

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council schedules a public hearing on Bill 21-0313, Transportation Reorganization Amendment Act of 2015
- D.C. Council schedules a public oversight roundtable on the Energy and Environmental Effects of the Proposed Nonunanimous Settlement Agreement Regarding Exelon’s Acquisition of Pepco
- Office of the Deputy Mayor for Health and Human Services announces availability of the 2016 Olmstead Plan for public review and comment
- Department of Health Care Finance establishes reimbursement standards for numerous health care services
- Department of Health Care Finance releases proposed amendments to the District of Columbia State Plan for Medical Assistance
- Department of Human Resources proposes rules for implementing the Government Paid Family Leave Program
- Office of Planning announces funding availability for Crossing the Street: Building DC’s Inclusive Future through Creative Placemaking

# DISTRICT OF COLUMBIA REGISTER

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The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 *et seq.* (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at [dcregs.dc.gov](http://dcregs.dc.gov). Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

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ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-198**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 23, 2015**

To approve, on an emergency basis, Change Order Nos. 11 and 12 to Contract No. GF-2010-C-0030 with Parkinson/Forrester UDC Student Center JV, LLC for the construction of the New Student Center at the University of the District of Columbia, Van Ness Campus, and to authorize payment in the aggregate amount of \$3,584,222 for the goods and services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Change Order Nos. 11 and 12 to Contract No. GF-2010-C-0030 Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Change Order Nos. 11 and 12 to Contract No. GF-2010-C-0030 with Parkinson/Forrester UDC Student Center JV, LLC for the construction of the New Student Center at the University of the District of Columbia, Van Ness Campus, and authorizes payment in the aggregate amount of \$3,584,222 for the goods and services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

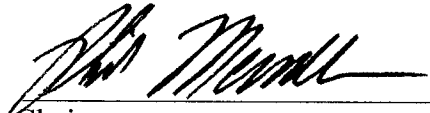
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

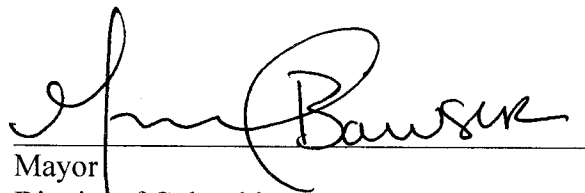
Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code §1-204.12(a)).

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
November 23, 2015

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-199**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 23, 2015**

To amend, on an emergency basis, the Day Care Policy Act of 1979 to extend eligibility for subsidized child care to foster parents who may no longer be working but have some form of verifiable income, teen parents under 21 years of age who themselves are in foster care or wards of the District, and foster parents who are not working but who are enrolled in a verified job training or education program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Foster Care Extended Eligibility Emergency Amendment Act of 2015".

Sec. 2. Section 5a(a) of the Day Care Policy Act of 1979, effective April 13, 1999 (D.C. Law 12-216; D.C. Official Code § 4-404.01(a)), is amended as follows:

(a) Paragraph (4) is amended by striking the phrase "services; and" and inserting the phrase "services;" in its place.

(b) Paragraph (5) is amended by striking the phrase "child." and inserting the phrase "child;" in its place.

(c) New paragraphs (6), (7), and (8) are added to read as follows:

"(6) Children of a teen parent under 21 years of age who is either in foster care or a ward of the District and is either working or enrolled in a verified job training or education program;

"(7) Children in foster care placement when the foster care provider is not working but receives some form of verifiable income, such as social security or disability, and the child care services are in the best interest of the child; and

"(8) Children in foster care placement when the foster care provider is not working but enrolled in a verified job training or education program, and the child care services are in the best interest of the child."


Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 206.02(c)(3)).

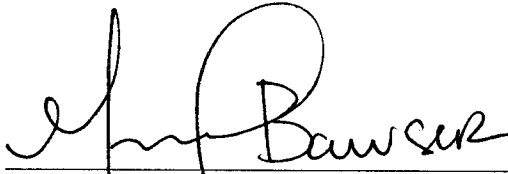
ENROLLED ORIGINAL

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
November 23, 2015

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-200**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 23, 2015**

To amend, on an emergency basis, due to congressional review, the Grandparent Caregivers Pilot Program Establishment Act of 2005 to allow the Grandparent Caregivers Program subsidy to be transferred to a relative caregiver when a grandparent is no longer able to care for the child.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Grandparent Caregivers Program Subsidy Transfer Congressional Review Emergency Amendment Act of 2015".

Sec. 2. The Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 4-251.01) is amended as follows:

(1) A new paragraph (1A) is added to read as follows:

"(1A) "Godparent" means an individual identified in a sworn affidavit by a relative of the child by blood, marriage, domestic partnership, or adoption to have close personal or emotional ties with the child or the child's family that pre-dated the child's placement with the individual."

(2) A new paragraph (3A) is added to read as follows:

"(3A) "Relative caregiver" means an individual who is the primary caretaker of the child and is related to the child by blood, marriage, domestic partnership, or adoption or is a godparent of the child."

(b) A new section 103a is added to read as follows:

"Sec. 103a. Transfer of subsidy.

"(a) The Mayor may transfer subsidy payments to a relative caregiver upon the death or mental or physical incapacity of a grandparent if:

"(1) The relative caregiver files an application for a subsidy within 30 days of becoming the child's primary caregiver;

"(2) The relative caregiver has a strong commitment to caring for the child;

"(3) The child's parent does not reside in the relative caregiver's home; provided, that a parent may reside in the home without disqualifying the relative caregiver from receiving a subsidy if:

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“(A) The parent has designated the relative caregiver to be the child’s standby guardian pursuant to Chapter 48 of Title 16;

“(B) The parent is a minor enrolled in school; or

“(C) The parent is a minor with a medically verifiable disability under criteria prescribed by the Mayor pursuant to section 106;

“(4) The relative caregiver and all adults residing in the relative caregiver’s home have submitted to criminal background checks;

“(5) The relative caregiver is a resident of the District as defined by section 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.03);

“(6) The relative caregiver has applied for Temporary Assistance for Needy Families benefits for the child;

“(7) The relative caregiver has entered into a subsidy agreement that includes a provision that no payments received under the agreement shall inure to the benefit of the child’s parent but shall be solely for the benefit of the child;

“(8) The relative caregiver is not currently receiving a guardianship or adoption subsidy for the child;

“(9) The relative caregiver has provided a signed statement, sworn under penalty of perjury, that the information provided to establish eligibility pursuant to this section or rules issued pursuant to section 106 is true and accurate to the best belief of the relative caregiver; and

“(10) The relative caregiver has met any additional requirements of rules issued pursuant to section 106.

“(b)(1) The Mayor shall recertify the eligibility of each relative caregiver receiving a subsidy on at least an annual basis.

“(2) For the purposes of the recertification, a relative caregiver may be required to provide a signed statement, sworn under penalty of perjury, that the information provided to establish continued eligibility pursuant to this section or any rules issued pursuant to section 106 remains true and accurate to the best belief of the relative caregiver.

“(c)(1) The Mayor shall terminate subsidy payments to a relative caregiver at any time if:

“(A) The Mayor determines the relative caregiver no longer meets the eligibility requirements established by this section or by rules issued pursuant to section 106; or

“(B) There is a substantiated finding of child abuse or neglect against the relative caregiver resulting in the removal of the child from the relative caregiver’s home.

“(2) A relative caregiver whose subsidy payments are terminated as a result of the removal of the child from the relative caregiver’s home may reapply if the child has been returned to the relative caregiver’s home.

“(d) Eligibility for subsidy payments under this section may continue until the child reaches 18 years of age.

“(e) The determination of whether to transfer a subsidy is solely within the discretion of the Mayor.



## ENROLLED ORIGINAL

“(f) A relative caregiver whose application for a subsidy transfer has been denied shall not be entitled to a hearing under Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

“(g) A relative caregiver whose subsidy has been terminated shall be entitled to a fair hearing under the applicable provisions of Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*); provided, that a relative caregiver shall not be entitled to a hearing if the termination of a subsidy is based upon the unavailability of appropriated funds.

“(h) Any statement under this section made with knowledge that the information set forth in the statement is false shall be subject to prosecution as a false statement under section 404(a) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405(a)).”

(c) Section 104 (D.C. Official Code § 4-251.04) is amended as follows:

(1) Subsection (b) is amended by striking the word “grandparent” and inserting the phrase “grandparent or relative caregiver” in its place.

(2) Subsection (c) is amended by striking the word “grandparent” wherever it appears and inserting the phrase “grandparent or relative caregiver” in its place.

(d) Section 105 (D.C. Official Code § 4-251.05) is amended by adding a new paragraph (5A) to read as follows:

“(5A) The number of subsidies transferred to a relative caregiver pursuant to section 103a;”.

(e) Section 107(a) (D.C. Official Code § 4-251.07(a)) is amended by striking the word “grandparent” and inserting the phrase “grandparent or relative caregiver” in its place.

### Sec. 3. Applicability.

This act shall apply as of October 18, 2015.

### Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

### Sec. 5. Effective date.

This act shall take effect following approval by the Mayor, (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

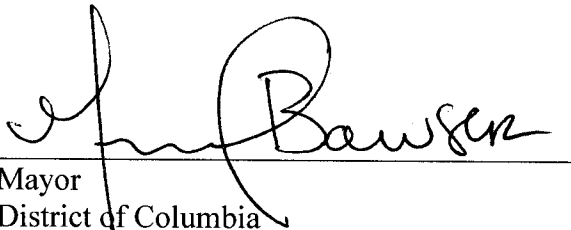
ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
November 23, 2015

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-201**

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 23, 2015**

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To amend, on an emergency basis, the Street and Alley Closing and Acquisition Procedures Act of 1982 to allow for the temporary naming of an adopted or sponsored Department of Parks and Recreation athletic field in honor of a current or former professional sports player and to permit the District to display the logo of an entity sponsoring or adopting a Department of Parks and Recreation athletic field on signage at the field; and to amend the Recreation Act of 1994 to clarify that certain entities, including a nonprofit organization, may adopt or sponsor a Department of Parks and Recreation program, site, facility, field, or operation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Athletic Field Naming and Sponsorship Emergency Amendment Act of 2015”.

Sec 2. The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), is amended as follows:

(a) Section 405 (D.C. Official Code § 9-204.05) is amended by striking the phrase “No public space” and inserting the phrase “Except as otherwise provided by this act, no public space” in its place.

(b) A new section 410 is added to read as follows:

“Sec. 410. Naming of sponsored recreation facilities.

“(a) Notwithstanding section 401, the Mayor may name in honor of a person a Department of Parks and Recreation athletic field that is adopted or sponsored pursuant to section 5 of the Recreation Act of 1994, effective March 23, 1995 (D.C. Law 10-246; D.C. Official Code § 10-304); provided, that:

“(1) The naming is detailed in an agreement between the Mayor and the entity adopting or sponsoring the field;

“(2) The agreement requires the financial adoption or sponsorship of the field;

“(3) The name is that of a current or former professional sports player who may be living or deceased less than 2 years; and

“(4) The naming is not permanent.

ENROLLED ORIGINAL

“(b) The District may display the logo of an entity sponsoring or adopting a field on signage at the field; provided, that the display of the logo be less prominent than the name of the person for whom the field is named, and that the display be consistent with the terms of the agreement required by subsection (a)(1) of this section.


Sec. 3. Section 5(a) of the Recreation Act of 1994, effective March 23, 1995 (D.C. Law 10-246; D.C. Official Code § 10-304(a)), is amended by striking the phrase “neighborhood and civic groups or other governmental entities may adopt or sponsor Departmental programs, sites, or operations” and inserting the phrase “neighborhood and civic groups, nonprofit organizations, or other governmental entities may adopt or sponsor Departmental programs, sites, facilities, fields, or operations” in its place.

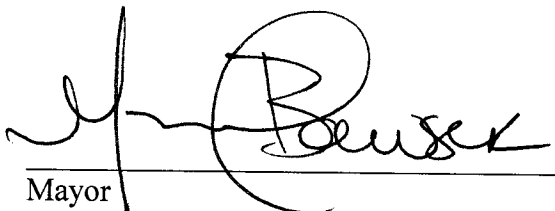
Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
November 23, 2015

## ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-202**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 23, 2015**

To amend, on an emergency basis, the Fiscal Year 2016 Budget Support Act of 2015 and various other acts to clarify provisions supporting the Fiscal Year 2016 budget; and to amend the Firearms Control Regulations Act of 1975 to clarify the descriptions of the boundaries around the White House and the U.S. Naval Observatory within which a concealed pistol licensee is prohibited from carrying a pistol.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Fiscal Year 2016 Second Budget Support Clarification Emergency Amendment Act of 2015”.

Sec. 2. Section 6004 of the Parking Amendment Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), is repealed.

Sec. 3. Section 4a(a)(1) of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a(a)(1)), is amended by striking the word “permanent”.

Sec. 4. Section 907 of the Firearms Control Regulations Act of 1975, effective June 16, 2015 (D.C. Law 20-279; D.C. Official Code § 7-2509.07) is amended as follows:

(a) Subsections (a)(11) and (12) are amended to read as follows:

“(11) The White House Complex and its grounds up to and including to the curb of the adjacent sidewalks touching the roadways of the area bounded by Constitution Avenue, N.W., 15th Street, N.W., H Street N.W., and 17th Street, N.W.;

“(12) The U.S. Naval Observatory and its fence line, including the area from the perimeter of its fence up to and including to the curb of the adjacent sidewalks touching the roadway of Observatory Circle, from Calvert Street, N.W. to Massachusetts Avenue, N.W. and around Observatory Circle to the far corner of Observatory Lane;”.

(b) Subsection (d)(1) is amended by striking the phrase “While he or she is traveling along a public street, road, or highway, including an adjacent public sidewalk that touches the perimeter of any of the premises where the carrying of a concealed pistol is prohibited under subsection (a) and subsection (b) of this section” and inserting the phrase “While he or she is

## ENROLLED ORIGINAL

traveling along a public sidewalk that touches the perimeter of any of the premises where the carrying of a concealed pistol is prohibited under subsection (a) and subsection (b) of this section, except for the areas designated in subsection (a)(11) and (a)(12), or along a public street, roadway, or highway” in its place.

Sec. 5. Section 47-355.07 of the District of Columbia Official Code is amended as follows:

(a) Subsection (c)(1) is amended as follows:

(1) Subparagraph (A) is amended by striking the phrase “serve at the pleasure of” and inserting the phrase “shall be appointed by” in its place.

(2) Subparagraph (B) is amended by striking the phrase “serves at the pleasure of” and inserting the phrase “shall be appointed by” in its place.

(3) Subparagraph (D) is amended by striking the phrase “serves at the pleasure of” and inserting the phrase “shall be appointed by” in its place.

(b) Subsection (d)(3)(D) is amended by striking the phrase “taken or proposed to be taken” and inserting the word “recommended” in its place.

(c) New subsections (d-1), (d-2), and (d-3) are added to read as follows:

“(d-1)(1) The Review Board shall conduct an investigation upon receipt of a report of an alleged violation.

“(2) In investigating a report of an alleged violation, the Review Board may:

“(A) Request assistance from the Office of the Chief Financial Officer, the Office of the Inspector General, and the Office of the Attorney General; and

“(B) Consult with the Office of the Attorney General for the purposes of obtaining legal advice.

“(d-2) The Review Board:

“(1) Shall have access, subject to any privileges or confidentiality requirements as provided by law, to all facilities, files, and databases of the District government, including all files, electronic paper records, reports, documents, and other materials that may relate to the investigation;

“(2) May request information or assistance from any District, federal, state, or local government agency as may be necessary for carrying out the investigation; and

“(3) May seek information from parties outside the District government, including government contractors, that may be relevant to the investigation.

“(d-3)(1) Subject to any applicable privileges, all officers, employees, and members of boards, commissions, and councils of the District government shall cooperate in an investigation by the Review Board and shall provide documents, materials, and information to the Review Board upon request.

“(2) Subject to any applicable privileges, officers, employees, and members of boards, commissions, and councils of the District government shall respond truthfully to all questions posed by the Review Board, and shall not prevent or prohibit the Review Board from initiating, carrying out, or completing an investigation within its jurisdiction.

“(3) The Review Board:

## ENROLLED ORIGINAL

“(A) May require any officer, employee, or member of a board, commission, or council of the District government, including the subject of an allegation, to appear before the Review Board; and

“(B) Shall provide any officer, employee, or member of a board, commission, or council of the District who is potentially subject to disciplinary action an opportunity to appear before the Review Board.

“(4) The Review Board may recommend an appropriate disciplinary action with respect to any officer, employee, or member of a board, commission, or council of the District government who fails to cooperate fully with a Review Board investigation.”.

Sec. 6. Chapter 18 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by striking the phrase “Tax haven updates” and inserting the phrase “Tax haven updates. (Repealed).” in its place.

(b) Section 47-1801.04(49) is amended as follows:

(1) Subparagraph (A) is amended by striking the phrase “means the jurisdictions listed in subparagraph (B-i) of this paragraph and any jurisdiction that” and inserting the phrase “means a jurisdiction that” in its place.

(2) Subparagraph (B-i) is repealed.

(c) Section 47-1810.09 is repealed.

Sec. 7. Section 47-1801.04(11) of the District of Columbia Official Code is amended as follows:

(a) Subparagraph (A) is amended by striking the phrase “calendar year beginning January 1, 2011” wherever it appears and inserting the phrase “base year” in its place.

(b) A new subparagraph (C) is added to read as follows:

“(C) For the purposes of this paragraph, the term “base year” shall mean the calendar year beginning January 1, 2011, or the calendar year beginning one calendar year before the calendar year in which the new dollar amount of a deduction or exemption shall become effective, whichever is later.”.

Sec. 8. Section 47-1806.02(h-1)(1) of the District of Columbia Official Code is amended to read as follows:

“(h-1)(1) For taxable years beginning after December 31, 2014, the amount of the personal exemption otherwise allowable for the taxable year in the case of an individual whose adjusted gross income exceeds \$150,000 shall be reduced by 2% for every \$2,500 (or fraction thereof) by which the taxpayer’s adjusted gross income for the taxable year exceeds \$150,000.”.

Sec. 9. Section 6012 of the Unlawfully Parked Vehicles Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), is amended by striking the phrase “shall be a

## ENROLLED ORIGINAL

violation of” and inserting the phrase “shall be a violation, to be adjudicated pursuant to” in its place.

Sec. 10. Section 2404 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 2404) is amended as follows:

(a) Subsection 2404.15 is amended to read as follows:

“2404.15 Except as provided in § 2424, the rates for parking meters in the “Premium Demand Parking Meter Rate Zones” shall be as follows:

“(a) Fifty cents (50¢) for thirteen minutes (13 min.) for automobile size spaces; and

“(b) Twenty-five cents per hour (25¢/hr.) for motorcycle size spaces.”.

(b) Subsection 2404.17 is amended to read as follows:

“2404.17 Except as provided in § 2424, the rates for parking meters in the “Normal Demand Parking Meter Rate Zones” shall be as follows:

“(a) Fifty cents (50¢) for thirteen minutes (13 min.) for automobile size spaces; and

“(b) Twenty-five cents per hour (25¢/hr.) for motorcycle size spaces.”.

Sec. 11. Section 8052 of the Fiscal Year 2016 Capital Rescission Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), is amended as follows:

(a) Strike the phrase “YY105C” in the tabular array and insert the phrase “YY159C” in its place.

(b) Strike the phrase “PROSPECT ES MODERNIZATION/RENOVATION” in the tabular array and insert the phrase “ELLINGTON MODERNIZATION/RENOVATION” in its place.

Sec. 12. Section 2(d) of the Fiscal Year 2016 Budget Support Clarification Emergency Amendment Act of 2015, effective October 16, 2015 (D.C. Act 21-164; 62 DCMR 13734), is repealed.

Sec. 13. Applicability.

Section 10 shall apply as of June 1, 2016.

Sec. 14. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than



ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
November 23, 2015

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-203**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 23, 2015**

To amend Title 47 of the District of Columbia Official Code to establish a qualified ABLE Program, to be known as the ABLE Program Trust, pursuant to the requirements of the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 to exempt from income taxation the earnings on deposits made to an ABLE Program Trust by an eligible individual to assist the individual with certain expenses related to the individual's blindness or disability.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "ABLE Program Trust Establishment Act of 2015".

Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new chapter designation to read as follows:

"49. ABLE Program."

(b) A new Chapter 49 is added to read as follows:

"CHAPTER 49. ABLE PROGRAM.

"Sec.

"47-4901. Definitions.

"47-4902. ABLE Program Trust.

"§ 47-4901. Definitions.

"For the purposes of this chapter, the term:

"(1) "ABLE account" means an account established by an eligible individual, owned by the eligible individual, and maintained under a qualified ABLE program, as defined in the Federal ABLE Act.

"(2) "ABLE Account Savings Agreement" means the terms, conditions, and provisions considered necessary or appropriate by the Chief Financial Officer, as set forth in regulations issued pursuant to this section, governing the deposits to and withdrawals from an ABLE account.

"(3) "ABLE Program Trust" or "Trust" means the trust established in § 47-4902.

## ENROLLED ORIGINAL

“(4) “Chief Financial Officer” or “CFO” means the Chief Financial Officer of the District of Columbia, established by § 1-204.24a(a)).

“(5) “Designated beneficiary” means an eligible individual who has established an ABLE account and is the owner of the account, as defined in the Federal ABLE Act.

“(6) “Eligible individual” means an individual who during the taxable year is entitled to benefits based on blindness or disability under Title II of the Social Security Act, approved August 14, 1935 (49 Stat. 620; 42 U.S.C. § 401 *et seq.*), or Title XVI of the Social Security Act, approved October 30, 1972 (86 Stat. 1465; 42 U.S.C. § 1381 *et seq.*), and such blindness or disability occurred before the date on which the individual attained 26 years of age, or a disability certification with respect to such individual is filed with the CFO for such taxable year, as defined in subsection (e)(1) of the Federal ABLE Act.

“(7) “Federal ABLE Act” means the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, approved December 19, 2014 (128 Stat. 4056; 26 U.S.C. § 529A).

“(8) “Qualified disability expense” means expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including expenses for:

“(A) Education;

“(B) Housing;

“(C) Transportation;

“(D) Employment training and support;

“(E) Assistive technology and personal support services;

“(F) Health, prevention and wellness;

“(G) Financial management and administrative services;

“(H) Legal fees;

“(I) Expenses for oversight and monitoring;

“(J) Funeral and burial expenses; and

“(K) Other expenses that are consistent with the purposes of § 47-4902

and the Federal ABLE Act and approved by the CFO.

“§ 47-4902. ABLÉ Program Trust.

“(a)(1) In accordance with the Federal ABLÉ Act, there is established a qualified ABLÉ program, to be known as the ABLÉ Program Trust, that shall be established as a trust, which shall authorize an eligible individual to create an ABLÉ account to enable the eligible individual to benefit from the tax incentives provided under the Federal ABLÉ Act.

“(2)(A) The Chief Financial Officer, or the CFO's designee, shall serve as the trustee of the Trust.

“(B) The Trust shall receive and hold all payments and contributions received from any public or private source, and the earnings on those payments and contributions, including:

“(i) Gifts;

“(ii) Bequests;

“(iii) Endowments;

ENROLLED ORIGINAL

“(iv) Federal and local grants; and

“(v) Any other funds intended for the Trust.

“(C) All deposits, and earnings on those deposits, held in the Trust shall constitute assets of the Trust and shall not be commingled with or revert to the General Fund of the District of Columbia or any special, emergency, or temporary fund of the District of Columbia at the end of any fiscal year or at any other time.

“(D) The Trust shall continue in existence as long as it holds any payments, contributions, or other funds or has any obligations and until its existence is terminated by law.

“(b) An eligible individual who seeks to save money for the payment of qualified disability expenses of a designated beneficiary may establish an ABLÉ account and shall enter into an ABLÉ Account Savings Agreement with the Trust.

“(c) The Chief Financial Officer shall take the action necessary to implement the ABLÉ Program Trust, promulgate regulations, and enter into ABLÉ Account Savings Agreements.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman  
Council of the District of Columbia

Mayor  
District of Columbia  
APPROVED

November 23, 2015

ENROLLED ORIGINAL

## A RESOLUTION

21-274

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 3, 2015

To approve multiyear Contract No. CFOPD-16-C-002 with RSI Enterprises, Inc. to conduct delinquent tax collections on behalf of the Office of Tax and Revenue.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CFOPD-16-C-002 Delinquent Tax Collection Approval Resolution of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves multiyear Contract No. CFOPD-16-C-002 with RSI Enterprises, Inc., which has a 3-year base term and 2 2-year option periods, for delinquent tax collections for the Office of the Chief Financial Officer, Office of Tax and Revenue in the not-to-exceed amount of \$3 million for the 3-year base term.

Sec. 3. The Council adopts the fiscal impact statement of the Office of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-75

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To posthumously recognize and celebrate Ron M. Linton’s outstanding and exceptional career in public service.

WHEREAS, Ron M. Linton was born in Detroit, Michigan on May 7, 1929;

WHEREAS, Mr. Linton attended Detroit public schools and received a Bachelor of Arts degree from Michigan State University in 1951;

WHEREAS, Mr. Linton came to Washington in 1958 as part of the American Political Science Association’s Congressional Fellowship Program;

WHEREAS, after his fellowship ended, Mr. Linton joined the presidential campaign staff of then-Senator John F. Kennedy, first as an assistant press secretary and then as a senior advance staffer;

WHEREAS, Mr. Linton served in the Kennedy Administration as an aide in the Defense Department under Secretary Robert McNamara;

WHEREAS, Mr. Linton returned to Capitol Hill to serve as the Staff Director for the U.S. Senate Committee on Public Works;

WHEREAS, Mr. Linton served on the District’s School Boundary Commission in 1967 and was named by Mayor Walter E. Washington in 1968 to chair a taskforce on DC Health and Environment;

WHEREAS, Mr. Linton served as Chairman of DC General Hospital’s Board of Directors;

WHEREAS, Mr. Linton was a founding Board Member of the Washington Metropolitan Area Airports Authority and served as its Chairman;

WHEREAS, Mr. Linton served on the DC Water Board of Directors, including 2 years as its Chairman;

## ENROLLED ORIGINAL

WHEREAS, Mr. Linton also served as Chairman of the New York Avenue Development Corporation, which revitalized New York Avenue, N.E.;

WHEREAS, Mr. Linton was a Board Member of the Office of Employee Appeals;

WHEREAS, Mr. Linton served as Chairman of his Advisory Neighborhood Commission;

WHEREAS, Mr. Linton served as Vice Chairman of the Downtown Cluster of Congregations;

WHEREAS, Mr. Linton was the author of numerous articles on urban policy and environmental affairs and was a visiting professor at Rennselaer Polytechnic Institute;

WHEREAS, Mr. Linton had a successful career in the private sector as President and CEO of Linton, Meilds, Reisler, and Cottone, Ltd., which later merged with the Carmen Group, and, later, as President of Linton Properties and as a consultant to McKissack & McKissack;

WHEREAS, Mr. Linton began a 26-year career as a volunteer officer with the Metropolitan Police Department in 1971, ultimately rising to Assistant Chief in charge of the reserve officers;

WHEREAS, Mayor Vincent C. Gray nominated Mr. Linton as Chairman of the District of Columbia Taxicab Commission in 2011;

WHEREAS, during his tenure there, Mr. Linton transformed the District of Columbia Taxicab Commission and oversaw the successful implementation of a broad set of ambitious reforms, including credit card readers, uniform dome lights and colors, and incentives for retiring old vehicles; and

WHEREAS, Mr. Linton was a dedicated, tireless, and passionate public servant who served in the District and federal governments for nearly 60 years and who continued working very long hours in his mid-80s, long after his peers had since retired.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the District of Columbia is grateful for Ron M. Linton's outstanding and exceptional service to our city and mourns his passing. He is a model for all to emulate.

Sec. 2. This resolution may be cited as the "Ron M. Linton Posthumous Recognition Resolution of 2015".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**NOTICE OF INTENT TO ACT ON NEW LEGISLATION**

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at [www.dccouncil.us](http://www.dccouncil.us).

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**COUNCIL OF THE DISTRICT OF COLUMBIA****PROPOSED LEGISLATION****BILLS**

B21-485            Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2015

Intro. 11-16-15 by Chairman Mendelson at the request of the Attorney General and referred to the Committee on Judiciary

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B21-488            Higher Education Tax Exemption Act of 2015

Intro. 11-20-15 by Councilmember Evans and referred to the Committee on Finance and Revenue

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**PROPOSED RESOLUTION**

PR21-426           Family Re-housing and Stabilization Program Second Approval Resolution of 2015

Intro. 11-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services with comments from the Committee of the Whole

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COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT  
MARY M. CHEH, CHAIR

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REVISED

NOTICE OF PUBLIC HEARING ON

**B21-0313, the Transportation Reorganization Amendment Act of 2015**

Friday, December 4, 2015  
at 11:00 a.m.  
in Room 412 of the  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

On Friday, December 4, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B21-0313, the Transportation Reorganization Amendment Act of 2015. B21-0313 would reorganize and establish several offices and divisions with the District Department of Transportation (DDOT), provide DDOT the authority to manage parking policy, operations, and enforcement, and to regulate and oversee the for-hire vehicle industry, and establish certain reporting and administrative duties for the Department of Motor Vehicles, among other things. The hearing will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 5 copies of their written testimony and should submit a copy of their testimony electronically to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us).

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on Friday, December 18, 2015.

**This notice has been revised to reflect that the location of the hearing has changed from Room 500 to Room 412.**

**Council of the District of Columbia  
Committee on Finance and Revenue  
Notice of Public Hearing**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

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**COUNCILMEMBER JACK EVANS, CHAIR  
COMMITTEE ON FINANCE AND REVENUE**

**ANNOUNCES A PUBLIC HEARING ON:**

**Bill 21-359 the “Ballpark Fee Overpayment Act of 2015”  
Bill 21-411, the “Bolling Air Force Base Military Housing Clarification Act of 2015”  
Tuesday, December 8, 2015  
10:00 a.m.  
Room 120 - John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Tuesday, December 8, 2015 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 21-359 the “Ballpark Fee Overpayment Act of 2015” would amend Chapter 27B of Title 47 of the District of Columbia Official Code to provide for the refund of overpaid ballpark fees by an entity that is directly or indirectly majority owned by a Real Estate Investment Trust.

Bill 21-411, the “Bolling Air Force Base Military Housing Clarification Act of 2015” would amend section 47-1080 of Title 47 of the District of Columbia Official Code to clarify that certain real property located on federal property used by the United States Department of the Air Force is exempt from the Ballpark fee.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or [sloy@dccouncil.us](mailto:sloy@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Monday, December 7, 2015. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT  
COMMITTEE ON BUSINESS, CONSUMER, & REGULATORY  
AFFAIRS

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NOTICE OF JOINT HEARING ON

**B21-0386, the Fisheries and Wildlife Omnibus Amendment Act of 2015**

Thursday, December 17, 2015  
at 1:00 p.m.  
in Room 123 of the  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

On Monday, November 23, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, and Councilmember Vincent Orange, Chairperson of the Committee on Business, Consumer, and Regulatory Affairs, will hold a joint hearing on B21-0386, the Fisheries and Wildlife Omnibus Amendment Act of 2015. B21-386 would designate the American Shad as the District's State Fish and the Hay's Spring amphipod as the District's State Amphipod; authorize the Aquatic Resources Education Center; designate the Director of the Department of Energy and Environment as the Natural Resources Trustee for the District; prohibit the sale of products containing plastic microbeads in the District, establish a Conservation Officer Corps; and provide the Mayor additional authority to manage invasive wildlife, sell fishing licenses and endorsements, address abandoned vessels, and license and regulate Marinas. The hearing will begin at 1:00 p.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us).

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108,

Washington, D.C. 20004. They may also be e-mailed to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on January 4, 2016.

**Council of the District of Columbia  
Committee on Business, Consumer, and Regulatory Affairs  
Notice of a Public Hearing**

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

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**Councilmember Vincent B. Orange, Sr., Chair  
Committee on Business, Consumer, and Regulatory Affairs**

**Announces a Public Hearing**

**on**

- **B21-387, the “Health Care Benefits Lien Reduction Act of 2015”**
- **B21-388, the “Workers' Compensation Benefits Lien Reduction Amendment Act of 2015”**

**Wednesday, December 16, 2015, 2:00 P.M.  
John A. Wilson Building, Room 500  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004**

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Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs on B21-387, the “Health Care Benefits Lien Reduction Act of 2015” and on B21-388, the “Workers' Compensation Benefits Lien Reduction Amendment Act of 2015”. The public hearing is scheduled for Wednesday, December 16, 2015 at 2:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-387, the “Health Care Benefits Lien Reduction Act of 2015”, would reduce the amount payable in a subrogation claim to a third-party payor for health-care benefits or services paid on behalf of an injured person.

