to the school. In the event of any such absence, including without limitation absence as a result of truancy, the nonpublic school and LEA shall assure that the IDEA requirements and procedures have been complied with prior to any termination of placement.
- A2822.4 Upon notification that an enrolled District of Columbia student with a disability has been hospitalized, incarcerated, detained, placed at a residential facility, or has been absent from the nonpublic special education school for more than five (5) consecutive calendar days, an approved nonpublic school shall:
- (a) Immediately notify the LEA in writing;
  - (b) Immediately notify the parent (if applicable/appropriate); and

- (c) Exercise all due diligence to:
- (1) Comply with any requests by the receiving facility or the LEA for records, or other input for the purpose of providing appropriate academic instruction and related services;
  - (2) Ensure that a written plan is developed by the IEP team within thirty (30) days of the hospitalization, detention/incarceration or other absences to specify whether or not the student will return to the nonpublic school, and, if so, by what date; and
  - (3) Inform the OSSE, in the attendance report accompanying its next invoice, of the student's status, plan and timeline for return to the nonpublic school.

### **A2823 TERMINATION OF ENROLLMENT.**

- A2823.1 An approved nonpublic special education school shall not terminate the enrollment of any student, unless and until the student's LEA has been informed in writing no less than fifteen (15) school days prior to the proposed date of termination.
- A2823.2 In the event of emergency circumstances, an approved nonpublic special education school shall not terminate the enrollment of any student, unless and until the student's LEA has been informed by the most expedient and appropriate means of communication with a follow up in writing.

### **A2824 PERSONNEL QUALIFICATIONS.**

- A2824.1 An approved nonpublic special education school shall ensure that its organizational structure provides for the effective and efficient operation of the school, supervision of the school staff and supervision of students.
- A2824.2 Effective no later than School Year 2010-11, each member of the teaching staff shall hold a teaching certification from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.
- A2824.3 Related service providers, whether employed or contracted by the approved nonpublic special education school, shall be appropriately certified, licensed or registered in their professional areas.
- A2824.4 An approved nonpublic special education school shall maintain personnel files including, at minimum, resumes, attendance records, contracts, driver's licenses, and evidence of child protective service and criminal background checks. Access

to personnel policies and files shall be available to the OSSE upon request, for the purposes of monitoring compliance with the requirements of this Section.

A2824.5 All approved nonpublic special education schools must conduct a background check on school personnel. An approved nonpublic special education school shall make criminal background checks consistent with the District of Columbia requirements.

A2824.6 An approved nonpublic special education school shall not employ or use as a consultant or contractor, any attorney or advocate that represents the parent of any student with a disability in an IDEA proceeding under 34 C.F.R. 300.500 through 300.538.

## **A2825 POLICIES AND PROCEDURES**

A2825.1 An approved nonpublic special education school shall maintain on file, at minimum, the following written policies:

- (a) Mission statement;
- (b) Positive behavior support policy statement and behavior plan, including school-wide crisis plan;
- (c) Emergency behavioral interventions;
- (d) Participation of all District of Columbia students in state-wide assessments;
- (e) Opportunities for enrolled students to interact maximally with their non-disabled peers during such time as they are enrolled in the nonpublic special education school;
- (f) Postsecondary transition services and transition planning;
- (g) Truancy (day schools)/ Runaway students (residential schools);
- (h) Records management and confidentiality of student records;
- (i) Process for a student or parent to make a complaint to the nonpublic special education school about the services the student is receiving;
- (j) Employee policies including position descriptions, staff evaluation policies, staff discipline policies (including suspensions and dismissals), procedures for handling complaints by staff, and a statement of equal employment/educational opportunities in regard to race, color, creed, religion, national origin, sex, sexual orientation and disability.

- (k) A plan for meaningful participation by the parent and other family members authorized by the parent;
- (l) Supervision of students;
- (m) A plan for serving limited English proficiency students;
- (n) Admissions and termination criteria;
- (o) Reporting of suspected child abuse or neglect;
- (p) IEP meetings, including conducting IEP meetings and including Manifestation Determination Reviews;
- (q) Conducting evaluations and reevaluations; and
- (r) Professional development plan which ensures adequate staff education on policies and procedures.