B21-388, the “Workers' Compensation Benefits Lien Reduction Amendment Act of 2015”, would amend the District of Columbia Workers’ Compensation Act of 1979 to require that court costs and attorney’s fees be proportionally shared

between the injured employee, or the employee's eligible survivors or legal representative, and the employer relative to the amount each received in a settlement against a third person.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at [fcaldwell@dccouncil.us](mailto:fcaldwell@dccouncil.us) and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Monday, December 14, 2015. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Wednesday, December 30, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING

on

**Bill 21-400, the “Closing of a portion of a public alley in Square 5197, S.O. 11-4822, Act of 2015”**

**Bill 21-424, the “Closing of a Portion of the Public Alley in Square 2882,  
S.O. 14-21729, Act of 2015”**

and

**Bill 21-449, the “Dedication and Designation of Land for Street Purposes in Squares 3185 and 3186,  
S.O. 11003, Act of 2015”**

on

**Monday, December 21, 2015  
10:30 a.m., Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole Bill 21-400, the “Closing of a portion of a public alley in Square 5197, S.O. 11-4822, Act of 2015;” Bill 21-424, the “Closing of a Portion of the Public Alley in Square 2882, S.O. 14-21729, Act of 2015;” and Bill 21-449, the “Dedication and Designation of Land for Street Purposes in Squares 3185 and 3186, S.O. 11003 Act of 2015.” The hearing will be held at 10:30 a.m. on Monday, December 21, 2015 in room 412 of the John A. Wilson Building.

The stated purpose of **Bill 21-400** is to order the closing of a portion of a public alley in Square 5197, bounded by Hayes Street, 51<sup>st</sup> Street, and Nannie Helen Burroughs Avenue, in Northeast Washington, D.C. in Ward 7. The alley portion is situated between two lots owned by the Deanwood Rehabilitation and Wellness Center; the Center intends to consolidate its property there for future expansion. The stated purpose of **Bill 21-424** is to order the closing of a portion of a public alley system in Square 2882, bounded by Euclid Street to the north, 9<sup>th</sup> Street to the east, Barry Place to the south, and Sherman Avenue to the west, in Northwest Washington, D.C. in Ward 1. The purpose of this closing is to allow redevelopment of several lots into a six-story, mixed use building that will contain approximately 237,611 square feet of residential units. The stated purpose of **Bill 21-449** is to order the dedication of land in Squares 3185 and 3186 for the pupose of expanding the Metropolitan Branch Trail by widening Spring Place, N.W. The owners agreed to dedicate this land as a condition of a development agreement on the property, under which they will construct two apartment buildings: one building with 87 units and one building with 64 units. The buildings will replace existing vehicle repair shops and services and a currently vacant parcel.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at clefevre@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of

business Thursday, Dec. 17, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Dec. 17, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. A copy of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on January 4, 2015.



**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING**

on

**Bill 21-474, the “Walter Reed Development Omnibus Act of 2015”**

on

**Thursday, December 17, 2015  
1:00 p.m., Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole Bill 21-474, the “Walter Reed Development Omnibus Act of 2015.” The hearing will be held at 1:00 p.m. on Thursday, December 17, 2015 in room 120 of the John A. Wilson Building.

The stated purpose of Bill 21-474 is to authorize the Mayor to acquire and dispose of a portion of the former Walter Reed Army Medical Center located at 6900 Georgia Avenue, N.W.; to establish the Walter Reed Reinvestment Fund into which certain funds received in connection with the site shall be deposited; to establish the Walter Reed Redevelopment Fund into which certain possessory interest tax revenues shall be deposited; to authorize the provision of grants by the Deputy Mayor for Planning and Economic Development in connection with the redevelopment and operation of the site; and to exempt the buildings on the site from vacant building registration requirements for a certain period of time.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at [clefevre@dccouncil.us](mailto:clefevre@dccouncil.us), and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, Dec. 15, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Dec. 15, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. A copy of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on December 31, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA  
**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**  
MARY M. CHEH, CHAIR

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**NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON**

**The Energy and Environmental Effects of the Proposed Nonunanimous Settlement Agreement Regarding Exelon's Acquisition of Pepco**

Friday, December 11, 2015  
at 11:30 a.m.  
in Room 500 of the  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

On Friday, December 11, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on the potential energy and environmental effects of the proposed nonunanimous settlement agreement regarding Exelon Corporation's acquisition of Pepco Holdings, Inc. The roundtable will begin at 11:30 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of the roundtable is to explore the potential energy and environmental effects of the nonunanimous settlement agreement filed with the Public Service Commission in Formal Case No. 1119, Exelon Corporation's proposed acquisition of Pepco Holdings, Inc.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us).

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on December 28, 2016.

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
1350 Pennsylvania Avenue, NW, Suite 410  
Washington, DC 20004

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ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen days on PR 21-422, the “Compensation Agreement between the District of Columbia Department of Behavioral Health and District of Columbia Nurses Association Approval Resolution of 2015,” to allow for the proposed resolution to be considered at the December 1, 2015 meeting of the Council. The abbreviated notice is necessary to allow the Council to approve the negotiated collective bargaining agreement (CBA) between the District of Columbia Department of Behavioral Health and nurses, represented by the DC Nurses Association. Pursuant to D.C. Official Code § 1-617.17(j), the Council has 30 days after the Mayor transmits a CBA to approve it. If the Council fails to do so within the 30 day period, the CBA is deemed approved. As this CBA was transmitted to the Council on November 13, 2015, the Council has until December 13, 2015 to approve the CBA. Given that the Council will have only one legislative meeting within this 30 day period, it is imperative that the Council act on PR 21-422 at the December 1<sup>st</sup> legislative meeting.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 27, 2015
Petition Date: January 11, 2016
Hearing Date: January 25, 2016

License No.: ABRA-091137
Licensee: We Are 4 Partners, LLC
Trade Name: Arcuri
License Class: Retailer's Class "C" Restaurant
Address: 2400 Wisconsin Ave, N.W.
Contact: Adam Hildebeitel: (202) 827-8745

WARD 3 ANC 3B SMD 3B02

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests an Entertainment Endorsement. Entertainment to include live music, DJ, poetry readings, karaoke and comedy shows.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE

Sunday 11 am - 2 am, Monday through Thursday 11:30 am - 2 am, Friday 11:30 am - 3am, Saturday 11 am - 3 am

PROPOSED HOURS FOR LIVE ENTERTAINMENT

Sunday through Thursday 6 pm - 2 am, Friday and Saturday 6 pm - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 27, 2015
Petition Date: January 11, 2016
Hearing Date: January 25, 2016

License No.: ABRA-090805
Licensee: CS Bond ST. AB-C Holdings., LLC
Trade Name: Carlyle Hotel
License Class: Retailer's Class "C" Hotel
Address: 1731 New Hampshire Avenue, N.W.
Contact: Sheila Linn: 202-955-3000

WARD 2

ANC 2B

SMD 2B03

Notice is hereby given that this applicant has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Change of Hours of alcohol beverage sales, service, and consumption and entertainment.

CURRENT HOURS OF OPERATION

Sunday through Saturday- 24 Hours

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday 11:00am to 12:00am, Monday through Saturday 12:00pm to 12:00am

CURRENT HOURS OF LIVE ENTERTAINMENT

Sunday through Saturday 6:00pm to 12:00am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday through Thursday 8:00am to 2:00am, Friday and Saturday 8:00am to 3:00am

PROPOSED HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday 6:00pm to 2:00am, Friday and Saturday 6:00pm to 3:00am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: November 27, 2015  
 Petition Date: January 11, 2016  
 Hearing Date: January 25, 2016

License No.: ABRA-095700  
 Licensee: Chaplin Restaurant DC, LLC  
 Trade Name: Chaplin  
 License Class: Retailer’s Class “C” Restaurant  
 Address: 1501 9<sup>th</sup> Street, N.W.  
 Contact: Adrian Williams: 202-644-8806

WARD 6                      ANC 6E                      SMD 6E01

Notice is hereby given that this applicant has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Hearing Date at 10:00 am, 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests a Change of Hours of operation and alcoholic beverage sales, service and consumption.

**CURRENT HOURS OF OPERATION**

Sunday through Thursday 11:00am to 2:00am, Friday and Saturday 11:00am to 3:00am

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

Sunday through Thursday 11:00am to 1:30am, Friday and Saturday 11:00am to 2:30am

**PROPOSED HOURS OF OPERATION**

Sunday through Thursday 10:00am to 2:00am, Friday and Saturday 10:00am to 3:00am

**PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

Sunday through Thursday 10:00am to 2:00am, Friday and Saturday 10:00am to 3:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 27, 2015
Petition Date: January 11, 2016
Roll Call Hearing Date: January 25, 2016

License No.: ABRA-100542
Licensee: Eritrean Cultural & Civic Center
Trade Name: Eritrean Cultural Center
License Class: Retailer's Class "CX" Multi-Purpose Facility
Address: 2154-2166 24th Place, N.E.
Contact: J. Jackson: 202-251-1566

WARD 5 ANC 5C SMD 5C02

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Requests a Change of Location. Total Occupancy Load of 1000. Live Entertainment Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 9am-2am, Friday & Saturday 9am-3am

HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday 6pm-2am, Friday & Saturday 6pm-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 27, 2015
Petition Date: January 11, 2016
Roll Call Hearing Date: January 25, 2016
Protest Hearing Date: March 23, 2016

License No.: ABRA-100675
Licensee: Florida Avenue Grill, LLC
Trade Name: Florida Avenue Grill
License Class: Retailer's Class "C" Restaurant
Address: 1100 Florida Avenue, N.W.
Contact: Imar Hutchins: 646-220-6062

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for March 23, 2016 at 1:30pm.

NATURE OF OPERATION

Soul food restaurant. Total Occupancy Load of 50. Sidewalk Café with seating for 36. Entertainment Endorsement & Cover Charge. No dancing.

HOURS OF OPERATION

Friday through Sunday 12am-12am (24 hour operations), Monday through Thursday 8am-12am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES

Sunday through Thursday 10am-12am, Friday and Saturday 10am-2am

HOUR OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Thursday 10am-12am, Friday and Saturday 10am to 2am

HOURS OF OPERATION FOR SIDEWALK CAFÉ

Sunday through Saturday 8am-9pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ

Sunday through Saturday 10am-9pm



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 27, 2015
Petition Date: January 11, 2016
Hearing Date: January 25, 2016

License No.: ABRA-090239
Licensee: Chevy Chase Management, LLC.
Trade Name: Range/Aggio
License Class: Retailer's Class "C" Restaurant
Address: 5335 Wisconsin Ave, N.W.
Contact: Hilda Karamouz Staples: (240) 315-6177

WARD 3 ANC 3E SMD 3E04

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant is seeking a Brew Pub Endorsement permit to add to their current "C" restaurant license.

CURRENT HOURS OF OPERATION

Sunday through Saturday 7 am - 2 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE

Sunday through Saturday 8 am - 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 27, 2015
Petition Date: January 11, 2016
Hearing Date: January 25, 2016

License No.: ABRA-097355
Licensee: Steak Ice 1310 H, LLC
Trade Name: Sally's Middle Name
License Class: Retailer's Class "D" Restaurant
Address: 1320 H Street, N.E.
Contact: Andrew Kline: (202) 686-7600

WARD 6

ANC 6A

SMD 6A06

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 1:30pm, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant has requested an expansion of the existing premises, to include an additional 60 seats on the 2nd floor.

CURRENT HOURS OF OPERATION

Sunday through Thursday 7 am - 2 am, Friday & Saturday 7 am - 3 am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE

Sunday through Thursday 8 am - 2 am, Friday & Saturday 8 am - 3 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: November 27, 2015  
Petition Date: January 11, 2016  
Hearing Date: January 25, 2016  
Protest Hearing Date: March 23, 2016

License No.: ABRA-100805  
Licensee: Cinema Beverages Holding Company, LLC  
Trade Name: West End Cinema Beverage Service  
License Class: Retailer’s Class “D” Multipurpose  
Address: 2301 M Street N.W., Ste 100  
Contact: Annette Johnson (612) 220-8235

WARD 2                      ANC 2A                      SMD 2A02

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14<sup>th</sup> Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for March 23, 2016 at 4:30 pm.

**NATURE OF OPERATION**

A high end movie theatre with a cafe serving patrons a variety of food offerings including local beer and wine specialties. Total Load 252.Total Seats 252. Summer Garden with 22 seats.

**HOURS OF OPERATION/ ALCOHOLIC BEVERAGE**

**SALES/SERVICE/CONSUMPTION**

Sunday through Thursday 10 am – 12:30 am Friday & Saturday 10 am- 2 am

**HOURS OF OPERATION/ ALCOHOLIC BEVERAGE**

**SALES/SERVICE/CONSUMPTION/SUMMER GARDEN**

Sunday through Saturday 10 am- 11 pm

**MAYOR'S AGENT  
FOR THE HISTORIC LANDMARK AND HISTORIC DISTRICT PROTECTION ACT**

**NOTICE OF PUBLIC HEARING**

Public notice is hereby given that the Mayor's Agent will hold a public hearing on an application affecting property subject to the Historic Landmark and Historic District Protection Act of 1978. Interested parties may appear and testify on behalf of, or in opposition to, the application. The hearing will be held at the Office of Planning, 1100 4th Street SW, Suite E650.

Hearing Date: **Tuesday, January 5, 2016 at 9:30 a.m.**  
Case Number: H.P.A. 15-529  
Square/Lot: Square 1230, A&T Lots 804, 814, 818, 820 and 822  
Applicant: Kebreab Zere  
Type of Work: Subdivision – Combination of five assessment and taxation lots into a single lot of record

Affected Historic Property: Georgetown Historic District  
Affected ANC: 2E

The Applicant's claim is that the failure to approve the requested subdivision would result in unreasonable economic hardship to the owner.

The hearing will be conducted in accordance with the Rules of Procedure pursuant to the Historic Landmark and Historic District Protection Act (Title 10C DCMR Chapters 4 and 30), which are on file with the D.C. Historic Preservation Office and posted on the Office website under "Regulations."

Interested persons or parties are invited to participate in and offer testimony at this hearing. Any person wishing to testify in support of or opposition to the application may appear at the hearing and give evidence without filing in advance. However, any affected person who wishes to be recognized as a party to the case is required to file a request with the Mayor's Agent at least fifteen days prior to the hearing. This request shall include the following information: 1) his or her name and address; 2) whether he or she will appear as a proponent or opponent of the application; 3) if he or she will appear through legal counsel, and if so, the name and address of legal counsel; and 4) a written statement setting forth the manner in which he or she may be affected or aggrieved by action upon the application and the grounds upon which he or she supports or opposes the application. Any requests for party status should be sent to the Mayor's Agent at 1100 4th Street SW, Suite E650, Washington, D.C. 20024. For further information, contact the Historic Preservation Office, at (202) 442-8800.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
TUESDAY, FEBRUARY 23, 2016  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

**TO CONSIDER THE FOLLOWING:** The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

**TIME: 9:30 A.M.**

**WARD ONE**

19178  
ANC-1B      **Application of Doug Church**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and the non-conforming structure requirements under § 2001.3, to construct a two-story rear addition to an existing one-family dwelling in the R-5-B District at premises 1436 Florida Avenue N.W. (Square 202, Lot 804).

**WARD SIX**

19180  
ANC-6E      **Application of 1525 Ninth Street LLC**, pursuant to 11 DCMR § 3104.1, for a special exception from the nonconforming use requirements pursuant to § 2003, to permit a change in use in the R-4 District at premises 1525 9th Street N.W. (Square 397, Lot 811).

**WARD FOUR**

17600B  
ANC-4B      **Application of Fort Totten North, L.L.C.**, pursuant to 11 DCMR § 3104.1, for a special exception from the fast food establishment requirements pursuant to § 733, to permit three fast food establishments in the C-2-A District at premises 300-320 Riggs Road N.E. (Square 3748, Lot 52).

**WARD SIX**

19187  
ANC-6E      **Application of 1212-1216 4th Street, LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot area requirements under § 401.11, the lot occupancy requirements under § 403.2, and a special exception from the nonconforming use requirements under § 2003, to allow the expansion of existing residential buildings and conversion of an office use to a neighborhood retail or service establishment in the R-4 District at premises 1212-1218 4th Street N.W. (Square 513, Lots 155 and 156).

## BZA PUBLIC HEARING NOTICE

FEBRUARY 23, 2016

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WARD TWO

19188            **Application of Reneau Real Estate, LLC**, pursuant to 11 DCMR §§ 3103.2  
ANC-2B           and 3104.1, for variances from the FAR requirements under § 402.4, the lot  
occupancy requirements under § 403.2, and the closed court requirements under  
§ 406.1, and a special exception from the green area ratio requirements under §  
3401.2, to construct a three-story, four-unit apartment house in the R-5-B District  
at premises 1719 T Street N.W. (Square 151, Lot 10).

WARD FOUR

19189            **Application of Christopher R. Leary**, pursuant to 11 DCMR § 3103.2, for a  
ANC-4C           variance from the use requirements under § 320.3, to convert a one-family  
dwelling into a flat in the R-3 District at premises 5523 13th Street N.W. (Square  
2933, Lot 24).

WARD SEVEN

19195            **Application of Nash Street Investors, LLC**, pursuant to 11 DCMR §§  
ANC-7C           3103.2 and 3104.1, for a variance from the off-street parking requirements under  
§ 2101, and a special exception from the rooftop structure requirements under §§  
411.11 and 400.7, to expand an existing apartment house in the R-5-A District at  
premises 4924 Nash Street N.E. (Square 5172, Lot 59).

WARD SIX

19196            **Application of 1247 ESE, LLC**, pursuant to 11 DCMR § 3103.2, for a  
ANC-6B           variance from the minimum lot dimension requirements under § 401.11, to  
convert lower-level storage space into a residential unit in the R-4 District at  
premises 1247 E Street S.E. (Square 1019, Lot 43).

**PLEASE NOTE:**

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

## BZA PUBLIC HEARING NOTICE

FEBRUARY 23, 2016

PAGE NO. 3

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: [www.dcoz.dc.gov](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**MARNIQUE Y. HEATH, CHAIRMAN, FREDERICK L. HILL, VICE CHAIRPERSON, JEFFREY L. HINKLE, AND A MEMBER OF THE ZONING COMMISSION, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.**





Z.C. PUBLIC HEARING NOTICE  
Z.C. CASE NO. 11-03C  
PAGE 2

The Market Square and Market Shed portion of the Subject Property will be improved as an open-air plaza located to the northwest of Parcel 1, and include Market Shed, a one-story building containing retail uses.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations 11 DCMR, § 3022.

**How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

**How to participate as a party.**

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

**If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.**

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail ([donna.hanousek@dc.gov](mailto:donna.hanousek@dc.gov)), or by calling (202) 727-0789.

Z.C. PUBLIC HEARING NOTICE  
Z.C. CASE NO. 11-03C  
PAGE 3

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- 1. Applicant and parties in support 60 minutes collectively
- 2. Parties in opposition 60 minutes collectively
- 3. Organizations 5 minutes each
- 4. Individuals 3 minutes each

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov); or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744 ; D.C. Official Code § 1-307.02 (2014 Repl.)) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)) hereby gives notice of the adoption of a new Section 991 (Other Laboratory and X-Ray Services) to Chapter 9 (Medicaid Program), Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

District of Columbia Medicaid beneficiaries are entitled to a set of mandatory benefits under federal law. One of these benefits is Laboratory and X-Ray Services. Federal law requires that all Medicaid programs provide services that are sufficient in amount, duration and scope to reasonably achieve their purpose. These proposed rules will clarify coverage limitations for other laboratory and x-ray services.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 3, 2015 at 62 DCR 003965. No comments were received and no substantive changes were made. A correction was made to Subsection 991.1 governing the licensure of an advanced practice nurse and Subsection 991.6 was amended to clarify that the reimbursement rate is eighty percent (80%) of the Medicare reimbursement rate.

This rulemaking correlates to an amendment to the District of Columbia State Plan for Medical Assistance which was approved on September 30, 2015 and became effective on October 1, 2015. The Director adopted these rules as final on November 16, 2015. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**A new Section 991, OTHER LABORATORY AND X-RAY SERVICES, is added to read as follows:**

**991 OTHER LABORATORY AND X-RAY SERVICES**

991.1 Medicaid reimbursable other laboratory and x-ray services shall be professional and technical laboratory and radiological services that are:

- (a) Medically necessary;

- (b) Ordered, in writing, by a physician or advanced practice registered nurse (APRN) who is screened and enrolled as a District Medicaid program provider pursuant to 29 DCMR §§ 9400 *et seq.*; and
  - (c) Provided in an office or similar facility other than a hospital outpatient department or clinic.
- 991.2 All ordering clinicians shall be licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 *et seq.*)
- 991.3 Coverage of and Medicaid reimbursement for other laboratory and x-ray services shall be limited as follows:
  - (a) Other laboratory and x-ray services performed in connection with a routine physical examination shall not be billed separately;
  - (b) Services primarily for, or in connection with, cosmetic purposes shall require prior approval by the Department of Health Care Finance or its designee;
  - (c) Services primarily for, or in connection with, dental or oral surgery services, shall be limited to those required as a result of the emergency repair or accidental injury to the jaw or related structure; and
  - (d) Other laboratory and x-ray services provided to an individual who is in an outpatient setting, including services referred to an outside office or facility shall be included in a hospital outpatient claim.
- 991.4 To receive Medicaid reimbursement, a provider of other laboratory services shall meet the following requirements:
  - (a) Be certified under Title XVIII of the Social Security Act and the Clinical Laboratories Improvement Amendments of 1988;
  - (b) Be licensed or registered in accordance with D.C. Official Code § 44-202;
  - (c) Hold an approved District Medicaid program Provider Agreement as an independent laboratory provider; and
  - (d) Be screened and enrolled as a District Medicaid provider pursuant to 29 DCMR § 9400.
- 991.5 To receive Medicaid reimbursement, a provider of x-ray services shall be:

- (a) Licensed or registered in accordance with D.C. Official Code § 44-202 and other applicable District of Columbia laws;
- (b) In compliance with manufacturer's guidelines for use and routine inspection of equipment; and
- (c) Screened and enrolled as a District Medicaid provider pursuant to 29 DCMR § 9400.

991.6 Medicaid reimbursement rates for other laboratory or x-ray services shall be eighty percent (80%) of the rates established by Medicare, and will not exceed Medicare on a per test basis.

991.7 The Department of Health Care Finance shall publish Medicaid reimbursement rates for other laboratory or x-ray services on the District Medicaid fee schedule, available online at [www.dc-medicaid.com](http://www.dc-medicaid.com).

## 991.99 DEFINITIONS

For purposes of this section, the following terms shall have the meanings ascribed.

**Outpatient** - A patient of an organized medical facility, or distinct part of that facility who is expected by the facility to receive and who does receive professional services for less than a twenty-four (24) hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight in accordance with the requirements set forth in 42 C.F.R. § 440.2.

**Professional service** - A service that may only be provided by a physician or Advanced Practice Registered Nurse who is qualified to analyze a procedure or service and providing a written report of findings.

**Technical services** - Services necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation, *e.g.*, machines test, laboratory, and radiology procedures.

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl. )), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Section 1913, entitled “One-Time Transitional Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement for one-time transitional services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

One-time transitional services are one-time, non-recurring start-up expenses for persons in the ID/DD Waiver who are transitioning from an institution or provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for their own living expenses. The most recent Notice of Final Rulemaking for 29 DCMR § 1913 (One-Time Transitional Services) was published in the *D.C. Register* on February 28, 2014, at 61 DCR 001647. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 28, 2015, at 62 DCR 011947. The emergency and proposed rulemaking was adopted on August 6, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 4, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking. These rules amend the previously published final rules by: (1) specifying requirements for lease agreements; (2) clarifying that furniture purchases must match the person’s preference; (3) eliminating the requirement that providers comply with Section 1909 of Chapter 19 of Title 29 DCMR; (4) eliminating the requirement that providers comply with Section 1908 of Chapter 19 or Title 29 DCMR; and (5) adding a requirement for reporting to the Department on Disability Services.

The Director of DHCf adopted these rules as final on November 13, 2015, and they shall become final on the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 1913, ONE-TIME TRANSITIONAL SERVICES, is deleted in its entirety and amended to read as follows:**

**1913 ONE-TIME TRANSITIONAL SERVICES**

- 1913.1 This section establishes the conditions of participation for Medicaid providers enumerated in § 1913.6 (Medicaid Providers) to provide one-time transitional (OTT) services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1913.2 OTT services are one-time, non-recurring start-up expenses for persons enrolled in the ID/DD Waiver who are transitioning from an institution or provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses.
- 1913.3 In order to be eligible for reimbursement, each Medicaid provider shall obtain prior authorization from the Department on Disability Services (DDS) before providing OTT services. The request for prior authorization shall include a written justification that demonstrates how the services will aid the person in transitioning to their own living arrangements; their ability to pay for the expenses; or their inability to obtain the services from other sources.
- 1913.4 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's Individual Support Plan (ISP) and Plan of Care:
- (a) The date when OTT funds were provided; and
  - (b) A description and amount of each expense as described in § 1913.5.
- 1913.5 Medicaid reimbursable OTT services may include the following:
- (a) Security deposits that are required to obtain a lease for an apartment or home. In order to qualify for OTT services, the lease or other written residency agreement shall include all of the responsibilities and protections from eviction that apply under the jurisdiction's landlord-tenant laws.

- (b) Essential household furnishings, which reflect the person's preferences, and other expenses required to occupy or maintain an apartment or home;
- (c) Start-up fees or deposits for utility or service access, including telephone, gas, electricity, and water;
- (d) Services necessary for the person's health, safety and wellbeing, such as pest eradication and one-time cleaning prior to occupancy;
- (e) Home accessibility adaptations including carpeting, one-time general home repair, including roof repair, painting and fence repair; and
- (f) Moving expenses related to transporting personal belongings.

1913.6 Medicaid reimbursable OTT services shall be provided by the following types of providers who possess a human care agreement with DDS:

- (a) A provider of supported living services as described under Section 1934 of Chapter 19 of Title 29 DCMR; and
- (b) A provider of residential habilitation services as described under Section 1929 of Chapter 19 of Title 29 DMCR.

1913.7 Each provider of Medicaid reimbursable OTT services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1913.8 Each provider of Medicaid reimbursable OTT services shall maintain the following documents for monitoring and audit reviews: copy of receipts documenting the date, item, amount expended, and any related warranty.

1913.9 Each provider of Medicaid reimbursable OTT services shall submit a written report, thirty (30) days after the service has been completed, that includes an itemized list of all expenses tied to the person's ISP goal, referencing the receipts provided, and indicating the process used to support the person to select items and set up their new home.

1913.10 Each provider of Medicaid reimbursable OTT services shall comply with the requirements described under Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR, as applicable.

1913.11 Medicaid reimbursement for OTT services shall not be available for:

- (a) Monthly rental or mortgage expenses;
- (b) Food;



- (c) Regular utility charges;
- (d) Household appliances or items that are intended for purely recreational purposes (*e.g.*, television, cable or satellite installation for television programming, stereo or other audio equipment, or computerized gaming equipment);
- (e) Environmental accessibility adaptation services that are of direct medical or remedial benefit to the person including specialized electric and plumbing systems necessary to accommodate medical equipment and supplies; and
- (f) Any durable medical equipment.

1913.12 Medicaid reimbursement for OTT services shall be limited to a maximum of five thousand dollars (\$5,000) per person for the duration of the ID/DD Waiver period as a one-time, non-recurring expense.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1914, entitled “Vehicle Modification Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement for vehicle modification services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Vehicle modifications are designed to help the person live his/her life with greater independence and to increase access to the community. The adaptations or modifications to a vehicle may include the installation of a lift or other adaptations to make the vehicle accessible to the person, or to enable the person to drive the vehicle.

The most recent Notice of Final Rulemaking for 29 DCMR § 1914 (Vehicle Modification Services) was published in the *D.C. Register* on March 14, 2014, at 61 DCR 002108. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 22, 2015, at 62 DCR 006695. That emergency and proposed rulemaking, which was adopted on May 8, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by: (1) clarifying service definition exclusions; (2) clarifying service authorization requirements for vehicle modification services; (3) clarifying requirements to request additional services beyond the limitations or caps on a service; (4) removing the exclusion under the previous rule that prohibited caregivers who provide Host Home services from utilizing Vehicle Modifications; and (5) clarifying that the service may not be used with Supported Living with Transportation. DHCF did not receive any comments in response to the first emergency and proposed rulemaking, but promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on August 21, 2015, at 62 DCR

011650, to continue the changes reflected in the first notice of emergency and proposed rulemaking described above. The second emergency and proposed rulemaking was adopted on August 13, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 11, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made from the second emergency and proposed rulemaking.

The DHCF Director adopted these rules as final on November 16, 2015, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsections 1914.3, 1914.9, 1914.12, 1914.13, and 1914.17 of Section 1914, VEHICLE MODIFICATION SERVICES, are amended to read as follows:**

1914.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing VM services. The request for prior authorization shall include a written justification demonstrating how the services will help the person to function with greater independence and increase his/her access to the community. The vehicle being serviced shall be owned by the person or the person’s family, guardian, or other primary caretaker who is not providing Residential Habilitation Services, Supported Living Services or Supported Living Services with Transportation.

...

1914.9 Before pre-authorization of any VM services, the vehicle owner shall submit at least two (2) written bids from providers for the service to the DDS service coordinator for comparison, in order to determine the most cost efficient use of Medicaid waiver funding for the service.

...

1914.12 Medicaid reimbursable VM services shall be available for modification of no more than two (2) vehicles over the course of five (5) years and shall not exceed a total of ten thousand dollars (\$10,000), unless the person receives service authorization from DDS through the exception process in § 1914.13.

1914.13 Exceptions to the ten thousand dollars (\$10,000) limit and/or the two (2) vehicle limit over the course of five (5) years may be approved by DDS on a case-by-case basis by the DDS Medicaid Waiver Supervisor or a designated Developmental Disabilities Administration (DDA) staff member for persons who demonstrate need. The request for exception must be in writing and must specify the amount

requested above the \$10,000 limit; describe the demonstrated need for the exception; and include supporting documentation.

...

1914.17 Medicaid reimbursable VM services shall not be provided to those persons receiving residential supports through Residential Habilitation, Supported Living, or Supported Living with Transportation.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to repeal Section 1917, entitled “Shared Living Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

The repealed section established standards governing reimbursement of shared living services (formerly known as live-in caregiver services) provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers. The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver, which was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)), no longer includes shared living services because these services were not utilized by participants in the ID/DD Waiver. CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 28, 2015, at 62 DCR 011951, repealing the provisions discussed above. The emergency and proposed rulemaking was adopted on August 6, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 4, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no changes were made to the emergency and proposed rulemaking.

The Director of DHCF adopted these rules as final on November 13, 2015, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 1917, SHARED LIVING SERVICES, is deleted in its entirety and amended to read as follows:**

**1917 [REPEALED]**

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Section 1921, entitled “Dental Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of dental services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services’, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 29, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The most recent Notice of Final Rulemaking for 29 DCMR § 1921 (Dental Services) was published in the *D.C. Register* on March 28, 2014 – Part 1, at 61 DCR 002602. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 28, 2015, at 62 DCR 011953. The emergency and proposed rulemaking was adopted on August 6, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 4, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking. These rules amend the previously published final rules by changing the requirements for maintaining records.

The Director of DHCF adopted these rules as final on November 16, 2015, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsection 1921.7 of Section 1921, DENTAL SERVICES, is amended to read as follows:**

1921.7 Each provider of Medicaid reimbursable dental services shall maintain records in accordance with professional standards, in a manner that protects a person's confidentiality and meets the confidentiality requirements for Protected Health Information under the Health Insurance Portability and Accountability (HIPAA) Act and implementing regulations.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1926, entitled “Occupational Therapy Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement for occupational therapy services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Occupational therapy services are designed to maximize independence, assist in gaining skills, prevent further disability, and maintain health. The most recent Notice of Final Rulemaking for 29 DCMR § 1926 (Occupational Therapy Services) was published in the *D.C. Register* on February 14, 2014, at 61 DCR 001284. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 14, 2015, at 62 DCR 011303. The emergency and proposed rulemaking was adopted on August 4, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 2, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking. These rules amend the previously published final rules by (1) clarifying that recordkeeping as required by § 1909 is limited to what is applicable for this service; (2) describing the requirements for measureable and functional outcomes; (3) requiring and describing the role of the provider at the person’s ISP and other support team meetings; (4) clarifying that documentation for adaptive equipment must be completed within the timeframes required by the person’s insurance for this to be a reimbursable activity; (5) describing requirements for progress notes; (6) clarifying requirements for routine assessment of adaptive equipment; (7) requiring that the provider must be selected by the person, and/or his or substitute



decision maker; (8) clarifying that the required assessment must be comprehensive; and (9) modifying rates to reflect increased costs to provide services.

The Director of DHCF adopted these rules as final on November 13, 2015, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Section 1926, OCCUPATIONAL THERAPY SERVICES, of Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and amended to read as follows:**

**1926 OCCUPATIONAL THERAPY SERVICES**

- 1926.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 1926.9 (Medicaid Providers) and occupational therapy professionals enumerated in § 1926.8 (professionals) to provide occupational therapy services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1926.2 Occupational therapy services are services that are designed to maximize independence, prevent further disability, and maintain health.
- 1926.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing, or allowing any professional to provide, occupational therapy services. In its request for prior authorization, the Medicaid provider shall document the following:
- (a) The person's need for occupational therapy services as demonstrated by a physician's order; and
  - (b) The name of the professional who will provide the occupational therapy services.
- 1926.4 In order to be eligible for Medicaid reimbursement, each occupational therapy professional shall conduct a comprehensive assessment of occupational therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.
- 1926.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person's caregiver, and a schedule for ongoing services. The therapy plan shall include:

- (a) The anticipated and measurable functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP;
- (b) A schedule of approved occupational therapy services to be provided; and
- (c) Shall be submitted by the Medicaid provider to DDS before services are delivered.

1926.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person’s Individual Support Plan (ISP) and Plan of Care:

- (a) The date, amount, and duration of occupational therapy services provided;
- (b) The scope of the occupational therapy services provided; and
- (c) The name of the professional who provided the occupational therapy services.

1926.7 Medicaid reimbursable occupational therapy services shall consist of the following activities:

- (a) Consulting with the person, their family, caregivers and support team to develop the therapy plan;
- (b) Implementing therapies described under the therapy plan;
- (c) Recording progress notes and quarterly reports during each visit. Progress notes shall contain the following:
  - (1) Progress in meeting each goal in the ISP;
  - (2) Any unusual health or behavioral events or changes in status;
  - (3) The start and end time of any services received by the person; and
  - (4) Any matter requiring follow-up on the part of the service provider or DDS;
- (d) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality and functioning of adaptive equipment to ensure it addresses the person’s needs;

- (e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission;
- (f) Participating in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her; and
- (g) Conducting periodic examinations and modified treatments for the person, as needed.

1926.8 Medicaid reimbursable occupational therapy services shall be provided by a licensed occupational therapist.

1926.9 Occupational therapy service providers, without regard to their employer of record, shall be selected by and be acceptable to the person receiving services, their guardian, or legal representative.

1926.10 In order to be eligible for Medicaid reimbursement, an occupational therapist shall be employed by the following providers:

- (a) An ID/DD Waiver provider enrolled by DDS; and
- (b) A Home Health Agency as defined in Section 1999 of Title 29 DCMR.

1926.11 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1926.12 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) The physician’s order;
- (b) A copy of the occupational therapy assessment and therapy plan in accordance with the requirements of Subsections 1926.4 and 1926.5; and
- (c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 or Title 29 DCMR, that are applicable to this service.

1926.13 If the person enrolled in the ID/DD Waiver is between the ages of eighteen (18) and twenty-one (21) years, the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the ID/DD Waiver service is neither replacing nor duplicating EPSDT services.

- 1926.14 Medicaid reimbursable occupational therapy services shall be limited to four (4) hours per day and one-hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional occupational therapy services and approved by a DDS staff member designated to provide clinical oversight.
- 1926.15 The Medicaid reimbursement rate for occupational therapy services shall be one hundred dollars (\$100.00) per hour. The billable unit of service shall be fifteen (15) minutes.

**DEPARTMENT OF HEALTH CARE FINANCE**  
**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1927, entitled “Personal Emergency Response System Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of personal emergency response system services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Personal Emergency Response System (PERS) is an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency. The person may also wear a portable “help” button to allow for mobility. The system is connected to the person’s phone and programmed to signal a response center once the “help” button is activated. Trained professionals staff the response center. PERS services are available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision.

The most recent Notice of Final Rulemaking for 29 DCMR § 1927 (Personal Emergency Response System Services) was published in the *D.C. Register* on March 21, 2014, at 61 DCR 002470. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 8, 2015, at 62 DCR 005775. That emergency and proposed rulemaking, which was adopted on April 24, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by (1) clarifying the requirements that the criteria set forth in Section 1906 of Title 29 DCMR, Chapter 19, only apply to responders who are employed by a provider agency; (2) correcting the identification of the agency for incident reporting; (3) allowing PERS to be delivered concurrently with Supported Living Periodic services and Supported Living with Transportation Periodic services; (4) eliminating the

prohibition from PERS being provided for a person receiving Host Home services; and (5) changing the rate for monthly rental, maintenance, and service fee. DHCF did not receive any comments in response to the first emergency and proposed rulemaking, but promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on August 21, 2015, at 62 DCR 011653, to continue the changes reflected in the first notice of emergency and proposed rulemaking described above. The second emergency and proposed rulemaking was adopted on August 12, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 10, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no changes were made from the second emergency and proposed rulemaking.

The Director of DHCF adopted these rules as final on November 16, 2015, and they shall become effective on the date of publication on this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsections 1927.11, 1927.14, 1927.18 and 1927.20 of Section 1927, PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES, are amended to read as follows:**

**1927 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS) SERVICES**

- 1927.11 If the responder who will be in direct contact with the person is an employee of a Medicaid Waiver provider agency, he or she shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1927.14 Each provider of Medicaid reimbursable PERS services shall follow the DDS Developmental Disabilities Administration (DDA) incident reporting process within twenty four (24) hours of an emergency response. Emergency responses shall not include test signals or activations made by a person.
- 1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence. PERS shall not be provided to persons receiving Residential Habilitation services, Supported Living or Supported Living with Transportation services, with the exception of Supported Living Periodic and Supported Living with Transportation Periodic services.
- 1927.20 Medicaid reimbursement for PERS services shall be as follows:
- (a) Fifty dollars (\$50.00) for the initial installation, training, and testing; and
  - (b) Thirty dollars and thirty-nine cents (\$30.39) for the monthly rental, maintenance, and service fee.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1930, entitled “Respite Services”, of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of respite services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Respite care provides relief to the family or primary caregiver to meet planned or emergency situations. Respite care gives the caregiver a period of relief for scheduled time away from the individual, including vacations. It may also be used in case of emergencies. Respite is only provided to those individuals who live in their own home, or their family home. Respite care will ensure that individuals have access to community activities as delineated in the individual’s ISP/Plan of Care.

The most recent Notice of Final Rulemaking for 29 DCMR § 1930 (Respite Services) was published in the *D.C. Register* on February 7, 2014, at 61 DCR 000993. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 24, 2015, at 62 DCR 005209. That emergency and proposed rulemaking, which was adopted on April 10, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by (1) clarifying that quarterly reports are not required for respite daily services; (2) requiring that respite daily providers comply with Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; (3) removing the exception that a provider already receiving reimbursement for the general care of the person may not receive Medicaid reimbursement for providing respite services; and (4) modifying the hourly and daily rates to reflect the approved methodology in accordance with the ID/DD Waiver. DHCF did not receive any comments in response to the first emergency and proposed rulemaking, but promulgated a Notice of Second Emergency and Proposed Rulemaking, which

was published in the *D.C. Register* on August 21, 2015, at 62 DCR 011656, to continue the changes reflected in the first notice of emergency and proposed rulemaking described above, and to change the hourly rate in § 1930.14 to twenty dollars and fifty-two cents (\$20.52). The second emergency and proposed rulemaking was adopted on August 12, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 10, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no changes were made to the second emergency and proposed rulemaking.

The Director of DHCF adopted these rules as final on November 13, 2015, and they shall become effective on the date of publication on this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsections 1930.8, 1930.9, 1930.11, 1930.14, and 1930.18, of Section 1930, RESPITE SERVICES, are amended, and a new Subsection 1930.21 is added, to read as follows:**

- 1930.8 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.
- 1930.9 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.
- 1930.11 Medicaid reimbursement shall not be available if respite services are provided by the following individuals or provider:
- (a) The person's primary caregiver; or
  - (b) A spouse, parent of a minor child, or legal guardian of the person receiving respite services.
- 1930.14 Medicaid reimbursement for hourly respite services shall be twenty dollars and fifty-two cents (\$20.52) per hour and shall be limited to seven hundred twenty (720) hours per calendar year.
- 1930.18 Medicaid reimbursement for daily respite services shall be four hundred dollars (\$400.00) per day and shall be limited to thirty (30) days per calendar year.
- 1930.21 Each provider of Medicaid reimbursable respite daily services shall comply with the requirements under Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR.



## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Section 1931, entitled “Skilled Nursing Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of skilled nursing services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. The most recent Notice of Final Rulemaking for 29 DCMR § 1929 (Skilled Nursing Services) was published in the *D.C. Register* on March 28, 2014 – Part 1, at 61 DCR 002615. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 21, 2015, at 62 DCR 011659. The emergency and proposed rulemaking was adopted on August 13, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until December 11, 2015, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking. These rules amend the previously published rules by: (1) changing the schedule for required updates from sixty (60) days to quarterly, or as needed; (2) changing the requirements for contents of progress notes; (3) eliminating the responsibility for completing quarterly reports from the licensed practical nurse (LPN); (4) eliminating the requirement that nurses providing this service meet the requirements for Direct Support Professionals; (5) allowing the service to be provided with Supported Living and Supported Living with Transportation, but not Supported Living with Skilled Nursing; and (6) increasing the rate for LPN visits.

The Director of DDCF adopted these rules as final on November 16, 2015, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 1931, SKILLED NURSING SERVICES, is amended in its entirety to read as follows:**

**1931 SKILLED NURSING SERVICES**

- 1931.1 The purpose of this section is to establish standards governing Medicaid eligibility for skilled nursing services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of skilled nursing services.
- 1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers.
- 1931.3 To be eligible for Medicaid reimbursement, the person shall first exhaust all available skilled nursing visits provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving skilled nursing services under the Waiver.
- 1931.4 To be eligible for Medicaid reimbursement, the person shall have a condition of circulatory or respiratory function complications, gastrointestinal complications, neurological function complications, or the existence of another severe medical condition that requires monitoring or care at least every other hour.
- 1931.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:
- (a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person's medical history and the duties that the skilled nurse would perform; and a skilled nurse checklist; and
  - (b) Be authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.

- 1931.6 The physician's order described in Subsection 1931.5 shall include the scope, frequency, and duration of skilled nursing services; shall be updated at least every ninety (90) calendar days; and shall be maintained in the person's records.
- 1931.7 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse (RN) delivering skilled nursing services shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the District of Columbia Municipal Regulations (DCMR). They may include, at a minimum, but are not limited to the following duties:
- (a) Performing a nursing assessment in accordance with the Developmental Disabilities Administration's Health and Wellness Standards;
  - (b) Assisting in the development of the Health Care Management Plan (HCMP);
  - (c) Coordinating the person's care and referrals;
  - (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements in the jurisdiction where services are provided;
  - (e) Administering medication or oversight of licensed medication administration personnel;
  - (f) Providing oversight and supervision to the licensed practical nurse (LPN), when delegating and assigning nursing interventions;
  - (g) Providing updates to Department on Disability Services (DDS) quarterly and more frequently as needed, if there are any changes to the person's needs or physician's order;
  - (h) Training the person, licensed practical nurse (LPN), family, caregivers, and any other individual, as needed; and
  - (i) Recording progress notes during each visit that meet standards of nursing care and include the following:
    - (1) Any unusual health or behavioral events or changes in status;
    - (2) Any matter requiring follow-up on the part of the service provider or DDS; and
    - (3) Clearly written records that contain a statement of the person's progress or lack of progress, medical conditions, functional losses,

and treatment goals that demonstrate that the person's services are and continue to be reasonable and necessary.

- (j) Submit summary notes at least quarterly and submit quarterly reports in accordance with the requirements in Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1931.8 In order to be eligible for Medicaid reimbursement, the duties of an LPN delivering skilled nursing services shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 DCMR. They may include, at minimum, but are not limited to the following duties:

- (a) Immediately reporting, any changes in the person's condition, to the supervising registered nurse;
- (b) Providing wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
- (c) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia. If services are provided in another jurisdiction, the services shall be consistent with that jurisdiction's requirements.

1931.9 Medicaid reimbursable skilled nursing services shall be provided by an RN or LPN under the supervision of an RN, in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 DCMR.

1931.10 In order to be eligible for Medicaid reimbursement, each person providing skilled nursing services shall be employed by a home health agency that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services.

1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1931.12 To be eligible for Medicaid reimbursement, skilled nursing services shall have prior authorization from DDS.

1931.13 In order to be eligible for Medicaid reimbursement, the RN shall monitor and supervise the provision of services provided by the licensed practical nurse, including conducting a site visit at least once every thirty (30) days, or more frequently, if specified in the person's ISP.

- 1931.14 In order to be eligible for Medicaid reimbursement, each provider shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) under Chapter 19 of Title 29 DCMR.
- 1931.15 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall ensure that the LPN receives ongoing supervision and that the service provided is consistent with the person's ISP.
- 1931.16 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least quarterly.
- 1931.17 The skilled nursing provider shall maintain a contingency plan that describes how skilled nursing will be provided when the scheduled nurse is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the service will be provided when back-up staff are unavailable.
- 1931.18 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:
- (a) The person has exhausted all nursing visits allowable under the Medicaid State Plan;
  - (b) DDS provides a written service authorization before the commencement of services;
  - (c) The service name and home health agency delivering services must be identified in the ISP and Plan of Care;
  - (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
  - (e) Services shall not conflict with the service limitations described under Subsection 1931.20.
- 1931.19 Medicaid reimbursement for skilled nursing services is only available for individuals who live independently in their natural homes, and people who receive the following residential supports: Host Homes; Supported Living; and Supported Living with Transportation. Skilled nursing services shall not be available when provided with Residential Habilitation or when Supported Living or Supported Living with Transportation is billed using the rate that includes direct skilled nursing services.
- 1931.20 Medicaid reimbursement is not available under the Waiver for skilled nursing visits that exceed fifty-two (52) visits per person annually.
- 1931.21 Upon exhaustion of the hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for one-to-one

extended nursing services for twenty-four (24) hours a day, for up to three hundred and sixty-five (365) days, with prior approval from DDS, for persons on a ventilator or requiring frequent tracheal suctioning.

1931.22 Prior approval for one-to-one extended nursing services shall be obtained from the Medicaid Waiver Supervisor or designated DDS staff person after submission of documentation demonstrating the need for the extended services.

1931.23 Medicaid reimbursement governing the provision of skilled nursing services shall be developed using the following two (2) rate structures:

- (a) Skilled nursing services rate; and
- (b) Extended skilled nursing services rate.

1931.24 The Medicaid reimbursement rate for skilled nursing services shall be sixty-five dollars (\$65.00) per visit for services provided by an RN or LPN for four (4) hours or less in duration. The Medicaid reimbursement rate for extended RN visits shall be thirty-two dollars (\$32.00) per hour or eight dollars (\$8.00) per fifteen minutes for extended RN visits for four (4) hours or less in duration. The Medicaid reimbursement rate for extended LPN visits shall be twenty-two dollars (\$22.00) per hour or five dollars and fifty cents (\$5.50) per fifteen minutes for extended visits for four (4) hours or less in duration.

1931.25 A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (“Department”), pursuant to 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) (2012 Repl.)) and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendments to Chapter 47 (Acupuncture) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The amendments to Chapter 47 will replace paragraphs, subsections, and sections of the chapter, including, *inter alia*, removing physicians who collaborate with acupuncturists from the dominion of the chapter; amending reference, educational, and credential requirements for licensure; citing to an additional section for education requirements; incorporating the existing separate section for applicants educated in foreign countries into the existing educational requirements section; removing the section entitled “Acupuncture Practice” to replace with a section entitled “Scope of Practice;” adding sections for herbology, mandatory use of disposable needles, and disposal of needles; and removing the requirement that the acupuncture advisory committee be the entity responsible for reviewing applications.

**Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended by removing the existing Chapter 47, and adding a new Chapter 47 by the same name, ACUPUNCTURE, to read as follows:**

**CHAPTER 47 ACUPUNCTURE**

|              |   |
|--------------|---|
| <b>Secs.</b> |   |
| 4700         | GENERAL PROVISIONS  |
| 4701         | TERM OF LICENSE   |
| 4702         | EDUCATIONAL REQUIREMENTS  |
| 4703         | CREDENTIALS REQUIRED FOR LICENSE  |
| 4704         | PROHIBITED TITLES   |
| 4705         | INFORMED CONSENT  |
| 4706         | SCOPE OF PRACTICE   |
| 4707         | HERBOLOGY   |
| 4708         | MANDATORY USE OF DISPOSABLE NEEDLES   |
| 4709         | PREPARATION OF PATIENT RECORDS; ELECTRONIC RECORDS;<br>ACCESS TO OR RELEASE OF INFORMATION; CONFIDENTIALITY;<br>TRANSFER OR DISPOSAL OF RECORDS |
| 4710         | CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS  |
| 4711         | REENTRY TO PRACTICE   |
| 4712         | [RESERVED]  |
| 4714         | [RESERVED]  |
| 4715         | [RESERVED]  |
| 4716         | [RESERVED]  |

4717 DUTIES OF ADVISORY COMMITTEE ON ACUPUNCTURE  
4799 DEFINITIONS

**4700 GENERAL PROVISIONS**

4700.1 This chapter shall apply to applicants for and holders of a license to practice acupuncture.

4700.2 Chapters 40 (Health Occupations: General Rules), 41 (Health Occupations: Administrative Procedures), and 46 (Medicine) of this title shall supplement this chapter.

4700.3 An applicant for a license under this chapter shall submit with a completed application one letter of reference from a physician or acupuncturist licensed in the United States, who has personal knowledge of the applicant's abilities and qualifications to practice acupuncture.

4700.4 The Board shall maintain a registry of licensed acupuncturists and shall make the registry available to the public for inspection.

**4701 TERM OF LICENSE**

4701.1 Subject to § 4701.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31<sup>st</sup> of each even-numbered year.

4701.2 If the Director changes the renewal system pursuant to § 4006.3 of Chapter 40 of this title, a license issued pursuant to this chapter shall expire in accordance with the system adopted by the Director.

**4702 EDUCATIONAL REQUIREMENTS**

4702.1 An applicant under this section, shall meet the education and training requirements for licensure by furnishing proof satisfactory to the Board that the applicant has met the requirements of §§ 4702 and 4703 in their entirety.

4702.2 In order to qualify for licensure, an applicant shall meet one of the following education requirements:

- (a) Obtain a baccalaureate degree from a school within the United States and graduate from an acupuncture program, which meets the requirements of § 4702.6; or
- (b) Obtain the equivalent of a baccalaureate degree from a school in another country and complete either:



- (1) An acupuncture program in the United States, which meets the requirements of § 4702.6;
- (2) An acupuncture program that is part of the baccalaureate degree program or its equivalent in another country; or
- (3) An apprenticeship program approved by NCCAOM.

4702.3 An individual who obtains his or her education in the United States shall submit proof that he or she has obtained a baccalaureate degree. An applicant shall arrange for the college or university to submit a certified transcript directly to the Board.

4702.4 An individual who obtains his or her education in another country shall arrange for a transcript evaluating company recognized by NCCAOM to submit a credential evaluation directly to the Board.

4702.5 The credential evaluation required by § 4702.4 shall demonstrate that the applicant obtained a degree:

- (a) That is equivalent to a combined baccalaureate degree and an acupuncture program from a college or university in another country that is accredited in that country;
- (b) That is equivalent to a master's degree or doctoral degree for which a baccalaureate degree or its equivalent was a prerequisite, and an acupuncture program from a college in another country that is accredited in that country;
- (c) From a college or university in another country that is equivalent to a baccalaureate degree. The college or university shall be accredited in the other country. An applicant who qualifies for certification by this method shall submit proof that he or she completed an acupuncture program in the United States that complies with § 4702.6; or
- (d) From a college in another country that is equivalent to a master's degree or doctoral degree for which a baccalaureate degree or its equivalent was a prerequisite. The college or university shall be accredited in the other country. An applicant who qualifies for certification by this method shall submit proof that he or she completed an acupuncture program in the United States that complies with § 4702.6.

4702.6 An acupuncture program that is required for licensure shall be given by a school accredited by the ACAOM, the Commission on Recognition of Post-Secondary Accreditation, or the United States Department of Education. A list of accredited acupuncture schools shall be maintained by the Board and provided to an

applicant upon request. An applicant shall arrange for the school of acupuncture to submit a certified transcript confirming that a diploma was awarded to the applicant directly to the Board.

4702.7 Any credentials required to be submitted pursuant to §§ 4702.2, 4702.3, or 4702.5, which are written in a language other than English shall be accompanied by a certified English translation prepared at the applicant's expense.

### **4703 CREDENTIALS REQUIRED FOR LICENSURE**

4703.1 At the time of application, an applicant shall submit to the Board:

- (a) A complete application form prescribed by the Board; and
- (b) Proof that the applicant has passed the English version of each of the following modules of the NCCAOM examination:
  - (1) Foundations of Oriental Medicine;
  - (2) Acupuncture;
  - (3) Point location; and
  - (4) Biomedicine.
- (c) If an applicant's entire education (high school, college, or university and acupuncture program) was conducted in a language other than in English, proof that the applicant has achieved a passing score on the Test of English as a Foreign Language (TOEFL) examination; and
- (d) Proof that the applicant has completed the educational requirements of § 4702.

4703.2 An applicant who passed the NCCAOM examination prior to June 1, 2004 shall submit proof that the applicant has passed the NCCAOM biomedicine module.

4703.3 Any credentials required to be submitted pursuant to § 4703.1, which are written in a language other than in English shall be accompanied by a certified English translation prepared at the applicant's expense.

### **4704 PROHIBITED TITLES**

4704.1 An acupuncturist shall not represent that he or she has a doctoral degree in the field of acupuncture and/or Oriental medicine, or use the title "doctor" or "Dr.," unless the educational program that awarded the person's degree is:

- (a) Approved by the ACAOM or is a college or university that is accredited by a regional accrediting agency recognized by the Council of Higher Education Accreditation (CHEA) or the United States Department of Education; or
- (b) Approved by the ministry of education of a foreign country to grant doctoral degrees.

4704.2 A person who uses the title “doctor” or “Dr.” pursuant to § 4704.1 shall indicate that the doctoral degree is in acupuncture and/or Oriental medicine.

4704.3 An acupuncturist shall not represent that he or she has a master’s degree in the field of acupuncture and/or Oriental medicine unless the education program that awarded his or her degree:

- (a) Approved by the ACAOM or is a college or university that is accredited by a regional agency recognized by the CHEA or the United States Department of Education; or
- (b) Approved by the ministry of education of a foreign country to grant master’s degrees.

4704.4 An acupuncturist who has a doctoral or master’s degree in a field other than acupuncture and/or oriental medicine may, in advertising or other materials visible to the public pertaining to the acupuncturist's practice, include this degree provided that the field in which the degree was awarded is specified without using an abbreviation and the doctoral or master’s degree was obtained from an educational program, which meets the requirements of §§ 4704.1 or 4704.3.

4704.5 An acupuncturist who has a doctorate in a field other than acupuncture or oriental medicine shall not use the title "doctor" in advertising or other materials visible to the public pertaining to the acupuncturist's acupuncture practice.

#### **4705 INFORMED CONSENT**

4705.1 The acupuncturist shall fully disclose to the patient such information as will enable the patient to make an evaluation of the nature of the treatment and of any attendant risks. The acupuncturist shall obtain, and maintain as part of his or her patient records, informed written consent from the patient before beginning acupuncture treatment.

4705.2 A licensed acupuncturist shall advise every patient that any care, treatment and services provided within the scope of the acupuncturist’s practice is not a substitute for care, treatment and services provided by a licensed physician regarding the patient's condition.

4705.3 A licensed acupuncturist shall maintain as part of his or her patient records a form, with the date and the signatures of the patient and the licensed acupuncturist, indicating that the licensed acupuncturist has advised the patient as required under § 4705.2 and shall provide a copy of this form to the patient.

**4706 SCOPE OF PRACTICE**

4706.1 The use of any of the following to effect therapeutic change is within the scope of practice of licensed acupuncturists and shall be performed only by acupuncturists licensed by the Board, or individuals otherwise permitted to practice acupuncture pursuant to D.C. Official Code §§ 3-1201 *et seq.*:

- (a) Needles;
- (b) Moxibustion;
- (c) Teishin (pressure needles); and
- (d) Electroacupuncture (utilizing electrodes on the surface of the skin or current applied to inserted needles).

4706.2 Licensed acupuncturists may, in addition to the methods listed in § 4706.1, use any of the following as part of his or her professional practice:

- (a) Acupatches;
- (b) Acuform;
- (c) Manual acutotement (stimulation by an instrument that does not pierce the skin);
- (d) Acupressure;
- (e) Cupping;
- (f) Gua sha scraping techniques;
- (g) Cold laser used for needle-less acupuncture;
- (h) Tuina;
- (i) Massage, bodywork and somatic therapy;
- (j) Ultrasonic;
- (k) Thermal methods;

- (l) Magnetic stimulation;
- (m) Breathing techniques;
- (n) Therapeutic exercise and techniques;
- (o) Oriental dietary therapy;
- (p) Lifestyle and behavioral education;
- (q) Percutaneous and transcutaneous electrical nerve stimulation;
- (r) Qigong;
- (s) Biofeedback and other devices that utilize color, light, sound, and electromagnetic energy for therapeutic purposes;
- (t) Diagnostic, assessment and treatment techniques that are taught in ACAOM-approved schools and through NCCAOM-approved continuing education courses and which assist in acupuncture and Oriental medicine diagnosis, corroboration, and monitoring of a treatment plan or in making a determination to refer a patient to another healthcare provider;
- (u) Taiji; and
- (v) Energetic therapy.

4706.3 Licensed acupuncturists may recommend to patients the use of:

- (a) Meditation; and
- (b) Products that facilitate health, such as:
  - (1) Homeopathic medicine that is recognized in the official Homeopathic Pharmacopoeia of the United States;
  - (2) Vitamins;
  - (3) Minerals;
  - (4) Enzymes;
  - (5) Glandulars;
  - (6) Amino acids;

- (7) Nonprescription substances; and
- (8) Nutritional or dietary supplements that meet Food and Drug Administration labeling requirements, 21 C.F.R. part 101.36, unless otherwise prohibited by State or Federal law.

4706.4 Licensed acupuncturists may use the following when providing acupuncture:

- (a) Solid filiform needles;
- (b) Dermal needles;
- (c) Plum blossom needles;
- (d) Intradermal/press needles;
- (e) Prismatic needles;
- (f) Lancets; and
- (g) Non-insertive pressure needles.

4706.5 Licensed acupuncturists shall not use the following when providing acupuncture:

- (a) Staples;
- (b) Hypodermic needles; and
- (c) Subcutaneous permanently implanted needles or sutures.

4706.6 The only licensed acupuncturists who may practice herbology are those qualified to do so under § 4707.

4706.7 Licensed acupuncturists may offer and provide to a patient, at fair market value, goods and devices related to the practice of acupuncture.

**4707 HERBOLOGY**

4707.1 Except as set forth in § 4707.2, a licensed acupuncturist shall practice Chinese Herbology only if he or she submits proof to the Board of current certification in Chinese Herbology or Oriental Medicine from the NCCAOM and is licensed by the Board to practice Chinese Herbology.

4707.2 A licensed acupuncturist who obtained his or her license on or before the effective date of these regulations may obtain a license to practice Chinese Herbology if he or she:

- (a) Has successfully completed an acupuncture program accredited by the ACAOM, and has successfully completed an herbology program accredited by the ACAOM;
- (b) Has passed the NCCAOM Chinese Herbology examination;
- (c) Has passed the NCCAOM Herbology module;
- (d) Was certified in Chinese Herbology or Oriental Medicine by NCCAOM;
- (e) Can provide proof satisfactory to the Board that he or she has completed 450 hours of education and/or training in Herbology, 120 hours of which must have been in supervised clinical practice, and where the clinical practice hours must have been completed within eighteen (18) months following the effective date of these regulations; or
- (f) Was educated outside the United States and can provide transcripts from a foreign institution that documents training in Chinese Herbology.

4707.3 A licensed acupuncturist who is permitted to practice Chinese Herbology pursuant to §§ 4707.1 or 4707.2 shall complete at least ten (10) hours of continuing education related to the practice of Chinese Herbology as part of the thirty (30) hours of continuing education he or she is required to complete pursuant to § 4710.

#### **4708 MANDATORY USE OF DISPOSABLE NEEDLES**

4708.1 A licensed acupuncturist shall use only sterile, disposable needles in performing any care, treatment or service on a patient.

4708.2 Disposable acupuncture needles shall be placed in a rigid, puncture-proof, sealable container. The container shall be sealed and labeled as a disposal container and shall be labeled as bio-hazardous material. The disposal container shall be wiped with a disinfectant if blood or other bodily fluids are spilled on the outside of the container. The acupuncturist shall dispose of the container pursuant to the requirements of the District of Columbia and federal laws governing the disposal of medical waste and biohazard materials.

#### **4709 PREPARATION OF PATIENT RECORDS; ELECTRONIC RECORDS; ACCESS TO OR RELEASE OF INFORMATION; CONFIDENTIALITY, TRANSFER OR DISPOSAL OF RECORDS**

4709.1 The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

- (a) "Authorized representative" means a person who has been designated by the patient or a court to exercise rights under this section. An authorized

representative may be the patient's attorney or an employee of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) shall be deemed to be an authorized representative.

- (b) "Patient" means any person who is the recipient of acupuncture.

4709.2

Acupuncturists shall prepare contemporaneous, permanent professional treatment records. Acupuncturists shall also maintain records relating to billings made to patients and third party carriers for professional services. All treatment records, bills, and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of three years from the date of the most recent entry.

- (a) To the extent applicable, professional treatment records shall reflect:

- (1) The dates of all treatments;
- (2) The patient complaint;
- (3) The history;
- (4) Progress notes;
- (5) Any orders for tests or consultations and the results thereof;
- (6) Documentation indicating that informed consent was given by the patient;
- (7) Findings from examinations;
- (8) If a physician has referred a patient for acupuncture, an indication that a referral or diagnosis was made by a physician, including the name of the physician; and
- (9) Documentation of any recommendations made to a patient for the use of meditation or products that facilitate health.

- (b) Corrections or additions may be made to an existing record, provided that each change is clearly identified as such, dated and initialed by the licensee;

- (c) A patient record that is prepared and maintained on a personal or other computer shall be prepared and maintained as follows:



- (1) The patient record shall contain at least two forms of identification, for example, name and record number or any other specific identifying information;
- (2) The entry made by the acupuncturist shall be made contemporaneously with the treatment and shall contain the date of service, date of entry, and full printed name of the treatment provider. The acupuncturist shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include date of the "signing";
- (3) The acupuncturist may dictate a dated entry for later transcription. The transcription shall be dated and identified as "preliminary" until reviewed, finalized and dated by the acupuncturist as provided in § 4709.2(c)(2);
- (4) The computer system shall contain an internal permanently activated date and time recordation for all entries, and shall automatically prepare a back-up copy of the file;
- (5) The computer system shall be designed in such manner that after "signing" by means of the CPC, the existing entry cannot be changed in any manner. Notwithstanding the permanent status of a prior entry, a new entry may be made at any time and may indicate correction to a prior entry;
- (6) Where more than one acupuncturist is authorized to make entries into the computer file of any professional treatment record, the acupuncturist responsible for the acupuncture practice shall assure that each such person obtains a CPC and uses the file program in the same manner; and
- (7) A copy of each day's entry, identified as preliminary or final as applicable, shall be made available to a physician responsible for the patient's care, to a representative of the Board, no later than ten (10) days after a request for the record, or to a patient within thirty (30) days of the request or promptly in the event of emergency.

4709.3 Acupuncturists shall provide access to professional treatment records to a patient or the patient's authorized representative in accordance with the following:

- (a) No later than thirty (30) days from receipt of a request from a patient or an authorized representative, the acupuncturist shall provide a copy of the professional treatment record, and/or billing records as may be requested.

The record shall include all pertinent objective data including test results as applicable, as well as any subjective information.

- (b) Unless otherwise required by law, an acupuncturist may, if a patient requests, provide a summary of the record in lieu of providing a photocopy of the actual record, so long as that summary adequately reflects the patient's history and treatment. An acupuncturist may charge a reasonable fee for the preparation of a summary, which has been provided in lieu of the actual record, which shall not exceed the cost allowed by § 4709.3(c) for that specific record.
- (c) Acupuncturists may require that a record request be in writing and may charge a reasonable fee for the reproduction of records.
- (d) If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the acupuncturist shall provide a transcription at no cost to the patient.
- (e) The acupuncturist shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4709.4 Acupuncturists shall maintain the confidentiality of professional treatment records, except that:

- (a) The acupuncturist shall release patient records as directed by a subpoena issued by the Board. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the acupuncturist, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the acupuncturist shall also provide a certified translation.
- (b) The acupuncturist shall release information as required by law or regulation.
- (c) The acupuncturist, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or has been asked to provide treatment to the patient, or whose expertise may assist the acupuncturist in his or her rendition of professional services.