**A2826 PROFESSIONAL DEVELOPMENT AND TRAINING**

A2826.1 An approved nonpublic special education school shall conduct staff training at least once annually, regarding:

- (a) Research-based interventions and alignment of curriculum to state standards, including District Learning Standards;
- (b) Confidentiality of student information;
- (c) Positive behavior support;
- (d) Restraints/seclusion policies in accordance with this Section;
- (e) Reporting of suspected abuse or neglect;
- (f) Emergency procedures including evacuation and fire drills;
- (g) The school's truancy/runaway policies; and
- (h) Equal Employment opportunities.

**A2827 INFORMATION FOR STUDENTS**

A2827.1 An approved nonpublic special education school shall provide each student with full and up to date information about its program, including at minimum its

academic policies, IEP process, policies on behavior management, student rights and privileges and the process for making a confidential complaint about the services or treatment he or she is receiving at the school.

## **A2828 INFORMATION FOR PARENTS**

A2828.1 An approved nonpublic special education school shall provide every parent with complete and up to date information about its program, including at minimum its academic policies, IEP process, policies on behavior management, student rights and privileges and the process for a parent to make a complaint about the services or treatment a student is receiving at the school.

A2828.2 In addition to the information set forth in the above subsection, the school shall provide information to all parents regarding monitoring by the OSSE, including the fact that students may be subject to private interviews by OSSE representatives in connection with monitoring.

## **A2829 FACILITIES**

A2829.1 An approved nonpublic special education school shall have current licenses, approvals, and certificate of inspection by state and local agencies, covering safety, fire, lead paint, health, building code, Americans with Disabilities Act and other inspections that may be required by local or state authorities.

## **A2830 PUBLIC ACCOUNTABILITY**

A2830.1 An approved nonpublic special education school shall maintain and keep up to date on an internet website, and make available for public review upon request, the following information:

- (a) Statement of purpose, including the number of students served and disability categories served;
- (b) Description of the education program;
- (c) Organizational chart and student/teacher ratios;
- (d) Discipline and behavior management policies;
- (e) Rates and tuition information;
- (f) Professional staff listing, including qualifications;
- (g) Licensure, certifications and accreditation status; and
- (h) Management and ownership.

A2830.2 The following documents shall be up to date, maintained onsite at the school and available for review upon request:

- (a) Documentation of current approval by the District of Columbia and all other relevant approval/licensing bodies; and
- (b) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws.

### **A2831 INCIDENT REPORTING**

A2831.1 As noted above, a separate written incident report shall be prepared for each child subject to the use of restraints or seclusion in accordance with this chapter.

A2831.2 Any other incident causing serious physical injury to a student shall be reported in writing within twenty four (24) hours to the LEA, any other involved District agencies, and parent(s).

### **A2832 EMERGENCY REPORTING**

A2832.1 In the event of fire or any other form of emergency situation, the approved nonpublic special education school must provide the LEA and the OSSE with written notification as soon as is feasible, and status reports thereafter as requested by the OSSE.

### **A2833 MATERIAL EVENTS REPORTING**

A2833.1 In the event of a material event or change of circumstances at an approved nonpublic special education school shall notify the LEA and the OSSE in writing no later than fifteen (15) calendar days from the date of such event.

A2833.2 A material event shall include without limitation changes related to or conditions placed upon a school's permit or licensing status; a change in accreditation status; change of financial status or court protection; a major change in its program offerings; a change of school management or leadership including administrative director, principal or Chief Executive Officer (CEO),

### **A2834 INVOICING**

A2834.1 An approved nonpublic special education school shall invoice the OSSE according to the District of Columbia's rates, policies and procedures for payment

of nonpublic special education providers. Such rates, policies and procedures shall be published and made available by the OSSE.

A2834.2 An approved nonpublic special education school shall not use any bundled or packaged rate methodology when invoicing the District of Columbia government.

**A2835 MEDICAID**

A2835.1 An approved nonpublic special education school shall adhere to all federal and District of Columbia laws and regulations governing Medicaid reimbursable services, including, but not limited to, documentation of all instances of IEP health-related services delivered to District of Columbia students enrolled in Medicaid.