- 4709.5 Where the patient has requested the release of a professional treatment record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the acupuncturist shall:
- (a) Secure and maintain a current written authorization, bearing the signature of the patient or an authorized representative;
  - (b) Assure that the scope of the release is consistent with the request; and
  - (c) Forward the records to the attention of the specific individual identified or mark the material "Confidential."
- 4709.6 If an acupuncturist ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the acupuncturist or designee shall:
- (a) Establish a procedure by which patients can obtain a copy of the treatment records or acquiesce in the transfer of those records to another licensee who is assuming responsibilities of the practice. However, an acupuncturist shall not charge a patient, pursuant to § 4709.3(c), for a copy of the records, when the records will be used for purposes of continuing treatment or care.
  - (b) Publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the acupuncturist's practice, at least once each month for the first three months after the cessation; and
  - (c) Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation, providing information concerning the established procedure for retrieval of records.

## **4710 CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS**

- 4710.1 In order to renew a license, an acupuncturist shall confirm on the renewal application that he or she has completed at least thirty (30) hours of continuing education through any of the following continuing education methods:
- (a) Successfully completing a continuing education course that has been approved by NCCAOM or by boards or committees regulating acupuncture in other states;
  - (b) Successfully completing up to fifteen (15) hours of a distance learning course approved by NCCAOM; or

- (c) Successfully completing continuing education courses or programs that are pre-approved by the Board.

4710.2 The Board may approve upon consultation with, and advice from, the Advisory Committee on Acupuncture continuing education credits obtained through methods other than described in § 4710.1.

- (a) A licensed acupuncturist may accrue no more than a combined total of six hours of continuing education credits under § 4710.2(b) as part of the overall requirement of thirty (30) hours of continuing education required in § 4710.1;
- (b) The methods through which a licensed acupuncturist may obtain continuing education credits other than as described in § 4710.1 are as follows:
  - (1) *Pro bono* activities consisting of work for the provision of acupuncture services provided through an organization offering humanitarian services to:
    - (i) Victims of an emergency situation or catastrophic disaster area;
    - (ii) Low income or underserved areas or populations in the District;
    - (iii) Special needs populations in the District; or
    - (iv) Active duty military personnel in the United States Armed Services.
  - (2) A licensed acupuncturist may accrue a maximum of three (3) hours of continuing education credit for *pro bono* activities, only upon the following conditions:
    - (i) Upon completion of the *pro bono* activity, the licensed acupuncturist shall obtain from the facility written documentation of completion of pro bono hours including:
      - (A) The name of the facility;
      - (B) The address where the pro bono work was provided;
      - (C) The type of work that was done;

- (D) The number of hours of actual work provided for which the licensee desires credit hours; and
- (E) A statement guaranteeing that the work provided no financial benefit to licensee.

- (3) Publishing a research-based article in a nationally recognized, peer-reviewed journal for which a licensed acupuncturist may accrue no more than three hours of continuing education credit.

**4711 RE-ENTRY TO PRACTICE**

4711.1 In the event a licensed acupuncturist is absent from the clinical practice of acupuncture for more than three consecutive years, the acupuncturist shall comply with a re-entry plan as determined by the Board according to the Board’s policy (as amended from time to time) on re-entry to active practice.

**4712 [RESERVED]**

**4713 [RESERVED]**

**4714 [RESERVED]**

**4715 [RESERVED]**

**4716 DUTIES OF ADVISORY COMMITTEE ON ACUPUNCTURE**

4716.1 The Committee shall advise the Board on all matters pertaining to this chapter.

4716.2 The Committee shall provide the Board with substantive assistance in the Board’s review of complaints and further assist the Board in responding to questions about acupuncturists and acupuncture practice referred to the Committee by the Board and make recommendations to the Board regarding the appropriate action to be taken.

4716.3 At the request of the Board, the Committee shall make its members available to testify at hearings and participate in settlement conferences involving an acupuncturist.

4716.4 The Committee shall submit to the Board an annual report of its activities.

**4799 DEFINITIONS**

4799.1 As used in this chapter, the following terms shall have the meanings ascribed:

**ACAOM** - Accreditation Commission for Acupuncture and Oriental Medicine.

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

**Acupuncture program** - a course of study in acupuncture that is at least three (3) years long and which is in addition to and separate from a baccalaureate degree program.

**Acupuncturist** - an individual licensed by the Board to perform acupuncture services.

**Adjunctive therapies** - those practices taught in ACAOM-approved schools and through NCCAOM-approved continuing education courses that are complementary to the performance of acupuncture.

**Applicant** - a person applying for a license to practice acupuncture under this chapter.

**Baccalaureate Degree** - a bachelor degree granted upon the conclusion of a program that consists of at least one hundred twenty (120) credits by a college or university that is accredited by a regional accreditation agency recognized by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education.

**Board** - the Board of Medicine, established by § 203(a) of the Act (D.C. Official Code § 3-1202.03(a)).

**Committee** - the Advisory Committee on Acupuncture, established by § 203(b) of the Act (D.C. Official Code § 3-1202.03(f)).

**Electroacupuncture** - the therapeutic use of weak electric currents at acupuncture loci to diagnose or to treat diseases or conditions.

**Glandulars** - non-prescriptive supplements that are derived from glands.

**Gua sha** - scraping applied to the surface of the skin with a round edged tool for therapeutic purposes.

**Herbology or Chinese Herbology** - the administration or recommendation of botanical, mineral, or animal substances, and includes prepared and raw forms of single herbs or formulas. Herbology does not include the injection of herbs.

**Mechanical stimulation** - stimulation on or near the surface of the body according to principles of Oriental medicine by means of apparatus or instrument.

**Moxibustion** - the therapeutic use of thermal stimulus on or near the surface of the body according to principles of Oriental medicine by burning artemisia alone or artemisia formulations.

**NCCAOM** - National Certification Commission for Acupuncture and Oriental Medicine.

**Oriental dietary therapy** - dietary and nutritional counseling and the recommendation of foods for therapeutic purposes.

**Oriental medicine** - a whole medical system originating in East Asia that aims to treat disease and support the body's ability to heal itself with a diverse range of traditional and modern therapeutic interventions.

**Qigong** - breathing techniques and exercises that promote health.

**Sterilize** or **sterilization** - the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

**Surface stimulation** - the application of purposeful stimuli to the surface of the body.

**Tuina** - a form of massage therapy based on traditional Oriental medical theories using or incorporating traction, manipulation of acupressure points, acupoint stimulation, and joint mobilization for therapeutic purposes.

4799.2 The definitions in § 4099 of Chapter 40 of this title are incorporated by reference into and are applicable to this chapter.

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 Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Administrative Assistant, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.

**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 Sections 404(a) and 1201 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 § 1-604.04(a) (2012 Repl.) and §§ 1-612.01 *et seq.* (2014 Repl.)), hereby gives notice of the intent to adopt the following rules amending Chapter 12 (Hours of Work, Legal Holidays and Leave) of Title 6 (Personnel), Subtitle B (Government Personnel), of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the publication of this notice in the *D.C. Register*.

The purpose of the rulemaking notice is to: (1) reorder, renumber and make minor changes to Sections 1204 (Establishment of Scheduled Tours of Duty), 1208 (Flexible Work Schedule), 1209 (Alternative Work Schedule), 1210 (Compressed Work Schedule); (2) rename Section 1211 from "Telecommuting" to "Telework," and to add provisions on "Situational Telework;" (3) make a change to a subsection number in Subsection 1223.6 of Section 1223 (Effect of Holidays) following amendments to the chapter; (4) amend Subsection 1261.2 of Section 1261 (Funeral Leave) to change the number of additional days of leave an employee can request following the passing of an immediate family member; and (5) move Subsections 1270.3 through 1270.10 of Section 1270 (Declared Emergencies - In General) to Section 1271 (Declared Emergencies - Early Dismissals) and rename Section 1271 to "Declared Emergencies – Emergency and Essential Employees," with a new provision added in Subsection 1270.6. In addition, prior Sections 1271 through 1273 have been renumbered to 1272 through 1274, and clarifying language on the leave status of an employee that uses a full day of leave on a day when a late arrival policy is in effect (1272) has been added. New Sections 1282 through 1287 on the Government Paid Family Leave Program have also been added to the chapter. Section 1299 (Definitions) has been amended to add definitions for the terms "Situational Telework," "Substantially Similar Position," "Telework," "Uniformed Member," and to amend the definition of the term "Unscheduled Telecommuting" and change the term to "Unscheduled Telework."

Upon adoption, these rules would amend Chapter 12 (Hours of Work, Legal Holidays, and Leave), of Subtitle B of Title 6 of the DCMR, published at 40 DCR 1292 (February 12, 1993), and amended at 49 DCR 9056 (October 4, 2002), 54 DCR 11538 (November 30, 2007), 55 DCR 012489 (December 12, 2008); 59 DCR 02690 (April 6, 2012), 61 DCR 3738 (April 11, 2014) and 61 DCR 011412 (October 31, 2014).

**Chapter 12, HOURS OF WORK, LEGAL HOLIDAYS AND LEAVE, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:**

**Section 1204, ESTABLISHMENT OF SCHEDULED TOURS OF DUTY, Subsection 1204.1, is amended to read as follows:**



1204.1 Agencies shall establish scheduled tours of duty consistent with the provisions of Subsection 1204.2 of this section, except when the Mayor determines that an agency would be seriously handicapped in carrying out its functions, or that costs would be substantially increased, and mandates an alternative work schedule as provided in Section 1208 of this chapter.

**Subsection 1204.2 is amended as follows:**

**The lead-in language of paragraph (b) is amended to read as follows:**

- (b) Except when an alternative work schedule has been approved as provided in Section 1208 of this chapter;

**Paragraph (d) is amended to read as follows:**

- (d) Breaks in working hours of more than one (1) hour shall not be scheduled during the working hours of a basic workday, except when a flexible work schedule has been approved as provided in Section 1209 of this chapter;

**Sections 1208 thru 1211 are amended to read as follows:**

**1208 ALTERNATIVE WORK SCHEDULES**

1208.1 An alternative work schedule, as defined in Section 1299 of this chapter, is inclusive of:

- (a) A flexible work schedule, pursuant to Section 1209; and
- (b) A compressed work schedule, pursuant to Section 1210.

1208.2 The Mayor may establish a mandatory alternative work schedule, as provided in Subsection 1204.1.

1208.3 Pursuant to Section 1201(e) of the CMPA (D.C. Official Code § 1-612.01(e) (2014 Repl.)), an agency director may establish an alternative work schedule for employees when such a work schedule is considered practicable and feasible and the costs of the agency will not be substantially increased.

1208.4 Employee participation in an alternative work schedule established by an agency director shall be voluntary.

1208.5 An alternative work schedule, if established, must be offered on an equal basis to all agency employees who are in substantially similar positions.

1208.6 An agency head’s decision to exclude classes of positions from participating in an alternative work schedule shall be final and not subject to appeal or grievance.

- 1208.7 The basic requirements for establishing an alternative work schedule shall be as follows:
- (a) The basic forty (40)-hour workweek may be scheduled on fewer than five (5) days;
  - (b) The working hours in each day of the basic workweek need not be the same; and
  - (c) The basic non-overtime workday may exceed eight (8) hours.
- 1208.8 Independent agencies may develop an alternative work schedule policy that differs from the provisions in Section 1208 through 1210 of this chapter.

## **1209 FLEXIBLE WORK SCHEDULE**

- 1209.1 Pursuant to Section 1201(e) of the CMPA (D.C. Official Code § 1-612.01(e) (2014 Repl.)), a flexible work schedule may be established by an agency for employees when:
- (a) Such a work schedule is considered both practicable and feasible in terms of increased employee morale, increased productivity, and improved service to the public; and
  - (b) Agency management determines that the schedule will not have an adverse impact on service to the public, and that costs to the agency will not increase substantially.
- 1209.2 A flexible work schedule, as defined in Section 1299 of this chapter, allows an employee to determine his or her own schedule within designated hours set by the employing agency, subject to certain core hours set by the agency during which the employee must work.
- 1209.3 The basic requirements for a flexible work schedule shall include the following:
- (a) The designation of core hours during which all employees are required to be present, except for authorized lunch periods;
  - (b) The designation of flexible time periods during which the employee has the option of selecting and varying his or her starting and end time but such flexible time periods may not commence prior to 6:00 a.m., nor end after 6:00 p.m.;
  - (c) The maintenance of accurate time and attendance controls must be in place to ensure that each employee works or otherwise accounts for eight (8) hours per day, five (5) days per week; and

- (d) Prior approval must be obtained by the agency head or the appropriate personnel authority before an employee may participate in a flexible work schedule.

## **1210 COMPRESSED WORK SCHEDULE**

1210.1 Pursuant to Section XII of the CMPA (D.C. Official Code § 1-612.01 (2014 Repl.)), a compressed work schedule may be established by an agency for employees when:

- (a) Such a work schedule is considered both practicable and feasible in terms of increased employee morale, increased productivity, and improved service to the public; and
- (b) If agency management determines that the schedule will not have an adverse impact on public service, and that costs will not increase substantially.

1210.2 A compressed work schedule, as defined in Section 1299 of this chapter, allows a full-time or part-time employee to work an eighty (80)-hour biweekly schedule or a less than eighty (80)-hour biweekly schedule, respectively, in fewer than ten (10) workdays.

1210.3 In accordance with Section 6 of the 2004 District of Columbia Omnibus Authorization Act, approved October 30, 2004 (Pub. L. 108-386, 118 Stat. 2228; D.C. Official Code § 1-510), an employee shall not be eligible earn overtime during his or her regular tour of duty in a compressed work schedule even if such tour of duty exceeds eight (8) hours.

1210.4 The tour of duty for each employee under a compressed work schedule program shall be defined by a fixed schedule established by the agency.

1210.5 The established work schedule of an employee working a compressed work schedule may not exceed ten (10) hours for any workday.

## **1211 TELEWORK**

1211.1 Telework is an arrangement in which an employee routinely, during a declared emergency (if directed to do so), or in situational cases as specified in this section, performs officially assigned duties at his or her home address of record.

1211.2 Based on the needs of the organization, and to the extent possible without diminishing employee performance, each agency is authorized to establish telework for eligible employees of the agency, except as provided in Subsection 1211.10 of this section.

- 1211.3 Telework, as provided in this section, must be offered on an equal basis to all agency employees who are in substantially similar positions.
- 1211.4 Telework shall be part of a scheduled tour of duty, subject to a written agreement between the agency and employee, and only permitted after an employee has completed any telework training required by the District of Columbia Department of Human Resources.
- 1211.5 Requests to engage in telework must:
- (a) Be signed by the employee;
  - (b) Be approved in writing and in advance by the employee's supervisor and the agency head (or his or her designee); and
  - (c) Verify that the position, during the period which an employee will telework, and the telework arrangement comply with the conditions set forth in Subsection 1211.7 of this section.
- 1211.6 Unless otherwise approved by the agency head and personnel authority, an employee shall be limited to two (2) days per workweek of telework.
- 1211.7 Positions best suited for telework are those that:
- (a) Have job tasks that are quantifiable, primarily project-oriented or case-work-oriented, telephone intensive, or computer-oriented; or have work activities that can be accommodated working away from the current work location with equal efficiency as if being performed at the official work site;
  - (b) Do not require daily unscheduled face-to-face contact with other employees, supervisors, or the public in the current work location; and
  - (c) Allow meetings to be scheduled without inconveniencing or impairing the performance of co-workers.
- 1211.8 An employee, who has been approved in writing to telework, may periodically request authorization to utilize situational telework on a temporary basis for the following circumstances:
- (a) When an employee has a short-term need for uninterrupted time to complete work on a complex project or report. In such cases, the employee must provide twelve (12)-hour advance written notification to his or her immediate supervisor, and obtain the written approval from the immediate supervisor and agency head (or his or her designee);
  - (b) When an employee is recovering from an illness or an injury and is

temporarily unable to physically report to his or her official work site, but is physically and mentally able to perform his or her official duties from a remote location. When possible, the employee must provide a twenty-four (24) hour advance written notice and must in all circumstances obtain approval from his or her immediate supervisor; or

- (c) When, due to the occurrence of a home repair emergency, the employee is prevented from reporting to his or her official work site.

- 1211.9 An employee's use of situational telework as provided in Subsections 1211.8(a) through (c), shall not exceed three (3) consecutive workdays.
- 1211.10 Notwithstanding the provisions of Subsections 1211.8(a) through (c), and on a case-by-case basis, an agency head may authorize the use of situational telework in other circumstances.
- 1211.11 An employee's approval and use of situational telework, as provided in Subsections 1211.8(a) through (c) of this section, is at the discretion and approval of the agency head or the employee's immediate supervisor.
- 1211.12 An employee shall not be eligible to participate in telework as provided in this section if:
- (a) The employee's performance rating for the most recent rating period is Marginal Performer (Level 2) (or equivalent) or lower as provided in Chapter 14 of these regulations; or
  - (b) The employee is on a Performance Improvement Plan (PIP) as provided in Chapter 14.
- 1211.13 Authorization to engage in telework, as provided in this section, may be rescinded by the agency head (or designee) or the immediate supervisor for reasons that include, but are not limited to, a determination that the employee has failed to accomplish the work as prescribed or due to the agency's organizational or operational needs.
- 1211.14 Whenever an agency head (or designee) or immediate supervisor determines that the approval for telework is to be rescinded pursuant to Subsection 1211.13 of this section, the employee shall be given, where practicable, at least two (2) weeks' notice prior to the rescission.
- 1211.15 Upon termination of a telework agreement, the employee shall return to the duty station and tour of duty that existed prior to receiving approval to engage in telework, unless the duty station or tour of duty has been changed by the employee's supervisor in accordance with applicable rules.

- 1211.16 Failure of an employee to return to his or her original duty station with the same tour of duty upon rescission of an authorization to engage in telework, shall result in the forfeiture of the employee's opportunity to engage in telework for a period of three (3) years and, if appropriate, may result in disciplinary action.
- 1211.17 By October 1 of each year, subordinate agencies shall submit a report to DCHR covering the agency's telework program activities for the prior fiscal year. The report shall include:
- (a) The name, grade, step, and position title of each employee approved to telework;
  - (b) The total number of days each employee is authorized to telework per workweek;
  - (c) The total number of employees working under an approved telework agreement;
  - (d) The number of employees that completed the required telework training;
  - (e) The number of telework agreements terminated and the reason(s) for the termination;
  - (f) The number of telework applications denied and the reason(s) for each denial; and
  - (g) A description of any employee or group of employees excluded from participating in telework and the reasons for such exclusions.
- 1211.18 The D.C. Department of Human Resources shall conduct periodic audits of subordinate agency telework programs for the purpose of ensuring compliance with the District's personnel regulations and human resource procedures. The audit may also cover PeopleSoft actions that the agency inputs relative to telework.

**Section 1223, EFFECT OF HOLIDAYS, Subsection 1223.6, is amended to read as follows:**

- 1223.6 An employee under an alternative work schedule pursuant to Section 1208 of this chapter who performs work on a holiday shall be entitled to holiday premium pay as provided in Section 1132 of Chapter 11 of these regulations.

**Section 1261, FUNERAL LEAVE, is amended to read as follows:**

- 1261.1 In accordance with the Funeral and Memorial Service Leave Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-83; D.C. Official Code § 1-612.03(n) (2014 Repl.)), an employee shall be entitled to not more than three (3)

days of authorized absence without loss of or reduction in pay, leave to which otherwise entitled, or credit for time or service, to make arrangements for or attend the funeral or memorial service of an immediate relative, as defined in Section 1299 of this chapter.

- 1261.2 In addition to the three (3) days of authorized absence as provided in Subsection 1261.1 of this section, unless the mission of the agency would be seriously impaired, an agency shall grant an employee's request for annual leave, sick leave, exempt time off, or compensatory time for an additional two (2) days upon the death of an immediate relative.
- 1261.3 The days requested for funeral leave need not be consecutive, but if they are not consecutive, the employee shall furnish to the approving authority satisfactory reasons justifying the granting of funeral leave for nonconsecutive days.
- 1261.4 When approved, an employee shall receive funeral leave for all previously scheduled hours during the leave period, including previously scheduled overtime hours. However, an employee shall not be eligible for overtime premiums for the same hours he or she receives funeral leave.

**Sections 1270 thru 1274 are amended to read as follows:**

**1270 DECLARED EMERGENCIES—IN GENERAL**

- 1270.1 During a declared emergency, the following situations may occur:
- (a) In response to circumstances that develop while employees are at work, employees may be dismissed early as provided in Section 1272 of this chapter;
  - (b) In response to circumstances that develop prior to normal duty hours, employees may be authorized to take unscheduled leave, unscheduled telework, or arrive late to work, as provided in Section 1273 of this chapter; and
  - (c) In response to circumstances that arise prior to normal duty hours, there may be a shut-down of District government operations as provided in Section 1274 of this chapter.
- 1270.2 The Mayor may declare an emergency whenever he or she deems it to be appropriate and in the public interest.

**1271 DECLARED EMERGENCIES—EMERGENCY AND ESSENTIAL EMPLOYEES**

- 1271.1 For the purposes of this section as well as Sections 1272 through 1274 of this

chapter, certain District government employees shall be designated as “essential” or “emergency” employees.

- 1271.2 Critical District government operations cannot be suspended or interrupted during emergency situations such as those described in Subsection 1270.1 of this section. Agencies shall identify each agency position with duties that are vital to the continuity of medical facilities, public safety, emergency services, or other crucial operations, and shall designate employees occupying such positions as “essential employees.” Employees designated as “essential” shall be required to be at work regardless of the emergency situation declared.
- 1271.3 The position description with duties as described in Subsection 1271.2 of this section shall state that the incumbent of the position shall be considered an essential employee required to be at work when an emergency is declared, regardless of the emergency situation declared.
- 1271.4 An employee designated as an “essential employee” under the provisions of Subsection 1271.2 of this section shall be identified by position title or other appropriate means and shall be notified in writing of his or her designation as an essential employee and the specific requirements placed upon the employee in emergency situations. The written notification shall occur within thirty (30) days of the agency determination for current employees, or at the time of hire or appointment to the essential position for new employees, as applicable. The required thirty (30)-day notification period may be suspended during a period of a declared emergency.
- 1271.5 An emergency employee is an employee whose services are necessary for the continuity of operations during a declared emergency. An emergency employee typically provides advice, recommendations, or specific functional support.
- 1271.6 An emergency employee may be designated from any employment status category (including, but not limited to: Management Supervisory Service, Excepted Service, Legal Service, Career Service, Education Services, etc.).
- 1271.7 An employee designated as an “emergency employee” under the standards of Subsection 1271.5 of this section shall be informed of the designation in writing within thirty (30) days of such designation. The required thirty (30)-day notification period and the requirement that notification be in writing may be suspended during a period of a declared emergency or during the period of time preceding an expected declaration of an emergency. A written notification shall follow a verbal notification.
- 1271.8 An agency head may activate an employee designated as an “emergency employee” based on the nature and circumstances of a particular declared emergency. An emergency employee who has been designated and activated will be called in to work, required to stay at work, or required to telework, if approved



to do so, during the particular emergency situation.

1271.9 Upon determination by an agency head that an employee's position designation as an emergency employee is no longer applicable, the agency head shall notify the employee, in writing, within thirty (30) days of such determination.

1271.10 Essential and emergency employees who are required to work during a declared emergency when non-essential and non-emergency employees are on administrative leave shall be entitled to compensation as provided in Section 1135 of Chapter 11 of these regulations.

## **1272 DECLARED EMERGENCIES—EARLY DISMISSALS**

1272.1 The Mayor may, whenever he or she deems it to be appropriate in the public interest, authorize the early dismissal of employees, whereupon he or she shall notify agencies to dismiss, for a specified period of time, and grant administrative leave to, as many employees as the agency head determines to be practicable.

1272.2 Agency heads and other personnel authorities may dismiss, and grant administrative leave to, employees due to the breakdown of heating or air conditioning equipment and other similar situations within one or more of the agency's or personnel authority's facilities.

1272.3 Except as provided in Subsection 1272.5 of this section, whenever early dismissal has been authorized, all employees, except essential employees and emergency employees who have been activated subject to the provisions of Section 1271 of this chapter, shall be permitted to leave their assigned duty stations prior to the close of the normal workday, on administrative leave, if the following conditions are met:

(a) They are in a duty status when the notice of early dismissal is received; and

(b) Their regular tour of duty ends after the hour given as the authorized time for early departure.

1272.4 An employee who previously requested and was granted leave for the entire day shall be charged leave for the entire day, regardless of the early dismissal.

1272.5 If, after the notice of early dismissal, an employee requests and is granted leave, the employee shall be charged leave only for that period when leave commences, to the hour that early dismissal is authorized.

1272.6 If, prior to the notice of early dismissal, an employee requests and is granted leave, but otherwise makes known his or her intention of returning to duty status at a time that precedes the end of his or her regular tour of duty, the employee

shall be charged leave only for the period of time specified.

**1273 DECLARED EMERGENCIES—LATE ARRIVAL, UNSCHEDULED LEAVE, OR UNSCHEDULED TELEWORK POLICY**

1273.1 The Mayor may, whenever he or she deems it to be appropriate and in the public interest, authorize one or all of the following:

- (a) A late arrival policy authorizing a designated number of hours of excused absence;
- (b) An unscheduled leave policy; or
- (c) An unscheduled telework policy.

1273.2 Each employee shall be responsible for reporting for duty at the late arrival time, even upon the occurrence of conditions beyond the control of an employee, such as inclement or hazardous weather or a transportation disruption.

1273.3 Whenever the Mayor determines that a late arrival policy is in effect in accordance with Subsection 1273.1(a) of this section, an employee, other than an essential or emergency employee subject to the provisions of Section 1271 of this chapter, shall be authorized to arrive late, up to the number of hours specified by the Mayor, without loss of pay. An employee who utilizes leave for the entire day when a late arrival policy is in effect shall be charged the appropriate leave for the entire day.

1273.4 Whenever the Mayor determines that an unscheduled leave policy is in effect in accordance with Subsection 1273.1(b) of this section, an employee, other than an essential or emergency employee subject to the provisions of Section 1271 of this chapter, shall be permitted to utilize annual leave, compensatory time, exempt time off, or leave without pay, for all or part of that day, up to a maximum of eight (8) hours or hours worked under a compressed work schedule, if applicable, without obtaining advance approval or providing detailed justification. The use of sick leave must be approved in accordance with Section 1243 of this chapter.

1273.5 Whenever the Mayor determines that an unscheduled telework policy is in effect in accordance with Subsection 1273.1(c) of this section, an employee on a telework agreement may telework. An employee must inform his or her supervisor and timekeeper (or equivalent) of any unscheduled telework day(s) taken pursuant to this section.

1273.6 Whenever the Mayor determines that an unscheduled telework policy is in effect, an employee designated as an emergency employee who is activated is required to report to work unless he or she is directed to telework.

1273.7 An employee who does not report to work (or who does not telework, when authorized to do so) and does not request leave during a period when an unscheduled leave or unscheduled telework policy is in effect, and refuses to consent to any type of leave upon return to duty, shall be charged with absence without official leave.

#### **1274 DECLARED EMERGENCIES—SHUT-DOWN**

1274.1 The Mayor may, whenever he or she deems it to be appropriate and in the public interest, authorize the shut-down of all non-essential District government operations prior to the commencement of normal duty hours.

1274.2 Agency heads and other personnel authorities may authorize the shut-down of one or more of their facilities due to a breakdown of heating or air conditioning equipment or other similar situations, and shall ensure that all affected employees are promptly notified.

1274.3 Except as provided in Subsections 1274.4 and 1274.5 of this section, employees shall be given administrative leave for the entire day of shut-down.

1274.4 Each essential employee subject to the provisions of Section 1271 of this chapter shall still be required to report for duty even upon the occurrence of conditions beyond the control of an employee, such as inclement or hazardous weather or a transportation disruption.

1274.5 Each emergency employee subject to the provisions of Section 1271 of this chapter shall be required to report for duty or telework, if activated, even upon the occurrence of conditions beyond the control of an employee, such as inclement or hazardous weather or transportation disruption.

#### **1275 - 1278 – [RESERVED]**

**New Sections 1282 thru 1287 are added to the chapter to read as follows:**

#### **1282 GOVERNMENT FAMILY LEAVE PROGRAM – GENERAL PROVISIONS**

1282.1 Eligible District government employees are entitled to up to eight (8) workweeks of paid family leave within a twelve (12) month period for a single qualifying event. Qualifying events are described in Subsection 1283.2.

1282.2 For the purposes of determining the number of hours of paid family leave to which an employee may be entitled, a workweek shall be calculated as the average weekly hours paid within the preceding six (6) months, excluding overtime, or, if reliable historical data is not available, the number of hours scheduled for an employee's typical tour of duty.

1282.3 An eligible employee shall receive paid family leave for only one (1) qualifying event within a twelve (12) month period.

1282.4 For purposes of Sections 1282 through 1287, the following meanings apply:

- (a) **“Child”** means a person under twenty-one (21) years of age; an individual, regardless of age, who is substantially dependent upon the employee due to physical or mental disability; or a person under twenty-three (23) years of age who is a full-time student at an accredited college or university;
- (b) **“Conditional approval”** means the temporary approval of an application when the employee cannot provide the required documentary proof prior to the qualifying event, including in instances of an emergency.
- (c) **“Eligible employee”** means a District government employee, other than a temporary employee appointed for less than ninety (90) days, an intermittent employee, and any other employee who is not eligible to accrue annual leave.
- (d) **“Family member”** means an individual related to the employee by blood, marriage, domestic partnership, or legal custody (including foster care); a child who lives with the employee and for whom the employee has permanently assumed and discharges parental responsibility; and an individual with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship.
- (e) **“Serious health condition”** means a physical or mental illness, injury, or impairment that involves inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment, or supervision at home by a health care provider or other competent individual, as defined in Section 2(9) of the District of Columbia Family and Medical Leave Act of 1990 (Act), effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(9)).

## 1283 GOVERNMENT FAMILY LEAVE PROGRAM – ELIGIBILITY

1283.1 To be eligible for the paid family leave program, the employee must meet the following criteria:

- (a) The employee must not be a temporary employee appointed for less than ninety (90) days; or

- (b) The employee must not be an intermittent employee, as defined in Section 1299;
- (c) The employee must not have received (or been paid) paid family leave benefits for another qualifying in the twelve (12) months preceding the start date for the new qualifying event; and
- (d) The qualifying event experienced by the employee must have occurred within twelve (12) months before the start date of the employee's paid family leave.

1283.2 An employee may be eligible for paid leave under this section for any of the following qualifying events:

- (a) The birth of a child of the employee;
- (b) The legal placement of a child with the employee (such as through adoption, guardianship, or foster care);
- (c) The placement of a child with the employee, when the employee permanently assumes and discharges parental responsibility for that child; or
- (d) When a family member suffers from a serious health condition, as defined in Section 1282 of this chapter that requires the employee's care.

1283.3 An eligible employee shall provide proof that a qualifying event has occurred within the last twelve (12) months, or will likely occur in the next twelve (12) weeks, by submitting one (1) of the following:

- (a) For the birth of a child, a certificate of live birth listing the employee as a legal parent or other reliable documentation evidencing the birth of the employee's child (unless waived by the agency);
- (b) For legal placement of a child, a certified copy of the court order granting the employee legal custody of the child;
- (c) For non-legal placements of a child, two (2) official records establishing the employee as a named caregiver to the child (such as school enrollment, insurance records, or medical records); and reliable documentation as to the date when the placement occurred (such as insurance records and certificates of death); or
- (d) For the care of a family member with a serious health condition:

- (1) Government or other reliable documentation establishing a family relationship (including but not limited to, birth certificate, marriage license, court order, joint lease, and joint bank account statement); and
- (2) A completed Certification of Health Care Provider for Family Member's Serious Health Condition, on a form supplied by the personnel authority.

1283.4 A child returning from residing away from the employee while attending an accredited college or university, summer school, or any other routine or temporary relocation, including visits with relatives or friends, shall not constitute placement with the employee under the paid family leave program.

#### **1284 GOVERNMENT FAMILY LEAVE PROGRAM – APPLICATION**

1284.1 To apply for paid family leave, an employee shall submit the District of Columbia Family and Medical Leave Act (DCFMLA), Request for Family and Medical Leave and Government Family Leave application and provide any required additional documentation to his or her agency FMLA Coordinator.

1284.2 Application materials shall be submitted to the agency FMLA Coordinator at least thirty (30) days prior to the qualifying event, if possible. Absent good cause, a failure to provide the requisite notice may result in delaying a decision on the requested leave until the required certification is provided.

1284.3 If an agency has reason to doubt the validity of the medical documentation provided by the employee, the agency shall consult with its agency counsel prior to requesting that the employee obtain a second opinion from another health care provider.

1284.4 The application materials shall be reviewed by the FMLA Coordinator for a determination of eligibility. The FMLA components of the application, if applicable, shall be reviewed and processed in accordance with the rules established by the Office of Human Rights.