A2835.2 An approved nonpublic special education school shall keep organized and confidential records that detail client specific information regarding all specific services provided for each individual recipient of services and retain those records for review. All such documentation shall include:

- (a) Recipient's name, date of birth, and Medicaid or unique identification number;
- (b) Date, time, and location of the services;
- (c) Provider of the services;
- (d) A description of the services provided, including diagnosis code and level of service;
- (e) Duration (or unit) of service, with start time;
- (f) Progress notes with an original signature by the service provider, including credentials (and signature of qualified supervisors for service providers requiring supervision);
- (g) Original/copy of provider health evaluation(s)/assessments(s);
- (h) Original/copy of IEP authorizing related service(s); and
- (i) Individual service provider daily documentation of the nature of the service encounters and progress notes, signed and dated by the provider, and listing the provider's credentials.

A2835.3 The frequency, duration and scope of services shall be specified in the student's IEP.

A2835.4 All services shall be logged within fifteen (15) calendar days of delivery and submitted using the format required by the District of Columbia government.

A2835.5 As requested by the OSSE, an approved nonpublic special education school shall enter into a contract confirming its rates for Medicaid purposes.

**A2836 ANNUAL CERTIFICATE OF COMPLIANCE**

A2836.1 Pursuant to D.C. Official Code § 38-2561.08, an approved nonpublic special education school shall certify compliance with this chapter not less than forty-five (45) calendar days prior to the start of the school year, using such forms as shall be provided by the OSSE.

**A2837 DISCLOSURE OF INFORMATION**

A2837.1 An approved nonpublic special education school shall make available to the OSSE, on request, information on all aspects of the school's program(s), staff credentials, certification by agencies other than the OSSE, information regarding any complaints made, health and safety information, the individual records of District of Columbia students, and any other information that the OSSE may reasonably require in exercising its duties as State Education Agency (SEA).

**A2838 MONITORING**

A2838.1 Pursuant to D.C. Official Code § 38-2561.09, the OSSE shall schedule periodic monitoring visits to each nonpublic special education school or program at least once during the validity of each Certificate of Approval, to verify compliance with this chapter, federal and local law. An approved nonpublic special education school shall inform all parents of enrolled District of Columbia students that a scheduled monitoring visit shall occur, prior to the monitoring visit.

A2838.2 OSSE representatives may make unannounced visits to a nonpublic special education school or program, review student records, and conduct private interviews with students and staff.

A2838.3 The OSSE shall issue to the nonpublic special education school a monitoring report at least once in every period of validity for a Certificate of Approval, to include any findings of noncompliance with D.C. Official Code § 38-2561 and/or this Section.

**A2839 INITIAL APPLICATION FOR CERTIFICATE OF APPROVAL**

A2839.1 A nonpublic special education school seeking a Certificate of Approval from the OSSE shall complete an initial application. Any application shall be made on the OSSE's standard form, which shall comply with the requirements of D.C. Official Code § 38-2561.07(e).

- A2839.2 An initial application by a nonpublic special education school shall be made by the nonpublic school itself. The OSSE will not accept an application for a Certificate of Approval by a parent, advocate, or LEA.
- A2839.3 Incomplete applications shall not be accepted.
- A2839.4 The OSSE shall review each application submitted for an initial Certificate of Approval according to the criteria specified in this chapter and shall consult with other District agencies and agencies of other state and local governments as applicable.
- A2839.5 The OSSE shall not grant approval to the educational component of a residential school until all licenses required by local or state law have been awarded. The OSSE shall not grant approval to any school or program lacking a physical location at the time of its application.
- A2839.6 Unless exceptional circumstances apply, a Certificate of Approval will enter into effect at the start of the official DCPS school year. An initial application for a Certificate of Approval must be made no later than forty-five (45) calendar days prior to the start of July 1 each school year. The OSSE may, at its discretion, schedule site visits, interviews, or other inspections, and/or consult with counterparts in the host state, District agencies or other relevant stakeholders prior to granting a Certificate of Approval. The OSSE shall provide the applicant with written notice of its actions and the reasons for such actions.

**A2840 EXPIRATION OF A CERTIFICATE OF APPROVAL.**

- A2840.1 If a Certificate of Approval has not been renewed by the OSSE on or before its expiration date, it is void. It is the responsibility of the nonpublic special education school to submit an application for renewal of its Certificate of Approval.