1284.5 If the employee cannot provide the required documentary proof prior to the qualifying event, the application may be conditionally approved. In such a case, the necessary documentation must be received by the agency FMLA Coordinator no more than four (4) weeks following the qualifying event.

1284.6 Following a review of the application for paid family leave, the FMLA Coordinator shall approve, conditionally approve, or deny the application. An application may only be denied when the employee fails to provide the required proof (requisite documentation), or is otherwise ineligible.

- 1284.7 If the application is approved, the employee shall be credited with a family leave balance equal to the time needed for the qualifying event, up to eight (8) workweeks as specified in Subsections 1282.1 and 1282.2.
- 1284.8 Credited paid family leave may be used in increments for an approved qualifying event, but each increment shall not be less than one (1) day. When used intermittently, the agency may require additional documentation to verify the leave is used for the qualifying event.
- 1284.9 When paid family leave is used intermittently as provided in this chapter, such usage shall be requested in the same manner as sick leave as provided in Subsection 1242.5 of this chapter.
- 1284.10 Employees needing intermittent leave for foreseeable medical treatment must work with their employers to schedule leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider.
- 1284.11 Leave credited under this section shall expire on the earlier of:
- (a) The length of the leave period approved in the application; or
  - (b) Twelve (12) months following the date of the qualifying event.

**1285 GOVERNMENT FAMILY LEAVE PROGRAM – PROTECTIONS AND LIMITATIONS**

- 1285.1 An employee who seeks or exercises his or her right to paid family leave shall enjoy the same employment and benefits protections afforded under DCFMLA (D.C. Official Code §§ 32-501 *et seq.*) and federal FMLA (29 U.S.C. §§ 2601 *et seq.*).
- 1285.2 An employee's use of paid family leave shall count against the sixteen (16) workweeks of family leave under Section 3 of the DCFMLA (D.C. Official Code 32-502) and, against the twelve (12) workweeks under the federal FMLA.
- 1285.3 An employee approved for paid family leave shall:
- (a) Retain his or her employment, seniority, and group health plan coverage while on paid family leave; and
  - (b) Be returned to the same position that he or she held prior to commencing paid family leave, or to a substantially similar position, upon returning to work.
- 1285.4 An employee shall accrue annual and sick leave while on paid family leave.

- 1285.5 Paid family leave shall only be used for the purposes outlined in Sections 1282 and 1283 and only for the qualifying event for which approved.
- 1285.6 An employee may not expand his or her DCFMLA protections beyond sixteen (16) weeks by applying for paid family leave for the same qualifying event in which the DCFMLA was previously approved.
- 1285.7 An employee on paid family leave may not engage in outside employment if that employment would conflict with the employee's typical tour of duty with the District of Columbia government.
- 1285.8 An employee on paid family leave must provide care to the child or family member for whom the leave was approved on each day for which paid family leave is used. An employee shall not receive paid family leave when the qualifying child or family member is entrusted to the care of another for four (4) or more hours during the employee's typical tour of duty.
- 1285.9 A probationary employee who receives paid family leave shall have their probationary period extended by the length of the paid family leave.
- 1285.10 The maximum amount of time a probationary period can be extended, as provided in Subsection 1285.9 of this section, is eight (8) workweeks.

**1286 GOVERNMENT FAMILY LEAVE PROGRAM – PREMIUM PAY**

- 1286.1 A District government employee who qualifies for and has been approved for paid family leave shall not be entitled to receive premium pay, as provided in Chapter 11 of the regulations, during hours that an employee receives paid family leave.

**1287 GOVERNMENT FAMILY LEAVE PROGRAM – MISUSE OF PAID FAMILY LEAVE**

- 1287.1 When an agency head (or his or her designee) has determined that an employee has used paid family leave for a purpose other than that specified in supporting documentation submitted by the employee, or as provided in this chapter, the application shall be void and the action considered fraud against the District government, and the employee may be subject to disciplinary action in accordance with Chapter 16.
- 1287.2 Upon determination that fraud has been committed as provided in Subsection 1287.1, the inappropriate usage of paid family leave shall be counted as a debt to the District government as provided in Chapter 29.



Section 1299, DEFINITIONS, is amended to insert the following definitions, and to remove the definition for the term “Unscheduled telecommuting” and replace it with the definition for the term “Unscheduled telework”, to read as follows:

**District of Columbia Family and Medical Leave Act (DCFMLA)** – refers to the District of Columbia Family and Medical Leave Act of 1990 (Act), effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code §§ 32-501, *et seq.*)

**Situational telework** – a temporary arrangement approved, in writing, in advance, in which the employee is authorized to telework for, but not limited to, the completion of a project or report, due to an injury or illness which prevents the employee from physically reporting to his or her official worksite, or due to a home repair emergency.

**Substantially similar position** – employees in an agency with the same grade, location, tour of duty, and with like duties and responsibilities.

**Telework** – an arrangement in which an employee regularly, or during a declared emergency, performs officially assigned duties at home or other worksites geographically convenient to the employee’s residence, and which is approved, in advance and in writing, by the employee’s immediate supervisor and agency head.

**Uniformed member** – for purposes of this chapter, the term uniformed member refers to a sworn employee of the Metropolitan Police Department or an employee who is a firefighter, emergency medical technician, or paramedic with the Fire and Emergency Medical Services Department.

**Unscheduled telework** – an employee who is on an approved telework agreement may telework without obtaining advance approval when a declared emergency is in effect on a day or during a period during which the employee was not previously scheduled to telework.

Comments on these proposed regulations should be submitted, in writing, within thirty (30) days of the date of the publication of this notice to Mr. Justin Zimmerman, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 340 North, Washington, D.C. 20001, or via email at [justin.zimmerman@dc.gov](mailto:justin.zimmerman@dc.gov). Additional copies of these proposed rules are available from the above address.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGRM13-2015-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT,

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, and 34-912(b) of the District of Columbia Official Code<sup>1</sup> of its intent to amend Chapter 13 (Rules Implementing the Public Utilities Reimbursement Fee Act of 1980) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments to Chapter 13 revise the existing procedures for collecting annual assessments due to the Commission and the Office of the People's Counsel. The amendments also add explicit penalty provisions for failure to respond to the Commission issued Annual Survey and for failure to pay assessments in a timely fashion.

**1301 DETERMINATION OF REIMBURSEMENTS**

1301.2 By March 15<sup>th</sup> of each year the Commission shall send to each utility, competitive electric supplier, competitive natural gas supplier, and CLEC an Annual Survey and Affidavit for assessment purposes. Each utility, competitive electric supplier, competitive natural gas supplier, and CLEC shall file its responses to the Annual Survey with the Commission by April 15<sup>th</sup>. Each response shall include a report of the responder's gross jurisdictional revenues for the proceeding calendar year ending December 31<sup>st</sup>.

1301.3 Failure to respond to the Commission issued Annual Survey by April 15<sup>th</sup> shall result in a penalty of \$100.00 per day for each day that the filing is late.

**1303 PAYMENT OF REIMBURSEMENTS**

1303.1 By June 1<sup>st</sup> of each year, the Commission shall send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Notices of Proposed Assessment for the Commission and the Office of the People's Counsel. The Notices of Proposed Assessment shall contain the proposed assessment due from each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC for the Commission and for the Office of the People's Counsel. The Notices of Proposed Assessment shall

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<sup>1</sup> D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2012 Repl.) and D.C. Official Code § 34-2002(g) (2012 Repl.).

indicate a specific time period for objections to the assessments contained in the Notices of Proposed Assessment to be filed with the Commission.

- 1303.2 If a public utility, competitive electric supplier, competitive natural gas supplier, or CLEC for the Commission and for the Office of the People's Counsel believes that the Proposed Assessment is incorrect, it may file a Notice of Objection with supporting documentation with the Commission before the objection period specified in the Notices of Proposed Assessment has expired. The Commission will not consider Notices of Objection that are not timely filed.
- 1303.3 Once the objection period specified in the Notices of Proposed Assessment has expired and, if no objections that have been filed, the Commission shall send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Orders of Assessment for the Commission and the Office of the People's Counsel no later than August 31<sup>st</sup> of each year.
- 1303.4 If a timely Notice of Objection is filed, the Commission shall review and decide on the objection on or before July 15<sup>th</sup>. If an objection is determined to be valid, the Commission may, if necessary, send revised Notices of Proposed Assessment to each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC and allow an additional abbreviated comment period for Notices of Objection to the revised Notices of Proposed Assessment. If no further objections are filed by the closed on the comment period, the Commission shall send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Orders of Assessment for the Commission and the Office of the People's Counsel no later than August 31<sup>st</sup> of each year.
- 1303.5 The amounts set out in the Orders of Assessment shall be paid in full to the Treasurer of the District of Columbia within thirty (30) days of the date of the Order of Assessment.
- 1303.6 Failure to pay the assessments in full within thirty (30) days of the Orders of Assessment shall result in a penalty of ten percent (10%) of the assessment due but not to exceed one hundred dollars (\$100.00) per day for each day that the assessment is late. Failure to pay the assessments and the penalty due, if any, in full may also result in a suspension or revocation of the license of the public utility, competitive electric supplier, competitive natural gas supplier, or CLEC.
- 1303.7 In the event the Commission determines that a penalty may be appropriate pursuant to § 1303.6, the Commission shall provide a Notice of any penalty that it intends to impose for non-payment to the public utility, competitive electric supplier, competitive natural gas supplier, or CLEC and shall give the recipients of the notice an opportunity for a hearing pursuant to D.C. Official Code §§ 34-706(c), 34-1508(a), 34-1671.11(a), or 34-2002(h-1) and 15 DCMR § 1301.6.

**1306 REFUNDS OR CREDITS**

1306.1 If total obligations of the Commission or the Office of the People's Counsel are less than ninety-five percent (95%) of total appropriations for the Commission or the Office of the People's Counsel as determined by the Office of the Chief Financial Officer in the annual audit released in the month of February of each year, the Commission or the Office of the People's Counsel shall cause the difference to be refunded or credited against the next year's assessment to the public utilities, competitive electric suppliers, competitive natural gas suppliers, and CLECs according to the formula under § 1301, within one hundred fifty (150) days following the end of the fiscal year. The decision to refund or credit the difference shall be at the Commission's discretion.

**1399 DEFINITIONS**

**Gross jurisdictional revenue** - gross revenues derived from operations regulated by the Commission in the District of Columbia.

3. Any person interested in commenting on the subject matter of this proposed rulemaking must submit comments and reply comments in writing no later than thirty (30) days and forty-five (45) days, respectively, from the date of publication of this Notice in the *D.C. Register*. Comments and reply comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005. Persons with questions concerning this Notice should call 202-626-5150. After the comment period expires, the Commission will take final rulemaking action.

## ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

**NOTICE OF PROPOSED RULEMAKING****Z.C. Case No. 12-08A****(Text Amendment — 11 DCMR)****Technical Correction to StE District § 3307.1**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend the Zoning Regulations (Title 11 DCMR) to make a technical correction to Chapter 33 (Saint Elizabeths East Campus (StE) District), § 3307.1. The correction applies to the Saint Elizabeths East Campus (StE) District and concerns the combined lot development process set forth in § 3307 (Combined Lots), which permits two (2) or more lots to combine for the purposes of achieving the minimum required FAR equivalent of residential uses. The proposed amendment would clarify that:

- (a) The combined lot process is not available to properties located in the StE-2, StE-10, StE-14a, StE-14b, StE-18, or StE-19 subdistricts;
- (b) The participating lots need not be located in the same subdistrict; and
- (c) The lot(s) receiving the residential gross floor area need not be subject to a minimum residential requirement.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendment to the Zoning Regulations is proposed.

**Chapter 33, SAINT ELIZABETHS EAST CAMPUS (STE) DISTRICT, of Title 11 DCMR, ZONING, is amended as follows:**

**§ 3307, COMBINED LOTS, § 3307.1, is amended to read as follows:**

**3307 COMBINED LOTS**

3307.1 Except for lots located in the StE-2, StE-10, StE-14a, StE-14b, StE-18, or StE-19 subdistrict, two (2) or more lots in one (1) or more StE subdistrict(s) may be combined for the purpose of achieving the minimum required FAR equivalent of residential uses, subject to the following:

- (a) The lots may be located in the same StE subdistrict or in different StE subdistricts;
- (b) The lot(s) receiving residential gross floor area need not be located in a StE subdistrict with a residential requirement; and

- (c) The total height and density limits of the subdistricts shall not be exceeded.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov). Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov). Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**DEPARTMENT OF HEALTH CARE FINANCE****NOTICE OF EMERGENCY RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of an amendment, on an emergency basis, to Chapter 48 (Medicaid Program: Reimbursement) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency rules establish updated methods and standards for the reimbursement of inpatient hospital services under the Medicaid program. Under these emergency rules, DHCF shall base Medicaid reimbursement for inpatient hospital services on an All Patient Refined Diagnosis Related Groups (APR-DRGs) prospective payment system (PPS). Inpatient hospital services subject to the APR-DRG PPS include inpatient hospital stays and services provided in general hospitals, including acute care hospitals and children's hospitals; and Medicare-designated distinct-part psychiatric units and distinct-part rehabilitation units of acute care hospitals. DHCF shall apply these rules to general and specialty hospitals both within and outside of the District of Columbia, with the exception of hospitals located in Maryland. In addition, these rules also establish (a) the District-wide base rate; (b) policy adjustors; (c) enhanced rates for hospitals located in economic development zones; (d) limits on reimbursement for direct and indirect medical education and capital add-ons; (e) thresholds for high-cost and low-cost outlier payments; and (f) policy updates to the Three-Day Payment Window.

This emergency rulemaking is necessitated by the immediate need to ensure that District residents have continued access to quality inpatient hospital services. The current cost-based reimbursement, based on an older Diagnosis Related Groups (DRG) system, no longer accurately reflects the severity of patient illness and the true cost of care. Moreover, current reimbursement is administratively burdensome and vulnerable to inconsistent provider reimbursement. In turn, these issues can impede access to quality inpatient hospital services. Conversely, APR-DRG PPS, using a District-wide base rate, incentivizes hospitals to provide cost-efficient care. As APR-DRG reimbursement is closely tied to casemix, hospitals that take sicker patients can expect higher payments, which should improve access to care. Reimbursement methodologies are intertwined with access to care as well as the cost and quality of that care.

The emergency rules correlates to an amendment to the District of Columbia State Plan for Medical Assistance (State Plan) which requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). The State Plan Amendment (SPA) was approved by the Council through the Fiscal Year 2015 Budget Support Emergency Act of 2014, enacted July

14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)) and also received approval from CMS on April 8, 2015 with an effective date of October 1, 2014.

A Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on January 16, 2015 at 62 DCR 000759, and a Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on February 13, 2015 at 62 DCR 002125. No comments were received. This rulemaking not only included inpatient hospital authority to update methods and standards for the reimbursement of inpatient hospital services under the Medicaid Program, it also included a new service to address children's behavioral health issues entitled Sub-Acute Psychiatric Services. Even though the authority to amend the District's inpatient hospital methods and standards was approved, the SPA delineating sub-acute psychiatric services is still under review by CMS. In light of this issue, Chapter 48 is being republished as an Emergency Rulemaking, deleting all language regarding sub-acute services at Sections 4820 and 4821 and designating those sections as reserved until the Sub-Acute Psychiatric Services SPA is approved.

These emergency rules were adopted on November 16, 2015 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until March 15, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt this emergency rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 48, MEDICAID PROGRAM: REIMBURSEMENT, of Title 29 DCMR, PUBLIC WELFARE, is amended to read as follows:**

**4800 INPATIENT SERVICES: GENERAL PROVISIONS**

- 4800.1 Effective for inpatient hospital discharges occurring on or after October 1, 2014, Medicaid reimbursement for inpatient hospital discharges shall be on All Patient Refined Diagnosis Related Groups (APR-DRGs) prospective payment system (PPS) for all general hospitals, including acute and pediatric hospitals, except:
- (a) Hospitals located in the State of Maryland as identified in Subsection 4800.12;
  - (b) Specialty hospitals as identified in Subsection 4800.14; and
  - (c) Hospitals providing inpatient services under certain extenuating circumstances as identified in Subsections 4800.15-16.
- 4800.2 Inpatient hospital discharges subject to the APR-DRG PPS shall include inpatient hospital stays that last at least one (1) day or more and services provided in Medicare-designated distinct-part psychiatric units and distinct-part rehabilitation units within those hospitals.



4800.3 Payment for each APR-DRG claim, excluding transfer claims, low-outlier claims, or interim claims, shall be based on the following formula:

$$\begin{aligned}
 & \text{APR-DRG Hospital-Specific Relative Value (HSRV)} \\
 & \text{(relative weight for that Diagnosis-related group (DRG))} \\
 & \quad \times \\
 & \quad \text{Policy Adjustor (if applicable)} \\
 & \quad \times \\
 & \text{District-wide base rate adjusted for Indirect Medical Education (IME), if applicable} \\
 & \quad = \\
 & \quad \text{DRG Base Payment}
 \end{aligned}$$

The final APR-DRG payment may include a high outlier payment adjustment, add-on payments for capital and direct medical education costs, and subtraction of other health coverage or patient share of cost if applicable.

$$\begin{aligned}
 & \text{DRG Base Payment} \\
 & \quad + \\
 & \quad \text{High-Outlier Payment Adjustment} \\
 & \quad + \\
 & \text{Add-on Payments for Capital and Direct Medical Education Costs} \\
 & \quad - \\
 & \quad \text{Other Health Coverage} \\
 & \quad - \\
 & \quad \text{Patient Share of Cost} \\
 & \quad = \\
 & \text{APR-DRG PPS Payment}
 \end{aligned}$$

4800.4 The following methods and standards may apply under APR-DRG PPS:

- (a) The APR-DRG classification system as contained in version 31 of the 3M™ APR-DRG Classification System Definitions Manual, and any subsequently adopted versions, shall apply for purposes of calculating reimbursement for all inpatient discharges, including specialty, under this chapter;
- (b) The District may update the APR-DRG grouper biennially;
- (c) As described under Section 4801, APR-DRG PPS shall include a single, District-wide base rate for all general hospitals providing inpatient hospital services;
- (d) As described under Section 4802, the implementation of APR-DRG PPS shall include an annual calculation of hospital-specific cost-to-charge ratios (CCRs);

- (e) As described under Section 4803, the implementation of APR-DRG PPS shall include a calculation of the District-wide cost and average cost per discharge;
- (f) As described under Section 4804, the base rate may include Indirect Medical Education (IME) for hospitals located within the District;
- (g) As described under Sections 4805 and 4807, APR-DRG PPS may include Direct Medical Education (DME) as well as capital add-on payments;
- (h) As described under Section 4806, APR-DRG PPS reflects a severity of illness (SOI) in its associated relative weight;
- (i) As described under Section 4808, APR-DRG PPS may include an adjustment to reimbursement for high-cost and low-cost outliers;
- (j) As described under Section 4809, the implementation of APR-DRG PPS may include policy adjustors;
- (k) As described under Section 4810, hospitals located in an Economic Development Zone (EDZ) shall receive an increased reimbursement rate;
- (l) As described under Section 4811, for each claim involving a transfer to another general hospital, DHCF shall pay the transferring hospital the lesser of the otherwise applicable DRG base payment amount or a prorated payment based on the ratio of covered days to the average length of stay associated with APR-DRG;
- (m) As described under Section 4812, reimbursement for short-term stays shall be limited; and
- (n) As described under Section 4813, implementation of APR-DRG PPS shall include consideration of third party liability and patient cost sharing.

4800.5 All non-emergency, inpatient admissions shall require prior authorization.

4800.6 Medicaid payment adjustments for Provider Preventable Conditions, including Health Care-Acquired Conditions pursuant to 29 DCMR § 9299 shall be processed and paid in accordance with the criteria for payment adjustment for provider preventable conditions described under 29 DCMR §§ 9200 *et seq.*

4800.7 Outpatient diagnostic services provided by any general hospital, not located in Maryland, one (1) to three (3) days prior to an inpatient admission at the same hospital shall not be separately payable and shall be billed as part of the inpatient stay.

- 4800.8 All hospital outpatient services that occur on the same day as an inpatient admission at the same general hospital, not located in Maryland, shall be considered part of the inpatient stay and shall not be payable separately.
- 4800.9 A general hospital located in the District shall be required to submit cost reports and comply with audits in accordance with the requirements described at Section 4822.
- 4800.10 All general hospitals that provide inpatient services shall maintain records in accordance with the requirements described at Section 4822.
- 4800.11 Hospitals that provide inpatient services shall be subject to the appeal and administrative review requirements described at Section 4822.
- 4800.12 General hospitals located in Maryland shall act in accordance with Health Services Cost Review Commission (HSCRC)'s All-Payer Model Contract with Center for Medicare and Medicaid Innovation, or its successor, for inpatient hospital discharges.
- 4800.13 Out-of-District general hospitals, not located in Maryland, shall be reimbursed by DRG. The DRG base rate for out-of-District hospitals is the District-wide Base Rate, without IME.
- 4800.14 Specialty hospitals, identified at Section 4814, shall be reimbursed either on a per diem or a per stay basis under APR-DRG PPS for inpatient hospital discharges.
- 4800.15 Where the Director of DHCF determines extenuating circumstances, including but not limited to closure or bankruptcy, exist within the District's specialty hospital system, a general hospital may receive reimbursement either on a per diem or a per stay basis under APR-DRG PPS for services provided to a patient who would have been transferred from the general hospital to a Long Term Care Hospital, if a bed were available.
- 4800.16 Reimbursement under Subsection 4800.14 may be adjusted based on the acuity of the patient to ensure appropriate payment.
- 4800.17 Appeal and administrative review rights, and cost reporting, auditing, and record maintenance requirements, identified at Sections 4822-4823, shall apply to all general hospitals receiving reimbursement under APR-DRG PPS.
- 4801 INPATIENT SERVICES: CALCULATION OF DISTRICT-WIDE BASE RATE**
- 4801.1 For Medicaid reimbursement of inpatient hospital discharges occurring on or after October 1, 2014, DHCF shall use a single, District-wide base rate for all general hospitals.

- 4801.2 Effective October 1, 2014, and annually thereafter, the base year period is the District's fiscal year that ends prior to October 1 of the prior calendar year.
- 4801.3 The District-wide base rate is based on aggregate costs for the base year. Aggregate cost is calculated using the hospital specific cost-to-charge ratio, as described in Section 4802, as well as facility casemix data, and claims data from all in-District participating hospitals for the base year.
- 4801.4 Subject to federal upper payment limits, the District-wide base rate shall not exceed a rate that approximates an aggregate payment to cost ratio of ninety-eight percent (98%) for the base year for in-District general hospitals. The payment to cost ratio is determined by modeling payments to all hospitals using claims data relevant to the base year.
- 4801.5 The District-wide base rate calculated pursuant to Subsections 4801.3 and 4801.4 may be adjusted for IME as set forth in Section 4804.
- 4801.6 The Indirect Medical Education (IME) component of the District-Wide Base Rate shall be hospital-specific for each in-District general hospital with IME costs, as recognized on their cost report.

**4802 INPATIENT SERVICES: CALCULATION OF COST-TO-CHARGE RATIO (CCR)**

- 4802.1 For Medicaid reimbursement of inpatient hospital discharges, hospital-specific cost-to-charge ratios (CCRs) shall be calculated annually.
- 4802.2 The CCR shall be developed based on each hospital's submitted cost reports for the hospital's fiscal year that ends prior to October 1 of the prior calendar year.
- 4802.3 The CCR used to calculate the cost of a claim shall be hospital-specific for hospitals providing in-patient hospital services.
- 4802.4 DHCF shall apply a weighted average of in-District hospitals CCRs to out-of-District hospitals.
- 4802.5 For the purposes of determining the overall hospital CCR, total costs reported shall be allocated to inpatient and outpatient costs based on the ratio of inpatient and outpatient charges reported in each cost center.
- 4802.6 For the purpose of excluding inpatient capital costs, capital costs associated with each ancillary cost center shall be allocated to inpatient and outpatient capital costs based on the ratio of inpatient and outpatient charges reported by each cost center.

**4803 INPATIENT SERVICES: CALCULATION OF THE HOSPITAL-SPECIFIC COST PER DISCHARGE**

- 4803.1 For Medicaid reimbursement of inpatient hospital discharges, the hospital specific cost per discharge shall equal a hospital's Medicaid inpatient operating costs standardized for indirect medical education (IME) costs and variations in casemix, divided by the number of Medicaid discharges in the base year data set and adjusted for outlier reserve.
- 4803.2 Medicaid inpatient operating costs for the base year period shall be calculated by applying the hospital-specific CCR, as determined in Section 4802, to allowed charges from the base year claims data.
- 4803.3 Medicaid inpatient operating costs shall be standardized for IME costs by removing IME costs to determine the District-wide component of the base rate. IME costs shall be removed by dividing Medicaid operating costs for each hospital with IME costs by the IME factor for that hospital.
- 4803.4 The IME adjustment factor for each hospital shall be calculated using the Medicare algorithm for each hospital based on the hospital cost report for the base year period.
- 4803.5 Medicaid inpatient operating costs shall be standardized for variations in casemix by dividing Medicaid operating costs standardized for IME by the appropriate casemix adjustment factor.
- 4803.6 The Hospital-specific cost per discharge shall be adjusted for IME and casemix and shall be reduced by a net one percent (1%) to account for five percent (5%) of the cost reserved for payment of high-cost outlier claims and four percent (4%) of the cost restored to account for the reduction in payment for low-cost outlier claims.

**4804 INPATIENT SERVICES: INDIRECT MEDICAL EDUCATION (IME)**

- 4804.1 For Medicaid reimbursement of inpatient hospital discharges, the amount of the hospital-specific cost per discharge adjusted for IME shall be added to the District-wide base rate for each in-District general hospital to determine the hospital-specific base rate.
- 4804.2 The hospital-specific cost per discharge of IME shall be calculated annually as follows:
- (a) The hospital-specific cost per discharge adjusted for casemix shall be divided by the IME factor.

- (b) For discharges occurring on or after October 1, 2014, the amount calculated in Subsection 4804.2(a) shall be multiplied by a factor of 0.75 to determine the IME payment per discharge for each hospital.
- (c) For discharges occurring on or after October 1, 2015, and annually thereafter, the amount calculated in Subsection 4804.2(a) is multiplied by a factor of 0.50 to determine the IME payment per discharge for each hospital.
- (d) The amount established pursuant to Subsections 4804.2(b) or (c) shall be subtracted from the average cost per discharge for each hospital before determining the District-wide base rate.

**4805 INPATIENT SERVICES: DIRECT MEDICAL EDUCATION (DME)**

- 4805.1 For Medicaid reimbursement of inpatient hospital discharges, DME shall be a per-discharge add-on payment for each in-District general hospital that is eligible for DME. The DME add-on shall be calculated annually by dividing the Medicaid DME costs determined in accordance with Subsection 4805.2 by the number of Medicaid discharges in the base year, subject to the limits described in this section.
- 4805.2 For discharges occurring on or after October 1, 2014, and annually thereafter, the DME add-on payment for each in-District general hospital shall be based on costs from each hospital's submitted or audited cost report for the hospital's fiscal year that ends September 30 of the prior calendar year, subject to the limits described in this section.
- 4805.3 The District-wide average cost of DME per Medicaid patient day shall be based on submitted cost reports for the base year. The average cost per patient day is calculated by dividing total Medicaid DME cost for all DME eligible hospitals by the total number of Medicaid days for those hospitals, as reported on the hospital cost reports. The per-day amount is converted to a per discharge amount for each hospital, based on Medicaid utilization information in the cost report.
- 4805.4 For discharges occurring on or after October 1, 2014, DME shall be limited to two hundred percent (200%) of the average District-wide cost of DME per Medicaid patient day.
- 4805.5 For discharges occurring on or after October 1, 2015, and annually thereafter, DME costs for each hospital shall be limited to the per discharge equivalent of one-hundred fifty percent (150%) of the average District-wide cost of DME per Medicaid patient day.
- 4805.6 If, after an audit of the hospital's cost report for the base year period, an adjustment is made to the hospital's reported costs which results in an increase or

decrease of five percent (5%) or greater of the DME add-on payment, the add-on payment for DME add-on costs shall be adjusted prospectively to reflect the revised costs.

**4806 INPATIENT SERVICES: CALCULATION OF RELATIVE WEIGHTS**

4806.1 For Medicaid reimbursement of inpatient hospital discharges occurring on or after October 1, 2014, DHCF shall use hospital-Specific Relative Value (HSRV) version 31 national weights for APR-DRGs. The HSRV method adjusts for differences in cost-to-charge ratios (CCR) among hospitals nationwide.

4806.2 Each DRG assignment shall reflect a severity of illness (SOI) in its associated relative weight. Relative weights are updated biennially at the time the APR-DRG grouper version is updated. The annual APR-DRG documentation from 3M™ describes the changes made each year.

**4807 INPATIENT SERVICES: CALCULATION OF CAPITAL ADD-ON PAYMENTS**

4807.1 For Medicaid reimbursement of inpatient hospital discharges, Capital payments shall be per-discharge add-on payments that apply to in-District general hospitals only.

4807.2 For discharges occurring on or after October 1, 2014, capital add-ons shall be limited to one hundred percent (100%) of the District average capital cost per Medicaid patient day. This payment shall be calculated based on submitted cost reports for in-District general hospitals for the base year.

4807.3 The average cost per patient day shall be calculated by dividing total Medicaid capital cost for all eligible hospitals by the total number of Medicaid days for those hospitals, as reported on the hospital cost reports.

4807.4 The per-day amount shall be converted to a per discharge amount for each hospital, based on Medicaid utilization information in the cost report.

4807.5 Effective October 1, 2014, and annually thereafter, the capital cost add-on payment shall be calculated by dividing the sum of Medicaid capital costs applicable to inpatient routine services costs, as reported in the cost report, and capital costs applicable to inpatient ancillary services, as determined in Subsection 4807.6, by the number of Medicaid discharges in the base year.

4807.6 Capital costs applicable to inpatient ancillary services shall be allocated to inpatient capital by applying the facility's ratio of ancillary inpatient charges to total ancillary charges for each ancillary line on the cost report.

4807.7 For discharges occurring on or after October 1, 2014, and annually thereafter, the capital cost add-on payment for each in-District general hospital shall be based on costs from each hospital's submitted cost report for the hospital's fiscal year that ends prior to October 1 of the prior calendar year.

4807.8 If after an audit of the hospital's cost report for the base year period an adjustment is made to the hospital's reported costs which results in an increase or decrease of five percent (5%) or greater of the capital cost add-on payment, the add-on payment for capital costs shall be adjusted, subject to District-wide limits.

**4808 INPATIENT SERVICES: CALCULATION OF OUTLIER PAYMENTS**

4808.1 For Medicaid reimbursement of inpatient hospital discharges, the APR-DRG PPS shall provide an additional payment for outliers, high-cost and low-cost, based on inpatient costs.

4808.2 For discharges on or after October 1, 2014, DHCF shall provide an additional payment for inpatient stays when the cost of providing care results in a loss to the hospital that exceeds the high-cost outlier threshold (*i.e.*, high-cost outlier). The goal for District-wide high-cost outlier payments is to identify an estimated maximum of five percent (5%) of inpatient payments as high-cost outliers.

4808.3 The loss to the hospital shall be calculated pursuant to the following formula:

$$\begin{aligned} & \text{LOSS} \\ & = \\ & \text{COST (ALLOWED CHARGES X COST TO CHARGE RATIO (CCR))} \\ & - \\ & \text{THE DRG BASE PAYMENT} \end{aligned}$$

4808.4 The outlier payment is calculated as follows if the loss exceeds the outlier threshold:

$$\begin{aligned} & \text{OUTLIER PAYMENT} \\ & = \\ & (\text{LOSS} - \text{OUTLIER THRESHOLD}) \\ & \times \\ & \text{THE MARGINAL COST FACTOR} \end{aligned}$$

4808.5 The DRG PPS payment for the stay shall be the sum of the DRG base payment and the outlier payment, adjusted for transfer pricing, if applicable.

4808.6 The CCR used to calculate the cost of a claim shall be hospital-specific as described at Section 4802.



- 4808.7 The high-cost outlier threshold shall be reviewed annually and updated when necessary based upon a review of claims history from the District’s previous fiscal year.
- 4808.8 For discharges occurring on or after October 1, 2014, and annually thereafter, DHCF shall adjust payments for extremely low-cost inpatient cases.
- 4808.9 Low-cost outliers shall be those cases where the gain on the claim (claim costs minus DRG base payment) exceeds the low-cost outlier threshold.
- 4808.10 Low-cost outliers shall be determined by using the formula identified at Subsection 4808.13.
- 4808.11 Each claim with a gain that exceeds the low-cost outlier threshold shall be paid at the lesser of the APR-DRG payment amount or a prorated payment.
- 4808.12 DHCF shall set the low-cost outlier threshold at a level that results in four percent (4%) or less of APR-DRG payments being associated with low-cost outlier cases.
- 4808.13 The low-cost outlier calculation shall use the national average lengths of stay (ALOS) available with the APR-DRG grouper as follows:

$$\begin{aligned}
 & \text{LOW-COST OUTLIER PAYMENT} \\
 & = \\
 & \text{(DRG BASE PAYMENT / NATIONAL ALOS)} \\
 & \times \\
 & \text{(LOS FOR ELIGIBLE DAYS OF THE STAY +1)}
 \end{aligned}$$

- 4808.14 If the low-cost outlier payment results in an amount greater than the DRG base payment, DHCF shall disregard the low-cost outlier payment.
- 4808.15 DHCF shall review and calculate the low-cost outlier threshold annually and update where necessary based upon a review of claims history from the previous District fiscal year.

**4809 INPATIENT SERVICES: POLICY ADJUSTOR(S)**

- 4809.1 DHCF may utilize policy adjustors to increase or decrease APR-DRG relative weights for certain care categories or for a range of DRGs to meet policy goals.
- 4809.2 For Medicaid reimbursement of inpatient hospital discharges occurring on or after October 1, 2014, DHCF shall apply the following policy adjustors to the DRG weights for all inpatient stays according to Medicaid Care Category (MCC) for children under the age of twenty-one (21), excluding normal newborns:

- (a) Pediatric mental health MCC equal to a factor of 2.25;

- (b) Neonate MCC equal to a factor of 1.25; and
- (c) All other pediatric stays except normal newborns equal to a factor of 1.5.

4809.3 The value of the policy adjustor(s) shall be reevaluated annually or more frequently when necessary.

**4810 INPATIENT SERVICES: SPECIAL CONSIDERATION FOR HOSPITALS LOCATED IN ECONOMIC DEVELOPMENT ZONES**

4810.1 A general hospital whose primary location is in an area identified as an Economic Development Zone and certified by the District’s Department of Small and Local Business Development as a Developmental Zone Enterprise (DZE) pursuant to D.C. Official Code § 2-218.37, shall receive a District-wide base rate increase of two percent (2%).

**4811 INPATIENT SERVICES: TRANSFER AND ABBREVIATED STAY PAYMENT**

4811.1 For each claim for Medicaid reimbursement involving a beneficiary transfer to another general hospital, DHCF shall pay the transferring hospital the lesser of the otherwise applicable DRG base payment amount or a prorated payment based on the ratio of covered days to the average length of stay associated with the APR-DRG.

4811.2 The transfer calculation shall apply to the transferring hospital according to the following calculation using the national average lengths of stay (ALOS) available with the APR-DRG grouper:

$$\begin{aligned}
 & \text{TRANSFER PAYMENT} \\
 & = \\
 & \text{(DRG BASE PAYMENT / NATIONAL ALOS)} \\
 & \times \\
 & \text{(LOS FOR ELIGIBLE DAYS OF THE STAY +1)}
 \end{aligned}$$

4811.3 If the transfer payment adjustment results in an amount greater than the DRG base payment amount without the adjustment, the transfer payment shall be disregarded and the APR-DRG PPS payment amount shall apply.

4811.4 The hospital receiving the beneficiary shall receive the full DRG payment (unless the referring hospital also transfers the beneficiary).

4811.5 All transfers, except for documented emergency cases shall be prior authorized and approved by DHCF, or its designee, as a condition of payment.

**4812 INPATIENT SERVICES: SHORT-TERM STAYS AND INELIGIBLE DAYS**

4812.1 DHCF shall deny claims for Medicaid reimbursement arising out of a patient admission and discharge on the same date (same-day discharge); and shall instruct the billing provider to bill the services as outpatient services.

4812.2 DHCF shall deny Medicaid reimbursement for same-day discharges unless the patient status indicates death.

4812.3 DHCF shall identify a discharge as a one-day stay when the discharge date occurs on the day following the admission date.

4812.4 DHCF may reimburse a one-day stay as follows:

(a) A claim reflecting a one-day stay may be reimbursed as a hospital stay, but may be subject to post-payment review of the medical necessity of the admission; or

(b) A one-day stay may qualify for a low-cost outlier adjustment pursuant to the low-cost outlier.

4812.5 DHCF shall deny any claim for an inpatient stay that includes ineligible days.

4812.6 A denied claim may be resubmitted for eligible days.

**4813 INPATIENT SERVICES: THIRD PARTY LIABILITY AND PATIENT COST-SHARING**

4813.1 For Medicaid reimbursement of inpatient hospital discharges, DHCF shall calculate the allowed amount for a service and then subtract third party liability (TPL) and patient cost-sharing in determining the actual payment to the provider.

4813.2 DHCF shall consider a beneficiary to have TPL when the individual receives health care benefits from organizations such as Medicare, commercial health insurance companies, prepaid health plans, health maintenance organizations, and other benefit plans.

4813.3 Where a commercial payer or some other third party (except Medicare) is liable for some portion of the claim, that portion shall be subtracted from the allowed amount.

4813.4 Patient cost-sharing shall relate to any portion that may be due from the patient such as coinsurance, deductibles, or spend-down payments. The cost-sharing amount shall be subtracted from the allowed amount.

**4814 SPECIALTY INPATIENT SERVICES: GENERAL PROVISIONS**

- 4814.1 The District of Columbia's Medicaid program shall reimburse claims associated with discharges from specialty hospitals, occurring on and after October 1, 2014, in accordance with the methodology described in Sections 4814 through 4819 of these rules. A claim eligible for payment shall reflect an approved specialty inpatient hospital stay of at least one (1) day or more by a beneficiary who is eligible for Medicaid.
- 4814.2 A specialty hospital shall be reimbursed either on a per diem (PD) or a per stay (PS) basis using the All Payer Refined-Diagnostic Related Group (APR-DRG) perspective payment system. DHCF adopted the APR-DRG classification system, as contained in the 2014 APR-DRG Classification System Definitions Manual, version 31.0, for purposes of calculating rates set forth in this section. Subsequent versions representing significant changes to the APR-DRG Classification System Definitions Manual may be adopted by DHCF at a later date.
- 4814.3 For purposes of Medicaid reimbursement, a specialty hospital meets the definition of "special hospital" as set forth in 22-B DCMR § 2099. Specialty hospitals classified as psychiatric hospitals shall be eligible for reimbursement for services that meet the definition at 42 C.F.R. § 440.160 and are provided to beneficiaries ages 21 and under. Specialty hospitals classified as rehabilitation hospitals or Long term care hospitals (LTCHs) shall be eligible for reimbursement for services that meet the definition at 42 C.F.R. § 440.10.
- 4814.4 For discharges occurring on or after October 1, 2014, the following types of specialty hospitals in the District shall be reimbursed on a PD basis as described at Section 4815:
- (a) Psychiatric hospitals;
  - (b) Pediatric hospitals not eligible for APR-DRG payment under Sections 4800-4813; and
  - (c) Rehabilitation hospitals.
- 4814.5 For discharges occurring on or after October 1, 2014, Long-term Care specialty hospitals (LTCHs) in the District shall be reimbursed on a PS basis as described at Section 4816.
- 4814.6 Out-of-District hospitals that deliver services meeting the definitions at 42 C.F.R. §§ 440.10 and 440.160 shall be reimbursed in accordance with the requirements set forth in Sections 4813, 4814, and 4815.
- 4814.7 A hospital entering the District of Columbia market after October 1, 2014 shall demonstrate substantial compliance with all applicable laws and policies,

including licensure, prior to contacting DHCF to initiate the rate setting process, including classification as either a per diem or per stay hospital.

- 4814.8 Each hospital classified within the specialty category shall have a hospital-specific base PD calculated in accordance with Section 4815 or base PS rate calculated in accordance with Section 4816. For purposes of this section, the base year period shall be Fiscal Year (FY) 2013, or October 1, 2012 through September 30, 2013.
- 4814.9 Cost classifications and allocation methods shall be applied in accordance with the CMS Guidelines for Form CMS 2552-10 and the Medicare Provider Reimbursement Manual 15, or subsequent, superseding issuances from CMS.
- 4814.10 The hospital specific cost-to-charge ratio (CCR) for specialty hospitals located in the District shall be calculated annually in accordance with 42 C.F.R. § 413.53 and 42 C.F.R. §§ 412.1 through 412.125, as reported on cost reporting Form HFCA 2552-10, Worksheet C Part I, or its successor. For purposes of specialty hospital reimbursement, organ acquisition costs shall not be included in the CCR calculation.
- 4814.11 Effective FY 2016, beginning on October 1, 2015, and annually thereafter, except during a rebasing year, DHCF shall apply an inflation adjustment to the then current base per diem or per stay rate associated with each specialty hospital. The inflation adjustment factor shall be calculated by multiplying the current base rate with the Medicare inflation factor to equal the adjusted base rate. DHCF shall base the inflation adjustment factor on the appropriate, hospital type specific inflation factor proposed under the Medicare program, set forth in the Hospital Inpatient Prospective Payment Systems (PPS) for general hospitals and the LTCH PPS for the same federal FY in which the rates will be effective.
- 4814.12 Effective in FY 2019, beginning on October 1, 2018, and every four (4) years thereafter (*i.e.*, quadrennially), the base rate for each specialty hospital shall be rebased as follows:
- (a) For rebasing occurring quadrennially on October 1, the updated base rate shall rely on the data set forth in the cost report for the preceding fiscal year, case mix, claims, and discharge data; and
  - (b) For rebasing of any hospital that enters the District of Columbia market during a non-rebasing year the rebasing shall be paid an interim rate equal to the base rate associated with a comparable specialty hospital until the next rebasing period, provided at least twelve (12) months of data are available prior to rebasing.

4814.13 Out-of-District specialty hospitals, not located in Maryland, shall be reimbursed for inpatient discharges in the same manner as general hospitals, pursuant to Sections 4800-4813.

4814.14 In the event that an out-of-District hospital offers inpatient specialty services that are distinct from services offered by other hospitals, DHCF may consider alternative reimbursement for those specialty inpatient services, provided the needs of Medicaid beneficiaries cannot be met by an in-District hospital.

4814.15 Maryland hospitals shall be reimbursed for specialty inpatient hospital services in accordance with Subsection 4800.12.

4814.16 All specialty hospital inpatient stays and non-emergency transfers shall be prior authorized pursuant to Subsection 4800.5.

4814.17 A specialty hospital located in an EDZ shall receive an increased reimbursement rate pursuant to Subsection 4810.1.

4814.18 Reimbursement of same-day discharges shall occur in accordance with Subsections 4812.1 through 4812.2.

**4815 SPECIALTY INPATIENT SERVICES: PER DIEM REIMBURSEMENT (PD-APR-DRG)**

4815.1 Reimbursement to the specialty hospitals reimbursed on a PD basis shall be calculated as set forth in this section.

4815.2 Payment based on the PD-APR-DRG method shall be determined as follows:

$$\begin{aligned} & \text{APR-DRG RELATIVE WEIGHT FOR EACH CLAIM} \\ & \quad \times \text{ FINAL BASE RATE} \\ & \quad \quad \quad \times \end{aligned}$$

NUMBER OF APPROVED DAYS

+

ADJUSTMENTS BASED ON TRANSFER RULE

4815.3 DHCF shall apply national hospital-specific relative value (HSRV) service weights, supplied by 3M™, for each APR-DRG. The case mix adjustment factor may be adjusted to account for any unexpected change in case mix related to improved coding practices.

4815.4 The hospital-specific PD base rate shall be based on costs from each specialty hospital's FY 2013 cost report standardized for variations in case mix, claims, and discharge data. The final PD base rate shall be determined by dividing the

Medicaid inpatient operating costs by the Number of Medicaid Discharges in FY 2013.

4815.5 For each PD-APR-DRG specialty hospital claim that involves a transfer to another hospital or health care facility, DHCF shall pay the specialty hospital for the last day of the beneficiary’s stay.

4815.6 For discharges occurring on or after October 1, 2014, psychiatric and pediatric hospitals not covered under Sections 4800-4813 shall be paid transition rates. Following submission of the cost report, in accordance with Section 4822, DHCF shall determine allowable costs, notify the hospital of any over- or under-payments made during FY 2015, and establish a final rate for FY 2016.

**4816 SPECIALTY INPATIENT SERVICES: PER STAY REIMBURSEMENT (PS-APR-DRG)**

4816.1 Reimbursement to the specialty hospitals reimbursed on a PS basis shall be calculated as set forth in this section.

4816.2 Payment based on the PS-APR-DRG method shall be determined as follows:

$$\begin{aligned}
 & \text{APR-DRG RELATIVE WEIGHT FOR EACH CLAIM} \\
 & \quad \times \\
 & \quad \text{FINAL BASE RATE} \\
 & \quad + \\
 & \quad \text{OUTLIER PAYMENT}
 \end{aligned}$$

4816.3 APR-DRG Relative Weight: DHCF shall apply national hospital specific relative value (HSRV) service weights, supplied by 3M™, for each APR-DRG. The case mix adjustment factor may be adjusted to account for any unexpected change in case mix related to improved coding practices.

4816.4 Final Base Rate: The PS-APR-DRG specialty hospitals shall be combined into one (1) peer group for purposes of establishing base payment rates. The final base year payment rate for each PS-APR-DRG specialty hospital shall be equal to the peer group average cost per discharge, calculated using the weighted average of the hospital specific cost per discharge (CPD) for each specialty hospital in the peer group.

4816.5 The hospital specific CPD shall be adjusted for outlier reserve and shall be determined using the following formula.

$$\begin{aligned}
 & \text{MEDICAID INPATIENT OPERATING COSTS} \\
 & \text{(STANDARDIZED FOR VARIATIONS IN CASE MIX)} \\
 & \quad \div
 \end{aligned}$$

NUMBER OF MEDICAID DISCHARGES IN FY 2013

4816.6 The hospital specific CPD shall be determined by dividing Medicaid inpatient operating costs by the Number of Medicaid discharges in FY 2013. The specialty hospital specific CPD, adjusted for case mix, shall be reduced by a net one percent (1%). The one percent (1%) reduction shall be based on five percent (5%) of the cost reserved for payment of claims for the highest cost stays and four percent (4%) of the cost restored to account for the reduction in payment for low cost claims.

4816.7 Medicaid inpatient operating costs shall be calculated by applying the specialty hospital-specific operating CCR, pursuant to Subsection 4814.10, to the allowed charges from the base year claims data.

**4817 SPECIALTY INPATIENT SERVICES: CALCULATION OF OUTLIER PAYMENTS FOR PS**

4817.1 DHCF shall provide an additional payment for high and low cost outliers.

4817.2 For discharges on or after October 1, 2014, DHCF shall provide an additional payment for specialty inpatient stays when the cost of providing care results in a loss to the hospital that exceeds the high-cost outlier threshold (*i.e.*, high-cost outlier).

4817.3 The Marginal Cost Factor shall be used when calculating the high-cost outlier payment and may be adjusted to limit high-cost payments to no more than five percent (5%) of the overall payments.

4817.4 The loss to the hospital shall be calculated pursuant to the following formula:

$$\begin{aligned} & \text{LOSS} \\ & = \\ & \text{COST (ALLOWED CHARGES X COST TO CHARGE RATIO (CCR))} \\ & - \\ & \text{THE DRG BASE PAYMENT} \end{aligned}$$

4817.5 The outlier payment is calculated as follows if the loss exceeds the outlier threshold:

$$\begin{aligned} & \text{OUTLIER PAYMENT} \\ & = \\ & (\text{LOSS} - \text{OUTLIER THRESHOLD}) \\ & \times \\ & \text{THE MARGINAL COST FACTOR} \end{aligned}$$

4817.6 The PS-APR-DRG payment for the stay shall be the sum of the DRG base payment and the outlier payment, adjusted for transfer pricing, if applicable.



- 4817.7 The CCR used to calculate the cost of a claim shall be hospital-specific as described at Subsection 4814.10.
- 4817.8 The high-cost outlier threshold shall be reviewed annually and updated when necessary based upon a review of claims history from the District’s previous fiscal year.
- 4817.9 For discharges occurring on or after October 1, 2014, and annually thereafter, DHCF shall adjust payments for extremely low-cost specialty inpatient cases.
- 4817.10 Low-cost outliers shall be those cases where the gain on the claim (claim costs minus DRG base payment) exceeds the low-cost outlier threshold. Low-cost outliers shall be determined by using the formula identified at Subsection 4817.4. Each claim with a gain that exceeds the low-cost outlier threshold shall be paid at the lesser of the PS-APR-DRG payment amount or a prorated payment.
- 4817.11 DHCF shall set the low-cost outlier threshold at a level that results in four percent (4%) or less of PS-APR-DRG payments being associated with low-cost outlier cases.
- 4817.12 The low-cost outlier calculation shall use the national average lengths of stay (ALOS) available with the APR-DRG grouper as follows:

$$\begin{aligned}
 & \text{LOW-COST OUTLIER PAYMENT} \\
 & = \\
 & (\text{DRG BASE PAYMENT} / \text{NATIONAL ALOS}) \\
 & \times \\
 & (\text{LOS FOR ELIGIBLE DAYS OF THE STAY} + 1)
 \end{aligned}$$

- 4817.13 If the low-cost outlier payment results in an amount greater than the DRG base payment, DHCF shall disregard the low-cost outlier payment.
- 4817.14 DHCF shall review and calculate the low-cost outlier threshold annually and update where necessary based upon a review of claims history from the previous District fiscal year.
- 4817.15 For PS-APR-DRG categories where there is insufficient data available to use in calculating a reliable mean or standard deviation, the outlier threshold shall be calculated by multiplying the Weight of the APR-DRG by the Average Outlier Multiplier.
- 4817.16 For each PS-APR-DRG specialty hospital claim that involves a transfer to another hospital or health care facility, DHCF shall pay the transferring specialty hospital the lesser of the APR-DRG amount or prorated payment shall be calculated as follows:

TRANSFER PAYMENT

$$\begin{aligned} &= \\ &(\text{DRG BASE PAYMENT} / \text{NATIONAL ALOS}) \\ &\times \\ &(\text{LOS FOR ELIGIBLE DAYS OF THE STAY} + 1) \end{aligned}$$

4817.17 For specialty inpatient discharges on or after October 1, 2014, LTCHs shall be paid transition rates. Following submission of the cost report, pursuant to Section 4822, DHCF shall determine allowable costs, notify the hospital of any over- or under-payments made during FY 2015, and establish a final rate for FY 2016.

**4818 SPECIALTY INPATIENT SERVICES: POLICY ADJUSTER(S)**

4818.1 DHCF may apply an age-adjuster to claims associated with specialty hospital inpatient stays where the beneficiary’s age falls outside of the age range used to calculate the base rate as is typically associated with that hospital’s patient population.

4818.2 In order to ensure budget predictability, monitor payments, and identify deviations from budget targets, DHCF shall make a documentation and coding adjustment (DCA) that reduces the base rate to offset case mix increases due to operational improvements in documentation and coding. DHCF, or its designee, shall evaluate the DCA every six (6) months.

4818.3 Where Healthcare-Acquired Conditions (HAC) assignment impacts the relative weights of a claim, DHCF shall use the weight minus the HAC diagnosis to determine final payment to the specialty hospital.

**4819 SPECIALTY INPATIENT SERVICES: CLAIMS SUBMISSION AND UTILIZATION CONTROL**

4819.1 A specialty hospital reimbursed on a per diem basis (PD-APR-DRG) shall be required to submit a final claim using Bill Type 114. DHCF, or its designee, shall retrospectively analyze hospital claims records in order to ensure compliance with this requirement.

4819.2 Specialty hospitals shall comply with federally prescribed utilization control standards, pursuant to 42 C.F.R. part 456 as a condition of receipt of Medicaid reimbursement.

**4820 [RESERVED]**

**4821 [RESERVED]**

**4822 COST REPORT, AUDIT, AND RECORD MAINTENANCE**

- 4822.1 All general and specialty hospitals enrolled in the District of Columbia Medicaid program shall meet the applicable cost report, audit and record maintenance requirements, as set forth in Sections 4822 and 4823, as a condition of receipt of Medicaid reimbursement.
- 4822.2 Each hospital shall notify DHCF in writing if the Center for Medicare and Medicaid Services (CMS) extends the submission date for the cost report filed with the Medicare program.
- 4822.3 For purposes of compliance with timeframes established within this section, all references to calendar days exclude any federal and District holidays that occur within that span of time.
- 4822.4 All references to timeframes for sending or receiving documents shall consider receipt to occur five (5) calendar days from the date on the letter, notice or communication.
- 4822.5 Each in-District general and specialty hospital shall be required to submit to DHCF Form CMS-2552-10, or its successor, issued by CMS, U.S. Department of Health and Human Services (HHS). A valid Form CMS 2252-10 shall include a current Office of Management and Budget (OMB) control number.
- 4822.6 A complete cost report shall consist of a valid Form CMS-2250-10 and all required supplemental documentation, including an Executive Compensation Schedule.
- 4822.7 Each in-District hospital delivering inpatient services, identified at Sections 4800 through 4813; specialty services, identified at Sections 4813 through 4819; and outpatient services, identified at 29 DCMR § 903, shall submit a complete cost report as follows:
- (a) Annually, within one hundred fifty (150) calendar days after the close of the hospital's fiscal year; or
  - (b) Within ninety (90) calendar days after the close of the hospital's fiscal year (FY) under the following circumstances:
    - (1) Upon terminating participation in the District's Medicaid program;
    - (2) Upon a change in ownership; or
    - (3) Upon a change in licensure status.
  - (c) Specialty hospitals paid transition rates, as described in Subsection 4815.6, shall submit a cost report within ninety (90) calendar days after the close of the hospital's fiscal year.

- 4822.8 Within thirty (30) calendar days of the date on which the cost report is due, the Department of Health Care Finance (DHCF) shall issue a Notice of Delinquency to a hospital that has not timely submitted its cost report or when a submitted cost report is incomplete. The submission of an incomplete cost report shall be treated as a failure to file a cost report.
- 4822.9 If a hospital has not submitted a complete cost report within thirty calendar (30) days of the date on the Notice of Delinquency, DHCF shall withhold seventy-five percent (75%) of the hospital's Medicaid reimbursement for the month in which the cost report is due and any subsequent monthly reimbursement occurring prior to the receipt of a complete cost report. DHCF shall promptly disburse withheld reimbursement upon receipt of a complete cost report.
- 4822.10 DHCF shall provide each hospital with a written summary of its submitted (*i.e.*, unaudited) annual cost report data for the hospital's FY that ends before October 1 of the previous calendar year. The data shall be used to calculate the hospital's reimbursement rates for the District's next FY beginning October 1.
- 4822.11 Each hospital shall have thirty (30) calendar days from the date of the cost report summary to review and certify the accuracy of cost report data, in writing, or to submit a written request for review and correction of the cost report data.
- 4822.12 Each hospital's cost report shall be deemed complete and validated thirty (30) calendar days after the date of the cost report summary unless the hospital requests a data review and correction or if the hospital does not provide a timely response.
- 4822.13 DHCF's review of the cost report data shall be:
- (a) Limited to the hospital's allegations that data is incomplete or incorrect;
  - (b) Supported by documentation submitted by the hospital; and
  - (c) Solely a data review.
- 4822.14 If the data review for validating the cost report data results in changes to the data used then DHCF shall use the updated data to determine base rates and add on payments for the District's next fiscal year beginning on October 1.
- 4822.15 Within thirty (30) days of receipt of the hospital's request, DHCF shall notify the hospital of the results of the data review.
- 4822.16 A hospital's request for a cost report data review by DHCF shall not be subject to appeal through the Office of Administrative Hearings (OAH).

- 4822.17 For a specialty hospital that is paid a transition rate, as described in Subsection 4815.6, DHCF shall conduct a post-audit reconciliation after completion of the first District FY during which the transition rate was used. The reconciliation process shall be intended to evaluate the impact of the transition rates compared to the hospital's costs for the base year.
- 4822.18 The process for reconciliation shall only apply to hospitals that are paid transition rates.
- 4822.19 The process for reconciliation shall be as follows:
- (a) Affected hospitals shall submit to DHCF a cost report as described in Subsection 4822.6;
  - (b) DHCF, or its designee, shall audit the cost report and determine allowable costs by using Worksheet C, or its successor, of the audited cost report (*i.e.*, determine audited CCR amount);
  - (c) DHCF, or its designee, shall evaluate claims data representing paid hospital stays during the District's corresponding fiscal year;
  - (d) Final hospital costs for the District's corresponding fiscal year shall then be determined by applying the audited CCR amount against the charges from the stays during the District's corresponding fiscal year;
  - (e) Based on final costs, a hospital's base rate for the District's fiscal year under review shall be adjusted in order to reconcile the difference between costs represented in the transition rate and actual costs calculated from the hospital's fiscal year stays and audited CCR amount;
  - (f) A new hospital base rate shall be calculated using the methodology established for each hospital, taking into account the new cost amount. The new rate shall be the base rate, adjusted annually for inflation until the next rebasing period;
  - (g) The hospital's stays during the fiscal year under review shall be reprocessed using the new rate, which may result in an overpayment to the hospital or an additional payment to the hospital; and
  - (h) All claims occurring after FY 2015, but prior to the reconciliation described in Subsections 4822.19(a)-(h), shall be subject to reprocessing. Reprocessing may result in repayment from the hospital or an additional payment to the hospital.

- 4822.20 DHCF, or its designee, acting on behalf of the District and the U.S. Department of Health and Human Services (HHS), or its designee, shall have the right to conduct audits at any time, upon reasonable notice to the hospital.
- 4822.21 Each hospital shall maintain sufficient financial records and data to properly determine allowable costs, and shall allow authorized agents of the United States Department of Health and Human Services (HHS) and the District to verify claims and reported costs.
- 4822.22 For purposes of this rule, an audit shall include a desk or field review or a field or on-site audit.
- 4822.23 Each hospital shall maintain all of its accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, which shall be considered as permanent records and be retained for a period of not less than six (6) years after the filing of a cost report.
- 4822.24 Each hospital shall also maintain all related documentation for any audit or appeal that is in progress when the required six (6) year period has tolled until the conclusion of that audit or appeal.
- 4822.25 Each hospital shall ensure that representatives of the District or federal government have access to any records pertaining to related organizations, as defined in 42 C.F.R § 413.7, including relevant financial records and statistical data to verify costs previously reported to DHCF.

#### **4823 NOTICE AND ADMINISTRATIVE REVIEW**

- 4823.1 All requests for administrative review shall be made in writing and delivered or emailed to the Department of Health care Finance, Reimbursement Analyst (Hospitals), Office of Rates, Reimbursement and Financial Analysis, 441 4<sup>th</sup> Street, NW, Suite 900 South, Washington, DC 20001, [ORRFA-AdminReview@dc.gov](mailto:ORRFA-AdminReview@dc.gov). Upon completion of review or audit of annual cost reports (including rebasing years), DHCF shall provide the hospital with written notice of any audit adjustment(s) determined to apply to the hospital's payment rates or cost to charge ratio (CCR).
- 4823.2 The notice issued from DHCF shall include the following, where applicable:
- (a) A description of the audit or rate adjustment including an explanation, by appropriate reference to law, rules, State Plan Amendment, or program manual of the reason in support of the adjustment;
  - (b) The effective date of the adjustment or change in payment rate;

- (c) A summary of all audit or payment rate adjustments made to reported costs, including an explanation, by appropriate reference to law, rules, or program manual, of the reasons in support of the adjustment; and
- (d) An explanation of the right to request Administrative Review within sixty (60) calendar days after the date of the decision.

4823.3 Each hospital seeking Administrative Review, shall at minimum, provide the following information:

- (a) The nature of the adjustment sought;
- (b) The amount of the adjustment sought and the total dollar amount involved;
- (c) The reasons or factors that the hospital believes justify an adjustment; and
- (d) The documentation needed to support the hospital's position, shall be subject to the following:
  - (1) A description of the total dollar amount involved shall be supported by generally accepted accounting principles; and
  - (2) A demonstration by the hospital that additional costs are necessary, proper and consistent with efficient and economical delivery of covered patient services.

4823.4 If changes are necessary as a result of the administrative review process, DHCF shall use the recalculated information to determine the rate for the period under review or make appropriate adjustments (for under-or overpayments) to the hospital's payments during the period under review.

4823.5 DHCF shall issue a final written notice within one hundred twenty (120) calendar days after receipt of all requested additional documentation and/or information. The final notice shall include an explanation of the right to request an Administrative Hearing through the OAH within forty-five (45) calendar days of receipt of the final notice.

4823.6 The filing of an administrative appeal with the OAH shall not stay DHCF's action to adjust a hospital's payment rate or recover any overpayments made to the hospital.

4823.7 The methodologies in Sections 4800 through 4819 for all inpatient, including specialty, hospital services shall not be subject to Administrative Review or Appeal. This limitation on review and appeal shall include reimbursement methodology components that are national standards (*e.g.*, relative weights), the District-wide Base Rate, and add-on payments.

4823.8 Hospitals shall not request Administrative Review of the reimbursement methodology for outpatient hospital services under 29 DCMR § 903, the Enhanced Ambulatory Patient Grouping (EAPG) base price, bundling techniques utilized under the EAPG methodology, or the national weights established under the EAPG reimbursement software.

#### 4899 DEFINITIONS

4899.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

**Acute care hospital:** The term “acute care hospital” shall include those hospitals providing inpatient services as defined at 42 C.F.R. § 440.10.

**APR-DRG Relative Weight:** A numerical value which reflects the relative resource requirements for the DRG to which it is assigned.

**Base year:** The standardized year on which rates for all hospitals for inpatient hospital services are calculated to derive a prospective payment system.

**Capital add-on:** An add-on payment per discharge that contributes toward hospitals’ capital costs by adding supplemental monies to inpatient claim payments.

**Diagnosis Related Group (DRG):** A patient classification system that reflects clinically cohesive groupings of inpatient hospitalizations utilizing similar hospital resources.

**Direct medical education (DME):** An add-on payment to reimburse teaching hospitals for direct costs associated with graduate medical education (GME).

**District-wide Base Rate:** A standardized base amount used to reimburse hospitals reimbursed by DRG. The base rate is the basis of payment for DRG stays.

**General Hospital:** A hospital that has the facilities and provides the services that are necessary for the general medical and surgical care of patients, including the provision of emergency care by an Emergency Department pursuant to 22-B DCMR § 2099.

**Hospital:** As defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. § 1395x(e), as revised 1988).



**High-cost outliers:** Claims in which the computed loss to the hospital exceeds the outlier threshold to qualify for an additional payment.

**Indirect medical education (IME):** A component of the DRG base rate that is associated with indirect graduate medical education (GME costs and included in the hospital-specific base rate for each in-District general hospital paid under the APR-DRG PPS.

**In-District hospitals:** Any hospital located within the District of Columbia

**Ineligible day:** Any day that a patient was not eligible for District Medicaid on the day of service.

**Low-cost outliers:** Claims in which the computed gain to the hospital exceeds the outlier threshold to qualify for an adjustment to the DRG payment.

**Marginal cost factor:** A factor used to determine the additional payment for a high-cost outlier.

**Medicaid Care Category (MCC):** A categorization accepted by DHCF to categorize DRGs into clinical care groupings. Each DRG is categorized into one MCC.

**Normal Newborn:** A liveborn neonate whose diagnosis is categorized by APR-DRG.

**Outlier threshold:** The annual minimum dollar amount that the hospital's loss or gain for a claim under APR-DRG PPS must meet in order for a high or low-cost outlier adjustment to DRG payment to be applied, *e.g.*, high cost outlier threshold (\$65,000) and low cost outlier threshold (\$30,000).

**Out-of-District hospital:** Any hospital that is not located within the District of Columbia. The term does not include hospitals located in the State of Maryland and specialty hospitals identified at 22-B DCMR § 2099.

**Pediatric (Children's) hospital:** A hospital engaged in furnishing services to inpatients who are predominantly individuals under the age of twenty-one (21).

**Rebase:** To review and/or update hospital reimbursement rates when necessary based upon a review of claims history and other relevant financial information.

**Specialty Hospital:** A hospital that meets the definition of "special hospital" as set forth in 22-B DCMR § 2099 as follows: (a) defines a program of specialized services, such as obstetrics, mental health, orthopedics, long

term acute care, rehabilitative services or pediatric services; (b) admits only patients with medical or surgical needs within the defined program; and (c) has the facilities for and provides those specialized services.

**Specialty Hospital Per-Diem Payment Method:** A payment method which reimburses specific specialty hospitals on a daily basis.

**Specialty Hospital Per-Stay Payment Method:** A payment method which reimburses specific specialty hospitals based upon the entire time a person is hospitalized.