**A2841 RENEWAL OF AN EXISTING CERTIFICATE OF APPROVAL**

- A2841.1 An approved nonpublic special education school may have its Certificate of Approval renewed for up to three years at a time. An application for renewal must be submitted not less than one hundred and eighty (180) calendar days prior to the expiration date of the current Certificate of Approval using a standard renewal form which shall be published on the OSSE's website. It is the responsibility of the nonpublic school to apply for renewal of certification.
- A2841.2 Any corrective actions in place at the time of application for renewal must be completed as a condition of renewal.
- A2841.3 The OSSE may revoke or decline to renew a Certificate of Approval for any of

the reasons pursuant to D.C. Official Code § 38-2561.11 and this chapter.

**A2842 EXTENSION OF A CERTIFICATE OF APPROVAL**

A2842.1 The OSSE may extend or modify a Certificate of Approval to allow a nonpublic special education school to reflect a material change at the school, to incorporate campus or program additions or changes, or as otherwise deemed appropriate.

A2840.2 An approved nonpublic special education school must submit an application form for any new branch or campus not covered by the existing Certificate of Approval.

**A2843 FINDINGS, CORRECTIVE ACTIONS AND REVOCATION OF A CERTIFICATE OF APPROVAL**

A2843.1 At least once within the period of validity for each Certificate of Approval, the OSSE shall, based on its monitoring activities, make written findings, documenting any noncompliance with D.C. Official Code § 38-2561 *et seq.* and/or this chapter.

A2843.2 Any finding of noncompliance that constitutes a violation of D.C. Official Code § 38-2561.11(a), shall be clearly documented as such, including the specific subsection of D.C. Official Code § 38-2561.11(a) found to be violated.

A2843.3 If the OSSE makes one or more findings of noncompliance, whether or not such findings constitute violations of D.C. Official Code § 38-2561.11(a), the OSSE shall order the school to correct each item within specific timeframes, or order the school to produce a written plan for correction of items of noncompliance.

A2843.4 If a school fails to correct items of noncompliance within the timeframes agreed with or imposed by the OSSE, the OSSE may, in its discretion, place the school into Probationary Approval status.

A2843.5 A school in probationary approval status shall be ordered to take specific corrective actions within thirty (30) days as a condition of continued certification. Failure to comply with a corrective action may, at the OSSE's discretion, result in revocation of the school's Certificate of Approval.

A2843.6 Pursuant to D.C. Official Code § 38-2561.11(b), the OSSE may, in its discretion, deny, revoke, refuse to renew or suspend a Certificate of Approval at any time, with or without an intervening imposition of probationary approval status, in the event of a finding of a violation of D.C. Official Code § 38-2561.11(a).

A2843.7 Pursuant to D.C. Official Code § 38-2561.11(b), the OSSE shall issue a written notification to the school of the violations of D.C. Official Code § 38-2561.11(a)

and its intention to deny, revoke, or refuse to renew or suspend a Certificate of Approval (Notice).

**A2844 ANNUAL CERTIFICATION OF COMPLIANCE**

A2844.1 Pursuant to D.C. Official Code § 38-2561.08, a nonpublic special education school with a Certificate of Approval, shall file with the OSSE, an annual certificate of compliance to certify its compliance with this chapter, no later than forty-five (45) days after the start of each official DCPS school year.

**A2845 HEARING AND APPEAL PROCESS**

A2845.1 A nonpublic special education school may appeal an OSSE finding(s) that it is in violation of D.C. Official Code, §38-2561.11(a).

A2845.2 The right to a hearing and the appeal process shall be conducted by an OSSE independent panel in accordance with D.C. Official Code, §38-2561.11(b) and this chapter.

A2845.3 A nonpublic special education school may request a hearing in writing, no later than thirty (30) calendar days after the date of the receipt of OSSE's Notice (with three days added to that date in the event the request is mailed to the OSSE).

A2845.4 The hearing request shall be addressed to the attention of the: State Superintendent of Education, Certificate of Approval Independent Panel Hearing and Appeal Process.

A2845.5 The nonpublic special education school's written appeal and request for a hearing shall include the following:

- (a) A concise statement outlining each issue to be addressed on appeal;
- (b) An index of the documents provided; and
- (c) The specific basis for opposing each OSSE finding or action subject to appeal; including the identification of the specific document provided to support the school's position; and
- (d) The basis for the relief requested.

A2845.6 The hearing on appeal shall be based upon the written record including the school's written submission in support of its appeal; the OSSE monitoring report including any attachments; the OSSE Notice and other documentation requested by the independent panel with copies provided to the respective parties.

- A2845.7 Any such hearing shall occur no more than thirty (30) calendar days after the request for a hearing.
- A2845.8 The nonpublic special education school and the OSSE shall have an opportunity for oral argument before the OSSE independent panel before a final decision is rendered. The length of the oral argument shall be limited to thirty (30) minutes.
- A2845.9 All appeals shall be conducted by an OSSE independent panel as follows:
- (a) An appeal with regard to a finding other than a decision to revoke a Certificate of Approval shall be heard by a standard independent panel consisting of three members:
    - (1) A designee of the State Superintendent of Education;
    - (2) A designee of the OSSE General Counsel; and
    - (3) An OSSE Department of Special Education representative;
  - (b) An appeal regarding a finding and notification by the OSSE of its intention to revoke a Certificate of Approval shall be reviewed by a full independent OSSE panel consisting of the following five members:
    - (1) A designee of the State Superintendent of Education;
    - (2) The OSSE General Counsel or designee;
    - (3) An OSSE Department of Special Education representative;
    - (4) An OSSE Department of Elementary and Secondary Education representative; and
    - (5) The Executive Director or designee of the District of Columbia Association for Special Education (DCASE) not associated with the school in question;
  - (c) An OSSE independent panel in either (a) or (b) above shall select a chairperson; and shall not contain any person who participated in, or had direct knowledge of the OSSE's original decision or underlying monitoring report and findings.
- A2845.10 While the appeal is pending, the nonpublic special education school shall continue to provide special education and related services to enrolled students.
- A2845.11 The decision of the OSSE independent panel shall be issued within ten (10) calendar days of the hearing.

A2845.12 Pursuant to D.C. Official Code § 38-2561.11(b), the decision of the OSSE panel is final and not appealable.

A2845.13 The OSSE shall publish the final decision issued by the independent panel, and take appropriate action in conformance with the final decision, including specific notification to the nonpublic school, and other interested parties as deemed appropriate including LEAs, and other government officials within or outside the District of Columbia.

## **A2846 RATE SETTING**

A2846.1 The fees for services provided by a nonpublic special education school to District of Columbia children shall conform to the rates established by the District of Columbia.

## **2899 DEFINITIONS**

Any term used in this chapter that is not otherwise defined herein, has the same meaning as the D.C. Official Code § 38-2561 *et seq.* and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300.

**“Mechanical restraint”** means the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

**“Nonpublic special education school or program,” “school” or “program”** means a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term "nonpublic special education school or program" shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting.

**“Parent”** shall have the same meaning as in the Individuals with Disabilities Education Act, Section 602(23).

**“Physical restraint”** means the use of bodily force to limit a student’s freedom of movement.

**“Prone restraint”** means the use of force and/or a physical device to hold a student face down on the floor.

**“Seclusion”** means the involuntary confinement of a student alone in a room or area from which he or she is physically prevented from leaving, whether or not in a locked area.

**“Student” or “student with a disability”** means “child” or “child with a disability” as defined by the Individuals with Disabilities Education Act (IDEA), Section 602(3).

**“Time Out”** means the exclusion of a student from the classroom or other area to a removed, supervised area, for a limited period of time during which the student has the opportunity to regain self-control.

**“Truancy”** is the willful absence from school by a student five (5) through seventeen (17) years of age) with or without approval, parental knowledge, or consent

Persons wishing to comment on this rule should submit their comments in writing to Kerri L. Briggs, PhD., Acting State Superintendent of Education, 441 4<sup>th</sup> Street, NW, Room 350N, Washington, D.C. 20001, Attn: Tameria Lewis, Assistant Superintendent, Department of Special Education. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may be obtained from the OSSE website at [www.osse.dc.gov](http://www.osse.dc.gov) or upon request at the above referenced location.