**Transition Rate:** An interim PS-APR-DRG or PD-APR-DRG rate established to allow for changes in reimbursement for specialty hospital discharges occurring October 1, 2014-September 30, 2015.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION****NOTICE OF SECOND EMERGENCY RULEMAKING**

The District of Columbia Taxicab Commission (“Commission”), pursuant to the authority set forth in Sections 8(c) (1),(2),(3), (4) (7), (10), (11), (14), (16), (18), (19) and (20), 14, 15, and 20(j) of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986, as amended by the Vehicle-for-Hire Innovation Amendment Act of 2014 (“Vehicle-for-Hire Act”), effective March 10, 2015 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(1),(2),(3), (4) (7), (10), (11), (14), (16), (18), (19) and (20), 50-313, 50-314, and 50-329 (2012 Repl. & 2014 Supp.)), hereby gives notice of its intent to adopt amendments to Chapter 16 (Dispatch Services and District of Columbia Taxicab Industry Co-op) and Chapter 99 (Definitions) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This second emergency rulemaking amends Chapter 16 to modify the requirements for the D.C. Universal Taxicab App (“DC TaxiApp”) and the D.C. Taxicab Industry Co-op (“Co-op”). This second emergency rulemaking is necessary because there is an immediate need to preserve and promote the safety and welfare of the District’s taxicab industry by: (1) expediting formation of the Co-op to prevent further delays in the formation of the Co-op by clarifying the obligations of industry stakeholders; (2) making the Co-op available for testing and licensing of the DC TaxiApp, necessary prerequisites to the deployment of the app; (3) clarifying the process for developing and approving the Co-op’s draft bylaws; (4) clarifying and expanding the requirements for the Co-op’s bylaws, to ensure that the Co-op will be owned and operated for the mutual benefit of all of its members, and that the Co-op will not be owned or operated in manner which violates its bylaws, or District or Federal laws; (5) establishing procedures to allow app developers to conduct live field testing of apps for taxicab service in the District without registering a digital dispatch service with the Office; and (6) accomplishing other lawful and appropriate purposes justifying the immediate effectiveness of these rules in advance of final rulemaking.

The Commission previously approved an emergency and proposed rulemaking on May 29, 2015, published in the *D.C. Register* on August 28, 2015 at 62 DCR 11955, which took effect immediately, and remained in effect for one hundred and twenty (120) days after the date of adoption (expiring September 25, 2015), unless earlier superseded by an amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurred first. This second emergency rulemaking was adopted by the Commission on October 14, 2015, and took effect immediately. These emergency rules shall replace the emergency rules adopted May 29, 2015, and shall remain in effect for one hundred and twenty (120) days after the date of adoption (expiring February 11, 2016), unless earlier superseded by an amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurs first. The changes in this second emergency rulemaking from the first emergency rulemaking adopted on May 29, 2015 consist of: (1) allowing the implementation date in § 1612.1 to be set by the Office in an administrative issuance, and deleting the dates in § 1613.4 and 1613.10 for actions which have been taken as of the date of this rulemaking; (2) clarifying § 1613.2 to ensure that meaningful opportunities to participate in the management of the Co-op are giving to all persons eligible for

membership in the Co-op; (3) clarifying § 1613.8 (a) by defining “preferential treatment” by the Co-op as denying persons eligible for membership meaningful opportunities to participate in the management or ownership of the Co-op; (4) modifying § 1613.8 (j) (2) to delete persons holding DCTC transferable taxicab vehicle licenses, as there are no such licensees; and (5) adding § 1613.16 to allow the Co-op to use a name or trade name other than the “District of Columbia Taxicab Industry Co-Op” and a name or trade name for the DC TaxiApp other than the “District of Columbia Universal Taxicab App”.

**Chapter 16, DISPATCH SERVICES AND DISTRICT OF COLUMBIA TAXICAB INDUSTRY CO-OP, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:**

**Sections 1612 and 1613 are amended to read as follow:**

**1612 DISTRICT OF COLUMBIA UNIVERSAL TAXICAB APP**

- 1612.1 Not later than September 1, 2015 or such later date as identified in an administrative issuance (“implementation date”), each DCTC taxicab operator shall provide service only when signed in to the District of Columbia Universal Taxicab App (“DC TaxiApp”). A violation of this subsection shall subject an operator to a civil fine of twenty five dollars (\$25).
- 1612.2 Each taxicab owner shall ensure that all of its vehicles are equipped, if necessary, to allow its associated taxicab operators to comply with the provisions of § 1612.1. A violation of this subsection shall subject the owner to a civil fine of fifty dollars (\$50) per vehicle.
- 1612.3 For purposes of this section and § 1613, the term “app” and “application” shall mean a piece of software designed to fulfill a particular purpose, which is downloadable by a user to a mobile device, such as a tablet or smartphone. Unless otherwise stated, an app’s purpose is the digital dispatch, or the digital dispatch and digital payment, of trips by vehicles-for-hire.
- 1612.4 Nothing in this title shall be construed to prevent any person from using an app provided by a registered digital dispatch service other than the Co-op.
- 1612.5 The Commission shall enact no rule or regulation respecting the rates and charges, if any, for trips booked through the DC TaxiApp. Such rates and charges shall be established only by the Co-op, as provided in § 1613.
- 1612.6 Any person developing an app (“app developer”) for taxicab service may engage in live field testing in the District provided the app developer meets the following requirements.
- (a) Prior to commencing live field testing in the District:

- (1) The app developer shall submit an application using a form made available by the Office, executed under oath, consisting of the following information and documentation:
    - (A) The app developer is licensed to do business in the District;
    - (B) The app developer maintains a registered agent in the District;
    - (C) The rates and charges to be used during the testing;
    - (D) The app developer is, or prior to commencing testing will be, in compliance with the provisions of paragraph (b) of this subsection;
    - (E) An initial inventory of all owners, operators, and vehicles that would participate in the testing;
    - (F) Such other information and documentation which the Office determines to be necessary and appropriate;
    - (G) A bond of fifty thousand dollars (\$50,000) effective during the period of testing and twelve (12) months thereafter, to cover claims by the Office for documented violations of this section; and
    - (H) Be accompanied by an application fee of two thousand five hundred dollars (\$2,500).
  - (2) The Office shall review the application within ten (10) days, and issue a decision in writing. If the decision grants the application, it may include terms and conditions for the live field testing relating to safety, consumer protection, the passenger surcharge, or any other provision of this title or other applicable law. The testing period shall not exceed one hundred twenty (120) days but may be extended by the Office pursuant to the same requirements for a new application under this subsection. The app developer shall not conduct live field testing if the Office does not grant the application.
- (b) Following the Office's approval, the app developer shall:
- (1) Use only:
    - (A) The DCTC-licensed vehicles listed on the inventory required by § 1612.6 (b) (7);

- (B) The DCTC-licensed taxicab owners and operators listed on the inventory required by § 1612.6 (b) (7), who volunteer to participate; and
  - (C) Passengers who volunteer to participate in the testing, who are informed of the rates and charges used by the app, and are provided with an estimated fare;
- (2) Not interfere with the collection or payment to the District of the passenger surcharge;
  - (3) Comply with §§ 1604.3, 1604.5, 1604.6, 1604.8, 1604.11, 1604.12, 1604.14, and 1605.9 (as promulgated on an emergency basis in the Notice of Emergency and Proposed Rulemaking approved on March 11, 2015, or in the corresponding provisions of any final rulemaking), to the same extent as if the app developer were a digital dispatch service;
  - (4) Provide passengers with contact information for the Office and for the app developer;
  - (5) Promptly inform the Office of a security breach requiring a report under the Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237, D.C. Official Code §§ 28-3851, *et seq.*), or other applicable law;
  - (6) Be subject to the provisions of Chapter 7, and shall cooperate with the Office to promptly resolve an issue relating to the testing, such as interference with a person's ability to comply with a provision of this title or other applicable law, or a passenger's complaint about the app;
  - (7) Maintain with the Office a current and accurate inventory of all owners, operators, and vehicles participating in the testing;
  - (8) Maintain its business records for two (2) years following the conclusion of the testing, which shall be subject to inspection by the Office;
  - (9) Comply with all applicable provisions of this title for enforcement and compliance to the same extent as if the app developer were a taxicab company or association;

- (10) File a public complaint with the Office against any person who engages in conduct which constitutes a clear threat to public safety or consumer protection, or which constitutes grounds for immediate suspension of a vehicle operator’s license under § 706; and
- (11) Promptly reimburse any participant in the testing for a documented loss resulting from the testing, such as a miscalculation of a fare.

1612.7 The Office, by written notice upon the app developer, may suspend or revoke its approval for live field testing where the testing:

- (a) Is conducted in violation of § 1612.6 (including violation of any terms or conditions stated in the Office’s approval under § 1612.6 (a) (2));
- (b) Threatens safety, consumer protection, or the payment to the District of the passenger surcharge; or
- (c) Interferes with the Office’s ability to enforce any provision of this title or other applicable law.

1612.8 An app which is the subject of approved live field testing shall not be launched in the District unless and until it is provided by a digital dispatch service registered as required by this chapter and other applicable law.

1612.9 No person shall conduct or participate in live field testing of an app for the dispatch of taxicabs in the District except as provided in this section. An entity which conducts or participates in live field testing in violation of this section shall be subject to a civil fine not to exceed one thousand dollars (\$1,000) per day based on the circumstances. An operator who knowingly participates in live field testing that violates this section shall be subject to a civil fine of twenty five dollars (\$25) for each trip booked through the app.

1612.10 Each taxicab company required by D.C. Official Code § 50-329.02 to provide dispatch services shall participate in live field testing of the DC TaxiApp if required to do so in an administrative issuance.

**1613 DISTRICT OF COLUMBIA TAXICAB INDUSTRY CO-OP**

1613.1 The Co-op shall be a cooperative association or other business entity authorized by the Business Corporation Act of 2011, D.C. Official Code § 29-301.01, *et seq.*, which allows the Co-op and all of its members to meet all the requirements of this section, § 1612, and other applicable laws, provided however, that if the Co-op is not a cooperative association, it shall be organized to comply with all applicable provisions of this section, to the maximum extent feasible, as determined by the Office in connection with its review of the draft bylaws pursuant to § 1613.12.

- 1613.2 The Co-op shall be owned and operated for the mutual benefit of all of its members, for the purpose of promoting the use of available DCTC-licensed taxicabs, including wheelchair accessible vehicles, by the residents of and visitors to the District, and such other purposes as stated in this section and § 1612. Consistent with the foregoing, no category of persons identified in § 1613.8 (j) shall be excluded from meaningful opportunities to participate in the management of the Co-op through a representative on the board of directors or other common means, and no person shall be excluded from meaningful opportunities to participate in the ownership of the Co-op through stock ownership or other common means, provided however, that a member may be excluded for a bona fide business purpose such as the lack of a capital contribution or material non-compliance with applicable provisions of this title or other applicable law.
- 1613.3 Unless otherwise provided in a license agreement with the Office, the Co-op shall provide all necessary management, service, and support for the DC TaxiApp in the manner prescribed by this section and § 1612, and by the license agreement.
- 1613.4 Any two or more persons who are permitted or required by § 1613.8 (j) to be members of the Co-op shall incorporate the Co-op.
- 1613.5 Following incorporation of the Co-op, the incorporators shall:
- (a) Promptly obtain a physical place of business for the Co-op within the District;
  - (b) Cooperate with the Office to conduct any necessary testing of the DC TaxiApp;
  - (c) Take or facilitate all actions required by this chapter and other applicable law to ensure that the Co-op is ready and able to begin full operations not later than the implementation date; and
  - (d) Schedule a meeting to be held within thirty (30) to sixty (60) days after the issuance of public notice to all prospective members of the Co-op, to:
    - (1) Elect a board of directors,
    - (2) Adopt the Co-op's bylaws following their approval by the Office; and
    - (3) Engage in such other business as necessary to begin full operation of the Co-op and to enable the use of the DC TaxiApp by all taxicab operators not later than the implementation date.



- 1613.6 The Co-op shall be governed by its bylaws, as approved by the Office pursuant to § 1613.12.
- 1613.7 Draft bylaws shall be prepared by a bylaw drafting advisory group whose members shall be:
- (a) Representatives of each taxicab company with current operating authority required by D.C. Official Code § 50-329.02 to provide dispatch services as of May 29, 2015; and
  - (b) An equal number of individuals selected at random by the Office from among those who volunteer to participate, each of whom shall either:
    - (1) Be permitted but not required to be members of the Co-op pursuant to § 1613.8 (j) (2); or
    - (2) Represent a group of individuals each of whom is permitted but not required to be members of the Co-op pursuant to § 1613.8 (j) (2).
- 1613.8 The draft bylaws filed with the Office pursuant to § 1613.6 shall include terms and conditions providing that:
- (a) The Co-op shall not give preferential treatment to any person or group of persons in the taxicab industry through its operations, through the marketing, availability, or functionality of the DC TaxiApp, through the rates and charges which the Co-op sets for trips booked through the DC TaxiApp, or through the revenue generated by the DC TaxiApp. Preferential treatment shall include but not be limited to denying a person listed in § 1613.8 (j) (2) meaningful opportunities to participate in the management or ownership of the Co-op, as otherwise required by this section or § 1612.
  - (b) The Co-op shall establish and maintain a digital dispatch service, registered and operated in compliance with this chapter, which at all times, maintains integration between the DC TaxiApp and each PSP in a manner consistent with § 408.16, to ensure that:
    - (1) Each passenger who books a ride through the DC TaxiApp may choose to make either an in-vehicle payment (cash or payment card) or a digital payment;
    - (2) The passenger surcharge is collected from the passenger and paid to the District for each trip; and

- (3) The PSP is able to comply with all obligations under Chapters 4 and 6.
- (c) The provisions of § 1613.8 (b) shall not apply if the DC TaxiApp does not provide the functionality needed for integration;
- (d) The Co-op shall establish competitive, market-based rates and charges for trips booked through the DC TaxiApp;
- (e) The Co-op shall execute any necessary license agreement with the District for the use of the DC TaxiApp, shall comply with all terms and conditions thereof, and shall not use, acquire, license, test, market, develop, or otherwise be associated with any other app without the written approval of the Office;
- (f) The Co-op shall develop, distribute, and require the acceptance of terms of service for the use of the DC TaxiApp by taxicab operators and passengers;
- (g) The Co-op shall ensure that operators receive the revenue they generate through the use of the DC TaxiApp within twenty four (24) hours or one (1) business day;
- (h) The Co-op shall promote the availability of wheelchair accessible taxicab service, and may use incentives to owners and operators to support such availability;
- (i) The Co-op shall carry such commercial insurance as necessary in connection with the use of the DC TaxiApp;
- (j) The Co-op's membership shall be limited to:
  - (1) Persons required to be members: each taxicab company with current operating authority that is required by D.C. Official Code § 50-329.02 to provide dispatch services and who pays the required capital contribution; and
  - (2) Persons allowed but not required to be members:
    - (A) Each individual who holds a current DCTC taxicab operator's license (Face card);
    - (B) Each individual who holds a current DCTC taxicab vehicle license other than a DCTC transferable taxicab vehicle license;

- (C) Each taxicab company with current operating authority, other than a taxicab company required to be a member under § 1613.8 (j) (1); and
- (D) Each taxicab association with current operating authority;
- (k) Each Co-op member shall make a capital contribution as determined by the board of directors, which shall be consistent with the provisions of this section and other applicable laws;
- (l) The Co-op may allow a fair return to members who choose to make additional capital contributions to fund the establishment and/or operations of the Co-op, and to investors;
- (m) The Co-op shall maintain a fair, reasonable, and non-discriminatory system which allows the passenger to rate the operator based on the quality of service received;
- (n) The Co-op shall establish standards for its operations, including standards for the safe and prompt provision of service through the DC TaxiApp;
- (o) The Co-op may suspend an operator from using the DC TaxiApp for not more than two (2) hours total during any seven (7) calendar day period based on material violations of the standards established by the Co-op, provided the Co-op promptly notifies the operator of the basis of the suspension and allows the operator to respond in writing;
- (p) The Co-op may suspend an operator from using the DC TaxiApp for more than two (2) hours total during any seven (7) calendar day period based on violations of the standards established by the Co-op, provided the Co-op maintains a system of discipline which gives operators the following minimum procedural protections:
  - (1) Written notice of a suspension accompanied by relevant documentation, which shall be provided in advance of the suspension except in the event of a clear threat to safety or consumer protection;
  - (2) Representation by an attorney or other individual, at the operator's expense;
  - (3) An opportunity to respond to the notice;
  - (4) One (1) level of review of the Co-op's decision;
  - (5) No suspension shall exceed thirty (30) calendar days; and

- (6) An operator's suspension shall not be considered for purposes of determining the appropriate length of a subsequent suspension more than three (3) years thereafter.
- (q) The Co-op may file a public complaint with the Office against any person in connection with a violation of this section or § 1612. The Co-op shall file a public complaint with the Office against any person who engages in conduct which constitutes a clear threat to public safety or consumer protection, or which constitutes grounds for immediate suspension of a vehicle operator's license under § 706;
- (r) Each member of the board of directors shall possess the qualifications required for an industry member of the Commission under D.C. Official Code § 50-305;
- (s) The Co-op shall annually publish a report which containing:
  - (1) A summary of the Co-op's major activities for the prior twelve (12) months;
  - (2) The names of the Co-op's members and their taxicab company or taxicab association affiliations, if any;
  - (3) The names of the Co-op's principal officers and members of the board of directors;
  - (4) The name and address of each entity in which the Co-op has a legal or equitable interest, or with which it conducts a business activity in a partnership or joint venture;
  - (5) The name and address of each entity with which the Co-op transacts business in excess of ten thousand dollars (\$10,000) per calendar year; and
  - (6) Such other information as the Co-op deems appropriate;
- (t) No person or associated group of persons shall:
  - (1) Control more than forty percent (40%) of the membership of the board of directors;
  - (2) Hold legal or equitable title to more than forty percent (40%) of the par value of the Co-op's total debt obligations, if any; or

- (3) Hold legal or equitable title to more than forty percent (40%) of the par value of any single class of the Co-op's stock, if any, or the par value of all combined classes of the Co-op's stock, if any;
- (u) Each of the following individuals ("filers") shall be required to file a confidential disclosure statement with the Co-op annually, and at the time of the filer's association with the Co-op or at the time of the filer's association with an entity in which the Co-op has a legal or equitable interest:
- (1) Each member of the board of directors and each principal officer of the Co-op;
  - (2) Each member of the board of directors and each principal officer of an entity in which the Co-op has a substantial legal or equitable interest; and
  - (3) Each person with which the Co-op transacts or proposes to transact business in excess of twenty five thousand dollars (\$25,000) in any calendar year;
- (v) Each form which the Co-op intends to be use as a confidential disclosure statement form shall be reviewed by the Office prior to its use. The form shall be substantially similar in substance to the confidential disclosure statement required by the D.C. Board of Ethics and Government Accountability for employees, excluding matters not relevant to the Co-op. The form shall require the filer to disclose under oath each the following matters, and to provide a written explanation and documentation where necessary, as the Co-op deems appropriate:
- (1) The filer, and the filer's spouse, domestic partner, and dependent children, have filed and paid all income and property taxes owed to the Federal government and each jurisdiction where the filer is required to pay such taxes;
  - (2) The filer, and the filer's spouse, domestic partner, and dependent children, have not received anything of value, such as a credit, offset, gift, favor, service, loan, gratuity, discount, meals, hospitality, contribution, employment, or a promise of the receipt of anything of value in the future, exceeding a total of one hundred dollars (\$100) from all sources, based on any understanding that the filer's official actions or judgment or vote while associated with the Co-op would be influenced;
  - (3) The filer, and the filer's spouse or domestic partner, have not been arrested for, charged with, or convicted of any of the following

- criminal offenses: bribery, tax evasion, insurance fraud, a violation of or a predicate offense under a Racketeer Influenced and Corrupt Organizations Act (Federal or state), any criminal offense which involves dishonesty or violence, or any criminal offense punishable by incarceration of one (1) year or more or a fine of ten thousand dollar (\$10,000) or more;
- (4) The filer, and the filer's spouse or domestic partner, have not been sued for, had a judgment entered against him or her for, entered into a settlement admitting liability for, or paid a civil fine for any of the following civil violations and causes of action: tax evasion, insurance fraud, a violation of or a predicate offense under a Racketeer Influenced and Corrupt Organizations Act (Federal or state), any civil violation or cause of action which involves dishonesty or violence, or any civil violation which is punishable by a civil fine payable to a government agency of ten thousand dollars (\$10,000) or more;
- (5) The filer, the filer's spouse or domestic partner, and dependent children, and the persons with whom the filer has a legal relationship such employment, independent contractor, and partnership, are not involved in a scheme or conspiracy to violate the Co-op's bylaws, or to violate any Federal, District or state law concerning or related to the Co-op or its activities, any entity in which the Co-op has a legal or equitable interest, or any member of the Co-op's board of directors or its principal officers; and
- (6) The filer, or the filer's spouse or domestic partner, has not had a business or professional license suspended or revoked by a government agency.
- (w) Matters subject to disclosure under § 1613.8 (v) (1)-(6), whether or not disclosed in a confidential disclosure statement, shall be treated as the Co-op deems appropriate, provided however that no individual shall serve as a member of the board of directors or a principal officer of the Co-op, own shares of the Co-op's stock, own debt issued by the Co-op, if any, or directly or indirectly control any interest in the Co-op other than as a member pursuant to § 1613.8 (j) if:
- (1) The individual willfully provides false, misleading, or materially incomplete information in a confidential disclosure statement or to the Office, or in connection with a civil or criminal investigation concerning or related to the Co-op or its activities by any government agency;

- (2) The individual, the individual's spouse or domestic partner, or the individual's children, have received items of value exceeding a total of one hundred dollars (\$100) from all sources as enumerated in § 1613.8 (v) (2);
  - (3) The individual, or the individual's spouse or domestic partner, has been convicted of a crime enumerated in § 1613.8 (v) (3);
  - (4) The individual, or the individual's spouse or domestic partner, has had a judgment entered against him or her for, has entered into a settlement admitting liability for, or has paid a civil fine for a civil violation or cause of action enumerated in § 1613.8 (v) (4);
  - (5) The individual, the individual's spouse or domestic partner, the filer's dependent children, or a person with whom the filer has a legal relationship, are involved in a scheme or conspiracy as enumerated in § 1613.8 (v) (5); or
  - (6) The individual, or the individual's spouse or domestic partner, has had a business or professional license suspended or revoked by a government agency within the prior five (5) years.
- (x) The Co-op shall not associate with, transact business with, or form a legal or equitable relationship with:
- (1) An individual who is restricted by § 1613.8 (w); or
  - (2) An entity, where an individual who is restricted by § 1613.8 (w) serves as an owner, manager, partner, member of the board of directors, principal officer, stockholder, or lender.
- (y) The Co-op shall maintain its business records for five (5) years, provided however that each executed confidential disclosure statement shall be maintained throughout its filer's association with the Co-op and for ten (10) years thereafter;
- (z) The Co-op shall allow the Office to inspect and copy its business records, but the Office shall not copy an executed confidential disclosure statement. This provision shall not apply to the Attorney General of the District of Columbia;
- (aa) A designee of the Office shall be permitted to attend, and be provided with the minutes of, each Co-op event, including a meeting of the board of directors, except at such times when an event is closed in order to consider a confidential matter such as a litigation or personnel issue. At such events, the designee may observe, ask questions, and provide information,

and shall receive copies of the documents made available to other attendees, but shall have no vote on any Co-op business;

- (bb) The Co-op shall enact no change to its bylaws which conflicts with a material provision of this title or other applicable law, without a prior amendment to this chapter authorizing such change, and shall promptly correct any errors or omissions in its bylaws;
- (cc) The Co-op shall comply with all applicable District and federal laws and regulations, and shall engage only in fair and lawful competition;
- (dd) The District may enforce the requirements of this section and § 1612 through an appropriate action at law or in equity, including an action by the Attorney General of the District of Columbia in *parens patriae*;

1613.9 The draft bylaws filed with the Office pursuant to § 1613.7 may:

- (a) Allow the Co-op to apply for and accept any necessary grants made available by the Office, and shall comply with all terms and conditions thereof; and
- (b) Allow the Co-op to engage in any activity which is authorized by law, not inconsistent with the required terms and conditions for its bylaws set forth in § 1613.8, and in the interest of its members, including:
  - (1) Offering insurance, such as life, health, dental, disability, and vehicle;
  - (2) Providing retirement and savings plans, and other benefits;
  - (3) Offering discounts on goods and services of interest to members; and
  - (4) Operating a subsidiary which engages only in activities related to the authorized activities of the Co-op; and
- (c) Contain such additional terms and conditions as are necessary and appropriate to establish, support, and maintain the Co-op, which are not inconsistent with the required terms and conditions for its bylaws set forth in this subsection or with other applicable laws.

1613.10 The bylaw drafting advisory group shall file the draft bylaws with the Office for its approval.

1613.11 The draft bylaws shall include the names of the bylaw drafting advisory group members who agree to the draft, and alternative text and comments, if any, from



any member of the bylaw drafting advisory group who does not concur with the text agreed to by the other members.

- 1613.12 The Office shall review the draft bylaws to determine whether they comply with this section and § 1612, and shall issue a written decision within ten (10) days of receiving draft bylaws which appear to comply with this section and § 1612. If the Office does not approve the draft bylaws, it shall state the basis of its decision in writing. Thereafter, the bylaw drafting advisory group shall revise the draft bylaws to address the issues identified in the Office’s decision and shall re-file the draft bylaws within ten (10) days.
- 1613.13 During the first twenty-four (24) months after the effective date of this section, the Office may make one or more grants to the Co-op in an amount not to exceed twenty five thousand dollars (\$25,000), to defray the documented expenses to establish or operate the Co-op pursuant to the provisions of this section, § 1612, and other applicable laws, upon such terms and conditions as may be contained in the grant. Each grant shall be made pursuant to all applicable laws, regulations, and guidelines, and any administrative issuance of the Office.
- 1613.14 The Office shall develop and test the DC TaxiApp, which is and shall remain the intellectual property of the District Government. The Office shall grant to the Co-op an exclusive right to use the DC TaxiApp for taxicab service in the District. The District Government shall retain all other rights to the DC TaxiApp, including the right to license the DC TaxiApp for any other purpose, including for use outside the District.
- 1613.15 The Co-op’s decision to suspend an operator’s use of the DC TaxiApp shall not be admissible to establish that a provision of this title or other applicable law was violated by the operator.
- 1613.16 The Co-op may use a name or trade name other than the “District of Columbia Taxicab Industry Co-Op”, provided the name or trade name is not misleading or confusing to the public. The Co-op may use a name or trade name for the DC TaxiApp other than the “District of Columbia Universal Taxicab App,” provided the name or trade name is not misleading or confusing to the public.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Section 1932, entitled “Speech, Hearing, and Language Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of speech, hearing, and language services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2014, effective February 29, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date of the emergency rules. CMS approved the amendment to the Id/DD Waiver effective September 24, 2015.

Speech, hearing, and language services are aimed at helping persons with intellectual and developmental disabilities enhance their communication and hearing skills. The Notice of Final Rulemaking was published in the *D.C. Register* on January 10, 2014, at 61 DCR 000230. These rules amend the previously published rules by: (1) clarifying that speech, hearing and language services may only be provided to waiver recipients between the ages of eighteen (18) and twenty-one (21) if Early Periodic Screening and Diagnostic Treatment (EPSDT) has been fully utilized and the person has a need for further services; (2) describing the requirements for measureable and functional outcomes; (3) clarifying the role of the provider at the person’s Individual Support Plan (ISP) and other support team meetings; (4) clarifying that documentation for adaptive equipment must be completed within the timeframes required by the person’s insurance for this to be a reimbursable activity; (5) adding a timeframe for the initial assessment development of a therapy plan; and (6) modifying rates to reflect increased costs of providing service.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of speech, hearing and language services. The rates must be increased to attract new providers and meet the demand for services. By taking emergency

action, this rule will provide the District with the tools needed to increase oversight and to closely monitor the quality and appropriateness of services being delivered to beneficiaries.

The emergency rulemaking was adopted on November 16, 2015, but became effective on that date. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days or until March 15, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking. The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENT DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsections 1932.3, 1932.5, 1932.17 and 1932.18 of Section 1932, SPEECH, HEARING, AND LANGUAGE SERVICES, are amended to read as follows:**

- 1932.3 To qualify for Medicaid reimbursement, speech, hearing, and language services shall be:
- (a) Ordered by a physician, if the person has a medically-related condition such as a history of aspiration, swallowing problems, tube feeding, or a tracheotomy;
  - (b) Recommended by the Support Team, if the person has a non-medical condition such as a receptive or expressive speech delay or disorder;
  - (c) Delivered to a person that is over the age of twenty-one (21), except that services may also be provided to a person enrolled in the Waiver who is between the ages of eighteen (18) and twenty-one (21) years old, in accordance with § 1932.15;
  - (d) Reasonable and necessary to treat the person's medical or non-medical communicative disorder; and
  - (e) Included in the person's Individual Support Plan (ISP) and Plan of Care.
- 1932.5 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing and language services shall comply with the following service delivery requirements:
- (a) Conduct a comprehensive assessment, within the first four (4) hours of service delivery, which shall include the following:

- (1) A background review and current functional review of communication capabilities in different environments;
  - (2) An environmental review of communication in places of employment, residence, and other sites as necessary;
  - (3) The potential for use of augmentative and alternative speech devices, methods, or strategies;
  - (4) The potential for sign language or other expressive communication methods; and
  - (5) A needs assessment for the use of adaptive eating equipment.
- (b) Develop and implement a speech, hearing, and language treatment plan, within the first four (4) hours of service delivery, that describes treatment strategies, including direct therapy, training of caregivers, monitoring requirements and instructions, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP;
  - (c) Assist persons with voice disorders to develop proper control of vocal and respiratory systems for correct voice production, if applicable;
  - (d) Conduct aural rehabilitation by teaching sign language and lip reading to people who have hearing loss, if applicable;
  - (e) Participate in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her;
  - (f) Record progress notes on each visit and submit quarterly reports;
  - (g) Verify that the speech, hearing, and language assessment and treatment plan, and daily notes and quarterly reports, are delivered to the person, family or other caregiver, physician, and the Department on Disability Services (DDS) Service Coordinator prior to the person's Support Team meeting;
  - (h) Assess the need for the use of adaptive equipment;
  - (i) Routinely assess (at least annually and more frequently as needed) the appropriateness and quality of adaptive equipment to ensure it addresses the person's needs;

- (j) Conduct periodic examinations to modify treatments, as appropriate, for the person receiving services and ensure that the speech pathologist's or audiologist's recommendations are incorporated into the ISP; when necessary; and
- (k) Complete documentation required to obtain or repair adaptive equipment in accordance with insurance requirements and Medicare and Medicaid guidelines, including required timelines for submission.

1932.17 The reimbursement rate for a speech, hearing and language assessment shall be one hundred dollars (\$100.00) an hour. The billable unit of service shall be fifteen (15) minutes and the reimbursement rate for each billable unit shall be twenty-five dollars (\$25.00). A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

1932.18 The reimbursement rate for speech, hearing and language services shall be one hundred dollars (\$100.00) per hour. The billable unit of service for speech, hearing and language therapy services shall be fifteen (15) minutes and the reimbursement rate for each billable unit shall be twenty-five dollars (\$25.00). A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

## DEPARTMENT OF HUMAN SERVICES

**NOTICE OF FOURTH EMERGENCY AND PROPOSED RULEMAKING**

The Director of the District of Columbia (District) Department of Human Services (Department), pursuant to the authority set forth in Sections 7(e) and 31 of the Homeless Services Reform Act of 2005 (HSRA), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-753.01(e) and 4-756.02 (2012 Repl.)), and pursuant to Mayor's Order 2006-20, dated February 13, 2006, and Mayor's Order 2007-80, dated April 2, 2007, hereby gives notice of the adoption of the following new Chapter 78 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations, entitled "Family Re-Housing and Stabilization Program", as an emergency rulemaking, to become effective immediately.

The purpose of the new chapter is to establish rules to administer the District of Columbia's Family Re-Housing and Stabilization Program (FRSP). FRSP will provide District residents who are experiencing homelessness or at imminent risk of experiencing homelessness with a range of services, tailored to the unique needs and strengths of the entire household, to assist them in achieving greater stability and economic security, including, but not limited to: individualized case management services, housing identification, connection to mainstream and community-based resources, time-limited rental subsidies, and utility assistance. Families participating in FRSP who also receive Temporary Assistance for Needy Families (TANF) assistance will be able to unify their services under their Individual Responsibility Plan and count the hours toward their work participation requirements by participating in a variety of employment-related services offered within FRSP, such as obtaining a General Education Development (GED) certificate, taking courses at the University of the District of Columbia, participating in work hours, and receiving a certification from the Department of Employment Services (DOES).

This notice of emergency and proposed rulemaking (Notice) takes into account comments and questions DHS received in response to its Notice of Third Emergency and Proposed Rulemaking published on July 10, 2015, at 62 DCR 9495. DHS considered all of the comments it received, and has included some of the suggestions it received into this Notice. Since many of the suggestions resulted in substantive changes to the rulemaking, this rulemaking is being published as proposed for additional notice and comment.

These rules were first published as emergency and proposed in the *D.C. Register* on July 27, 2012, at 59 DCR 8831 [EXPIRED]. Emergency rules were subsequently published on January 18, 2013, at 60 DCR 415 [EXPIRED]. A Notice of Second Emergency Rulemaking was published on May 31, 2013, at 60 DCR 7631 [EXPIRED]. The Department then published the Notice of Second Emergency and Proposed Rulemaking on June 27, 2014, at 61 DCR 6562 [EXPIRED]. A Notice of Third Emergency Rulemaking was published on November 14, 2014, at 61 DCR 11889 [EXPIRED]. On March 27, 2015, the Department published the Notice of Fourth Emergency Rulemaking at 62 DCR 3693 [EXPIRED]. The agency's Notice of Third Emergency and Proposed Rulemaking was then published on July 10, 2015, at 62 DCR 9495. This Notice supersedes the Notice of Third Emergency and Proposed Rulemaking.

Emergency rulemaking action, pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), is necessary so as to allow the Department to continue to operate FRSP as the Department continues to review the comments received in response to the proposed rules, and to finalize the proposed rules. Therefore, taking emergency action under these circumstances will promote the immediate preservation of the health, safety, and welfare of District residents who are experiencing homelessness by permitting the Department to continue to support their rapid return to permanent housing and working to ensure that the experience of homelessness with the District is rare, brief, and non-recurring.

These emergency rules were adopted on September 23, 2015, and went into effect at that time. The emergency rules shall expire on January 21, 2016, which is one hundred twenty (120) days after the adoption date of these emergency rules, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Further, and in accordance with Section 31 of the HSRA, these proposed rules will be submitted to the Council of the District of Columbia (Council) for a forty-five (45)-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The proposed rules shall not become effective prior to the completion of the thirty (30)-day comment period and the forty-five (45)-day Council review period.

**Add the following new Chapter 78, FAMILY RE-HOUSING AND STABILIZATION PROGRAM, to Title 29 DCMR, PUBLIC WELFARE, to read as follows:**

**CHAPTER 78            FAMILY RE-HOUSING AND STABILIZATION PROGRAM**

**7800            SCOPE**

- 7800.1            The purpose of the Family Re-Housing and Stabilization Program (“FRSP” or “Program”) is to support District residents, who are experiencing homelessness or at imminent risk of experiencing homelessness, to achieve stability in permanent housing through individualized and time-limited assistance. FRSP offers a range of supports that are responsive to participant needs, including: individualized case management services, housing identification, connection to mainstream and community-based resources, and financial assistance.
- 7800.2            The provisions of this chapter describe the application process, eligibility criteria, assistance determination, description of assistance provided, and appeal procedures for the Program.
- 7800.3            Nothing in these rules shall be interpreted to mean that FRSP assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.

7800.4 The Department of Human Services (Department) may execute contracts, grants, and other agreements as necessary to carry out the Program.

**7801 APPLICATION PROCESS**

7801.1 Each FRSP application shall be in writing on a form provided by the Department and signed by the applicant, and submitted to the Eligibility Provider. An authorized representative may apply on behalf of the applicant, if the applicant provides a written and signed statement stating why he or she cannot apply in person and the name and address of the person authorized to act on his or her behalf.

7801.2 If an applicant with a disability or the authorized representative of an applicant with a disability requests assistance to complete the FRSP application, the Provider shall assist such applicant or authorized representative with the application process to ensure that the applicant has an equal opportunity to submit an application.

7801.3 The Department shall provide FRSP application forms to the Eligibility Provider to use, and to disseminate to applicants, and the Eligibility Provider shall accept applications from each applicant who requests or is referred for FRSP assistance.

7801.4 At the time of application, the Eligibility Provider shall provide each applicant with a written FRSP notice explaining the program. Each applicant shall personally, or through an authorized representative, sign an FRSP notice acknowledgement form, acknowledging receipt of the FRSP notice. The FRSP notice shall contain a description of the Program, the Eligibility Provider and Service Provider's responsibilities, the applicant's rights and responsibilities, grievance procedure and the Program requirements, including that receipt of FRSP assistance is conditioned upon actively seeking housing and completing the steps necessary to lease and move into an FRSP-approved housing unit in a timely manner (approximately thirty (30) days from the date of the Notice of Eligibility), absent a good cause reason for delay. For purposes of this section, "good cause" shall include delays caused by actions or inactions of persons outside of the applicant's control.

7801.5 As part of the application process, each applicant, personally or through an authorized representative, shall sign an FRSP release form authorizing the Eligibility Provider to obtain or verify information necessary for processing the application.

7801.6 As part of the application process, each applicant shall provide the following information to the Eligibility Provider to determine if the applicant is eligible for the Program:



- (a) What circumstances brought about the applicant’s experience of homelessness, or imminent risk of homelessness;
- (b) Willingness to actively engage in the application process; and
- (c) Documentation of the following:
  - (1) Household composition;
  - (2) Employment status and employment history;
  - (3) Income and financial assets history;
  - (4) Household expenses;
  - (5) Rental and other relevant housing history;
  - (6) Facts and circumstances surrounding financial and other barriers to housing stability; and
  - (7) Facts and circumstances surrounding work experience, education, or training that can contribute to the household’s ability to achieve housing stability independent of the Program by the end of the FRSP period.

7801.7 The request for documentation under § 7801.6(b) may be waived if the applicant signs a declaration containing the necessary information listed in § 7801.6(b).

7801.8 If additional information is needed from the applicant to determine eligibility for the Program, the Eligibility Provider shall make the request, in writing, for additional information, which shall specify the information needed to complete the application. The written request shall also include information to assist the applicant with obtaining the required information and/or offer appropriate assistance in obtaining the required information. The application shall be considered complete when all required information is provided to the Eligibility Provider.

7801.9 The Eligibility Provider may use, among other things, documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.

7801.10 If an applicant has not obtained and provided to the Eligibility Provider the required information for eligibility determination under § 7801 within thirty (30)

days of the date of application, then the Eligibility Provider is responsible for making documented efforts to contact the applicant both by telephone and in writing upon the completion of the thirty (30) days of the date of application, to discuss if services are still needed and discuss any barriers that are delaying the requested documentation. If, at such time, contact with the applicant is made and services are still requested, the Eligibility Provider will take appropriate steps to assist the applicant in obtaining the required information. If, at such time, contact cannot be made, or the applicant no longer requests the services, an application shall be considered abandoned.

## **7802 APPLICANT UNIT**

7802.1 The applicant unit shall be composed of each individual who lives in the same household as the applicant and whose needs, assets, and income are combined to determine eligibility.

7802.2 The applicant unit shall include:

- (a) Minor and/or dependent children;
- (b) Persons related by full- or half- blood with legal responsibility for minor children in the household;
- (c) Persons related by legal adoption;
- (d) Persons related by marriage or domestic partnership, including stepchildren and unmarried parents of a common child who live together; and
- (e) Persons with a legal responsibility for an unrelated minor child or an unrelated adult with a disability.

7802.3 The applicant unit may include any person not included by § 7802.2, regardless of blood relationship, age, or marriage, whose history and statements reasonably demonstrate that the individuals intend to remain together as a family unit.

7802.4 A person temporarily away from home due to employment, school, hospitalization, or vacation, shall be considered to be living in the household. A minor child who is away at school is considered to be living in the household if he or she returns to the home on occasional weekends, holidays, school breaks, or during summer vacations.

## **7803 ELIGIBILITY CRITERIA**

- 7803.1 An applicant shall be eligible to receive FRSP assistance if the applicant unit is a family, as defined in § 7899, that:
- (a) Is currently experiencing homelessness as defined by Section 2 of the HSRA (D.C. Official Code § 4-751.01(18)), or is at imminent risk of experiencing homelessness; and
  - (b) Is a resident of the District of Columbia as defined by Section 2 of the HSRA (D.C. Official Code § 4-751.01(32)).
- 7803.2 Relevant factors for determining whether a household is appropriate for FRSP assistance include, but are not limited to:
- (a) Current income;
  - (b) Expected future income;
  - (c) Rental history;
  - (d) Employment history;
  - (e) Employment potential based on job skills, certifications, or participation in a training or employment program;
  - (f) Previous receipt of emergency rental assistance, including Emergency Rental Assistance Program or other homeless services within the last eighteen (18) months, whether applying for the same or a different financial assistance;
  - (g) Assessment on a uniform tool as selected by the Department, such as the Service Prioritization Decision Assistance Tool (SPDAT), that identifies Rapid Re-Housing as the appropriate housing assistance option based on the applicant's needs;
  - (h) Identification by the District of Columbia Housing Authority (DCHA) or other subsidized housing provider, as a household that is reasonably likely to receive DCHA or other subsidized housing within approximately twelve (12) months;
  - (i) Willingness to take steps that could reasonably lead to increased income in the household; and

- (j) Identification of and willingness to take steps that could reasonably lead to permanent housing stability in cohabitation with family, friends, or other appropriate and safe situations.

7803.3 The Eligibility Provider shall determine the eligibility in as short a time as feasible, but not later than ten (10) calendar days after receipt of a completed application by the Eligibility Provider. Delays caused by the following shall not count towards the ten (10)-day deadline:

- (a) The applicant's inability to supply information to document facts stated in the completed application needed to determine eligibility and type or amount of assistance;
- (b) The inability to contact the applicant through telephone, mail, or email;
- (c) Evidence of misrepresentation in the application;
- (d) Delay by a third party from whom the Eligibility Provider has requested information; or
- (e) Any other delay in receipt of information or documentation from the applicant that is necessary to complete the application.

7803.4 The Eligibility Provider shall create and maintain in the applicant's or participant's file detailed documentation of the Program's eligibility determination, including the assistance for which the applicant qualifies and subsequent case-management reviews.

7803.5 If an applicant is determined eligible for FRSP assistance pursuant to § 7803.1, the Eligibility Provider shall give to the applicant, personally or through an authorized representative, a written Notice of Eligibility Determination which shall state:

- (a) That the applicant was determined eligible;
- (b) The reason or reasons why the applicant was determined eligible;
- (c) That receipt of FRSP assistance is conditioned upon selecting an FRSP-approved housing unit and completing steps to lease-up and move into the unit in a timely manner, which is thirty (30) days from the date of the notice of eligibility;
- (d) The initial length of time for which the subsidy will be provided; and, if extensions are conditioned upon certain factors, what those factors are;

- (e) An initial estimation of what services and supports as outlined in § 7805.2 will be provided to the applicant as part of FRSP participation;
- (f) That all FRSP participants must make a good faith effort to participate in case management services; and
- (g) That the FRSP participant has a right to appeal the eligibility determination through fair hearing and administrative review proceedings in accordance with § 7808, including the appropriate deadlines for requesting an appeal.

7803.6 If an applicant is determined ineligible for an initial application for FRSP assistance, the Eligibility Provider shall give to the applicant, personally or through an authorized representative, a written Notice of Denial of Eligibility which shall state:

- (a) That the applicant is being denied eligibility;
- (b) The reason or reasons for the denial, including the factual and legal basis for the denial;
- (c) The applicable statute, regulation, or policy pursuant to which the denial was made;
- (d) That the FRSP applicant has a right to appeal the denial through fair hearing and administrative review proceedings pursuant to § 7808, including the procedures and appropriate deadlines for requesting an appeal; and
- (e) That the applicant is being referred to other programs and services that they may qualify for within the Continuum of Care.

**7804 PRIORITY DETERMINATION**

7804.1 Families residing in a Department-funded family hypothermia shelter, temporary shelter, transitional housing program, or determined to be at imminent risk of needing admission to shelter or supportive housing pursuant to 29 DCMR § 2508.1(a)(1), shall receive the first priority for the Program.

7804.2 Families residing in a non-Department funded family shelter or housing program within the Continuum of Care, or determined to be a Priority Two for shelter or supportive housing pursuant to 29 DCMR § 2508.1(a)(2), shall receive the second priority for the Program.

- 7804.3 Within each of the first and second priority groups, additional priority determinations may be made based on the following:
- (a) The applicant's prospective ability to achieve housing stability at the end of the FRSP assistance period, as demonstrated by income, documented work experience, completion of the Individual Responsibility Plan, the identification of other stable housing opportunities, or other relevant factors;
  - (b) The length of time the applicant has resided in their current program since the most recent placement;
  - (c) The need to provide a reasonable accommodation based on a disability may be a reason to increase prioritization; and
  - (d) Other relevant factors.

**7805 RE-HOUSING AND STABILIZATION ASSISTANCE**

- 7805.1 FRSP assistance supports District residents, who are experiencing homelessness or at imminent risk of experiencing homelessness, to achieve stability in permanent housing through individualized and time-limited assistance. FRSP offers a range of supports that are responsive to participant needs, including: individualized case management services, housing identification, connection to mainstream and community-based resources, and financial assistance in the form of a limited utility assistance and/or monthly rental subsidy. FRSP assistance shall be "needs-based," meaning that the assistance provided shall be the necessary amount, as determined by the Eligibility Provider and the family, needed for the FRSP applicant to obtain housing and mitigate the likelihood of them returning to homelessness.
- 7805.2 FRSP assistance shall include the appropriate supports, including any or all of the following:
- (a) The assignment to a qualified Service Provider with the capacity to provide individualized case management services using a progressive engagement model based on the presenting needs of the family;
  - (b) Development of an individualized plan to facilitate attainment of participant's goals, including housing stability. For participants receiving Temporary Assistance for Needy Families (TANF) and who already have an Individual Responsibility Plan ("IRP"), the IRP should serve this purpose and can be modified and evaluated as necessary in collaboration

with other organizations and entities that are also engaged with the participant;

- (c) Connection to other community resources and services that are responsive to the needs of the household (*e.g.*, behavioral health, primary health care, educational supports, food and nutrition resources);
- (d) Financial assistance in the form of a monthly rental subsidy if needed and identified in the individualized plan pursuant to paragraph (b) of this subsection;
- (e) Housing Identification assistance through which the Service Provider assists clients with:
  - (1) Identification of a unit independently and/or accessing a pool of available housing units to identify a unit that best fits the client's needs;
  - (2) Assistance in negotiating with landlords to reduce the rent or include utilities; and
  - (3) Scheduling a timely inspection of the unit;
- (f) Job placement and workforce development;
- (g) Documentation of activities that can be credited toward a participant's IRP, such as housing search, housing counseling services, obtaining a GED certification, University of the District of Columbia class credit, work hours, or certification with DOES or other barrier remediation activities specifically identified in the plan.

7805.3 Service Providers will have regular engagement with participants as dictated by the goals in the individualized plan or IRP, but no less than monthly, coordinate with other Service Providers, and will maintain current documentation on progress toward goals. This includes an assessment of progress made towards the completion of the individualized plan or IRP.

7805.4 The Service Provider shall conduct a formal review of services provided and the participant's participation in the Program after three (3), six (6), nine (9), and twelve (12) months of assistance. This review will include the following:

- (a) Review of participant's income change and approved budget plan;

- (b) Review of progress on the individualized plan or IRP and the applicant's approved budget plan;
- (c) Needs-based assessments, using a progressive engagement model, to determine if a less or more aggressive intervention is required; and
- (d) Review of participant's likely ability to sustain housing stability independently of the Program at the end of the FRSP assistance period.

7805.5 The Program shall not be obligated to provide a monetary amount for a requested service if a less costly alternative is available.

7805.6 Rental costs for the unit may not exceed the rent reasonableness standard determined by the DCHA. Eligibility Providers and participants shall attempt to identify housing units below market rent wherever possible.

7805.7 FRSP financial assistance may consist of a security deposit, move-in assistance, time-limited rental subsidy, and utility assistance, in accordance with the applicant's approved budget plan.

7805.8 The maximum FRSP payment for a security deposit shall be the actual amount of the deposit, which shall not exceed the cost of one (1) month's unsubsidized rent.

7805.9 Individualized plans or IRPs for each family shall aim for a targeted progression towards exit from the supports provided in twelve (12) months or less. A family is expected to plan for a reduction in financial assistance after the one (1) year lease term but may continue to receive case management assistance as needed to maintain housing stability and a rental subsidy if approved by DHS or its designee based on the criteria in § 7505.10. In the event that the Service Provider determines at the three (3), six (6), nine (9), or twelve (12) month review that the participant will likely be unable to sustain housing stability independently of the Program at the end of the FRSP assistance period, the Service Provider shall:

- (a) Notify the Eligibility Provider and the Department of the factors indicating that the participant will likely be unable to sustain housing independently;
- (b) If funding is available, the Service Provider shall notify the Eligibility Provider of its recommendation for an extension of assistance for the participant beyond twelve (12) months as provided in § 7505.10;
- (c) If the participant requests additional information and assistance in applying to other similar District-funded housing or rental assistance programs, assess the participant for eligibility in, and assist with applications to, the following programs, as appropriate:



- (1) The District of Columbia Housing Authority's (DCHA) Housing Choice Voucher Program's (HCVP) limited local preference for permanent supportive housing for chronically homeless individuals and families;
  - (2) Other available DCHA public housing or housing voucher programs, including the Local Rent Supplement Program (LRSP); and
  - (3) Other District-funded housing or rental assistance programs.
- (d) Identify other affordable and subsidized rental housing programs, including but not limited to HUD-subsidized units; and, if the participant requests assistance with applying to these programs, assist the participant with the application process as necessary, and to the extent permitted by other housing programs; and
- (e) Consider potential appropriate shared living arrangements that could work within the participant's budget.

7805.10

The Department or the Department's designee shall consider requests for FRSP assistance extending past twelve (12) months, if funding is available. Extensions of subsidy beyond twelve (12) months must be requested in writing, and may be granted to participants who have made good faith efforts towards the achievement of goals set forth in their individualized plan or IRP, as observed by the Service Provider at the three (3), six (6), nine (9), and twelve (12) month reviews, but who cannot yet sustain housing stability independently of the program, and have not yet been approved for permanently affordable housing. When making a determination of whether to grant a participant an extension beyond twelve (12) months, the Department or Department's designee shall consider the totality of the circumstances. FRSP is not an entitlement and the program is not designed to be an indefinite bridge to long-term affordable housing; therefore, length of participation in the program beyond eighteen (18) months may be a valid factor for denial of an extension. Any such extensions of time shall be granted in increments not greater than six (6) months, with regular formal reviews as provided by § 7805.4 at least every three (3) months. In the event that a requested extension of assistance is denied, a participant shall be given thirty (30) days written notice prior to the final subsidy payment. Such notice shall explicitly set forth the reason for the denial of additional assistance, and shall inform the participant that:

- (a) The FRSP participant has a right to appeal the determination through a fair hearing and administrative review, including deadlines for requesting an appeal; and
- (b) The FRSP participant has a right to continuation of FRSP services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

7805.11 During the period of rental assistance, each household shall contribute a minimum of forty percent (40%) and a maximum of sixty percent (60%) of their adjusted annual income toward housing costs as determined by the Department. For this period, FRSP rental assistance shall be the difference between the cost of housing and the household contribution. Actual contribution will be determined in the participant's approved budget component of the Individualized plan or IRP. The Eligibility Provider or the Department's designee shall pay the subsidized portion of the rent directly to the landlord, including any late fees or court costs that accrue due to the Eligibility Provider's late or non-payment of rent.

7805.12 As part of demonstrating good faith participation in services, the participant household shall demonstrate that they:

- (a) Have paid their share of the housing costs during the subsidy period on a timely basis; and
- (b) Have demonstrated activity in achieving the goals identified in their Individualized plan or IRP.

7805.13 Households receiving FRSP assistance shall report to the Provider in writing within fifteen (15) days of any decrease in income of fifty dollars (\$50) or more. Increases in income shall result in recalculation at the regularly scheduled review period.

7805.14 Upon receiving written notification from the household of a change in the household's monthly income, the Eligibility Provider shall determine if there is a need to recalculate the amount of the household's housing cost contribution, based on the following criteria:

- (a) If the participant reports a decrease in monthly income of fifty dollars (\$50) or more, the Eligibility Provider shall recalculate the household's contribution;
- (b) If the participant reports a decrease in monthly income of less than fifty dollars (\$50) the household may request that a recalculation be conducted;

- (c) If the recalculation pursuant to paragraphs (a) and (b) results in an increase in the amount of FRSP rental assistance, the change shall take effect the first day of the month or the next day that rent is due if different from the first of the month, whichever is first, following completion of the calculation. The recalculation shall be completed within five (5) business days of receipt of written notice from the household of the decrease in household income or request a recalculation, and documentation necessary for the Eligibility Provider's recalculation;
- (d) If the household is reporting an increase in monthly income of one hundred dollars (\$100) or more at the regularly scheduled review, the Eligibility Provider shall conduct a recalculation;
- (e) If the recalculation made pursuant to paragraph (d) results in a decrease in the amount of FRSP rental assistance, the change shall take effect the first of the month, or on the day that rent is next due if different than the first of the month, whichever is first, following the month in which written notice of the change under § 7805.15 is provided to the household; and
- (f) If the next day rent is due is less than fifteen (15) calendar days from the date the notice is either hand delivered or postmarked, the change in the FRSP rental assistance shall be effective the second month (or the second date upon which rent is due) following the month in which written notice of the change per § 7805.15 is provided to the household.

7805.15 When an Eligibility Provider calculates the initial FRSP assistance or makes a change in FRSP assistance based upon a reported change in income under § 7805.14, the Provider shall give to the participant household a written Notice of FRSP Rental Assistance or a Notice of Change in FRSP Rental Assistance, as appropriate. Each Notice shall state:

- (a) The basis for the rental assistance determination;
- (b) The statute, regulation, or policy under which the change was made;
- (c) The participant's current FRSP rental assistance and the household's current share of the housing costs;
- (d) If the rental assistance is changing, a computation of the new amount of FRSP rental assistance and the new amount of the household's share of the housing costs;

- (e) If the rental assistance is changing, the effective date of the new amount of rental assistance in accordance with § 7805.14(c), § 7805.14(e), or § 7805.14(f), whichever is applicable; and
- (f) The FRSP participant has a right to a reconsideration of the initial calculation and the recalculation by the Department or the Department's designee, at any time. Such requests for reconsideration of either the initial calculation or the recalculation by the Department or the Department's designee shall be made in writing to the Eligibility Provider

7805.16 A request for reconsideration in accordance with § 7805.15(f) shall be responded to by the Eligibility Provider within five (5) business days of receipt of the household's written request for a reconsideration. The five (5) business day timeframe may be tolled if the provider has requested documentation necessary to the review, and receipt of such documentation is pending.

7805.17 Notice required by § 7805.15 shall be either hand-delivered to an adult member of the participant household or mailed to the household by first class mail within twenty-four (24) hours of the Provider's calculation or recalculation of the household's rental assistance.

7805.18 Only in the rare circumstance where required by a vendor or by a District or federal agency, may the assistance payment be made in the form of cash. In all other cases, all FRSP assistance payments shall be in the form of non-cash direct vendor payments.

## **7806 UNIT SELECTION**

7806.1 Participation in the FRSP is conditioned upon selecting a unit that passes the FRSP required housing inspection and meets the Rent Reasonableness Standard, determined by DCHA, except that the Department or the Department's designee may authorize selection of a housing unit that exceeds the maximum allowable rent for purposes of ensuring the program is readily accessible to and usable by large families and individuals with disabilities, in accordance with the HSRA, D.C. Official Code §§ 4-754.11(a)(2) and 4-754.21(11).

7806.2 A FRSP participant shall be required to work with their case manager to identify a unit independently and/or access the pool of available housing units to identify a unit that best fits their needs

7806.3 If the participant is unable to secure a housing unit in a timely manner, despite good faith efforts made to actively participate in the housing search process, he or she shall be offered at least one (1) unit from the available housing inventory to the extent that units are available in the housing inventory.

- 7806.4 Failure to accept a unit after having been offered or having identified two (2) units that were available and met the participant's stated needs, may be a basis for termination from the Program pursuant to § 7807.1(f) and Section 22 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36(a)(2)(F)).
- 7806.5 FRSP assistance shall be provided only for housing units located within the District of Columbia. Any unit constructed before 1978 in which a child under the age of six (6) will be residing must comply with Section 302 of the Lead-Based Paint Poisoning Prevention Act, effective November 9, 1973 (Pub. L. 91-695; 42 U.S.C. § 4822), as amended, and implementing regulations at 24 C.F.R. part 35, subparts A, B, M, and R.
- 7806.6 Upon selection, successful inspection, and signing of a lease, the Service Provider shall ensure that the case manager's and Department's contact information is promptly provided to the landlord.
- 7806.7 The Service Provider shall assist a tenant in relocating to a different unit if, at any time during the participant's tenancy:
- (a) The participant needs to move as a reasonable accommodation;
  - (b) The participant needs to move as a result of domestic violence; or
  - (c) The unit has substantial housing code violations which adversely impact the health or safety of the participant's household, which the landlord fails to address after receiving notice of the housing code violation.

## **7807 PROGRAM EXITS**

- 7807.1 Participants are considered to have exited the program when they are no longer receiving financial assistance or supportive services through a FRSP provider. Participants may exit because they no longer require FRSP supports, by program termination, or because they reached the length of time for which their participation was approved (inclusive of applicable program extension).
- 7807.2 An Eligibility Provider may terminate FRSP assistance pursuant to Section 22 of the HSRA (D.C. Official Code § 4-754.36), including terminating case management services and financial assistance, if a member of the household:
- (a) Possesses a weapon illegally on the premises of the property subsidized by the FRSP;

- (b) Possesses or sells illegal drugs on the premises of the property subsidized by the FRSP;
- (c) Assaults or batters any person on the premises of the property subsidized by the FRSP;
- (d) Endangers the safety of oneself or the safety of others on the premises of the property subsidized by the FRSP;
- (e) Intentionally or maliciously vandalizes or destroys or steals the property of any person on the premises of the property subsidized by the FRSP;
- (f) Does not accept an offer of appropriate permanent housing or supportive housing that better serves the household's needs after being offered two (2) appropriate permanent or supportive housing opportunities in accordance with Section 22(a)(2)(F) of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36(a)(2)(F)); or,
- (g) Knowingly engages in repeated violations of an Eligibility Provider's or Service Provider's program rules.

7807.3 For purposes of § 7807.2(f), two (2) offers of appropriate permanent or supportive housing shall include being offered or having identified two (2) units that are available and meet the requirements of the Program and the applicant's stated needs and preferences, or any other supportive or permanent housing program for which the participant has been determined eligible, including but not limited to the Local Rent Supplement Program, Housing Choice Voucher Program (HCVP), or public housing.

7807.4 In the case of terminations pursuant to § 7807.2(f), the Service Provider must have made reasonable and documented efforts to help the participant overcome obstacles to obtaining or maintaining permanent housing.

7807.5 The Service Provider shall give written and oral notice to a FRSP participating household of their termination from services pursuant to this section at least thirty (30) days before the effective date of the termination.

7807.6 If a participant is terminated from FRSP services, the Service Provider shall give to the participant, personally or through an authorized representative, a written Notice of Termination, which shall state:

- (a) The applicant is being terminated;
- (b) The effective date of the termination;

- (c) The reason or reasons for the termination, including the date or dates on which the basis or bases for the termination occurred;
- (d) The statute, regulation, or program rule(s) under which the termination is being made;
- (e) The FRSP participant has a right to appeal the termination through a fair hearing and administrative review, including deadlines for requesting an appeal; and
- (f) The FRSP participant has a right to continuation of FRSP services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

7807.7 Termination pursuant to this section refers to a termination of FRSP assistance including case management services and financial assistance only and does not provide the FRSP Providers or the Department with any authority to interfere with a participant's tenancy rights under the lease agreement as governed by Title 14 of the District of Columbia Municipal Regulations.

7807.8 A FRSP participant may successfully transition from assistance at any time.

7807.9 Successful exit from FRSP includes the following:

- (a) Demonstrated ability to sustain housing independent of FRSP assistance; and
- (b) Relocation to another housing option that eliminates the need for FRSP financial assistance.

## **7808 CESSATION OF HOUSING SUBSIDY**

7808.1 Pursuant to § 7805.10, a participant may not receive FRSP assistance for more than twelve (12) months unless the participant requests and receives additional FRSP assistance. Thirty (30) days before that twelve (12)-month deadline arrives, the Service Provider shall notify the participant that the participant's FRSP assistance will cease unless the participant requests additional FRSP assistance pursuant to § 7805.10.

7808.2 The Service Provider's written notice to the client of the cessation of the housing subsidy shall include:

- (a) A clear statement of the effective date of the cessation of the housing subsidy;
- (b) A clear and detailed statement of the factual basis for the cessation of the housing subsidy, including the date or dates on which the basis or bases for the cessation occurred;
- (c) A reference to the statute, regulation, or Program Rule pursuant to which the cessation of housing subsidy is being implemented;
- (d) A clear and complete statement of the client's rights to appeal the termination through a fair hearing and administrative review, including deadlines for instituting the appeal; and
- (e) A statement of the client's right to continuation of the FRSP placement pending the outcome of any fair hearing requested within fifteen (15) days after receipt of written notice of the cessation of housing subsidy.

7808.3 A Service Provider shall not use its cessation of housing subsidy authority provided under this section in a way that would interfere with a client's tenancy rights under an agreement governed by Title 14 of the District of Columbia Municipal Regulations.

## **7809 FAIR HEARING AND ADMINISTRATIVE REVIEW**

7809.1 An applicant or participating FRSP household shall have ninety (90) calendar days following the receipt of a written notice described in §§ 7803.6 or 7807.5 to request a fair hearing, in accordance with the hearing provisions of Section 26 of the HSRA, (D.C. Law 16-35; D.C. Official Code § 4-754.41 (2012 Repl.)), for the action that is the subject of the written notice.

7809.2 Upon receipt of a fair hearing request, the Department shall offer the appellant or his or her authorized representative an opportunity for an administrative review in accordance with Section 27 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.42 (2012 Repl.)), except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal in time to resolve the housing emergency and prevent the eviction.

7809.3 In accordance with Section 9 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.11(18) (2012 Repl.)), any recipient who requests a fair hearing within fifteen (15) days of receipt of written notice of a termination pursuant to § 7807 shall have the right to the continuation of FRSP services pending a final decision from the fair hearing proceedings.



**7810 SUMMARY OF PROVIDER RESPONSIBILITIES**

7810.1 An Eligibility Provider is responsible for the following:

- (a) Assisting FRSP applicants with the overall application process, including assisting applicants in obtaining required information;
- (b) Completing eligibility determinations in as short a time as possible, but no longer than ten (10) calendar days after receipt of a completed application;
- (c) Maintaining in the applicant's or participant's file the following detailed documentation:
  - (1) Assistance for which the applicant qualifies;
  - (2) Case-management reviews; and
  - (3) The applicant's or participant's individualized plan or IRP;
- (d) Providing financial assistance in the form of a monthly rental subsidy if needed and identified in the individualized plan or IRP;
- (e) For applicants who are determined ineligible for FRSP assistance, the Provider will provide them with a referral or referrals to other programs and services within the Continuum of Care.

7810.2 A Service Provider is responsible for the following:

- (a) Providing individualized case management services using a progressive engagement model based on the presenting needs of everyone in the participant household;
- (b) Developing an individualized plan or IRP in collaboration with the participant and other organizations and entities that are also engaged with the participant;
- (c) Connecting FRSP participants to other community resources, and ongoing evaluation of the individualized plan or IRP and modification as needed;
- (d) Conducting a review of case management services provided and client participation after three (3), six (6), nine (9), and twelve (12) months of assistance;

- (e) Assisting FRSP participants to identify a housing unit independently and/or access the pool of available housing units to identify a unit the best fits their needs;
- (f) Providing employment supports; and
- (g) Ensuring applicants receiving TANF receive credit for any work or barrier remediation activities and supports identified in the service plan, such as job search, GED preparation, housing search and counseling.

## 7899 DEFINITIONS

7899.1 The terms and definitions in 29 DCMR § 2599 are incorporated by reference in this chapter.

7899.2 For the purposes of this chapter, the following additional terms shall have the meanings ascribed:

**Approved Budget Plan** – An estimate of costs, revenues, and resources over a specified period, reflecting a reading of future financial conditions and goals. A budget serves also as a: (1) plan of action for achieving quantified objectives, (2) standard for measuring performance, and (3) device for coping with foreseeable adverse situations.

**Authorized representative** – an individual who is at least eighteen (18) years of age, who is acting responsibly on behalf of the applicant, and has sufficient knowledge of the applicant’s circumstances to provide or obtain necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

**Eligibility Provider** – an organization that receives Family Re-Housing and Stabilization Program funds and is authorized to determine eligibility and administer Family Re-Housing and Stabilization Program services, including the payment of rental subsidies.

**Family** -- (A) A group of individuals with at least one minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit; or (B) A pregnant woman in her third trimester.

**Housing stability** – the ability to pay housing costs with or without assistance from another source, including rent and utilities, or to secure other viable and secure housing options necessary to retain housing without Family Re-Housing and Stabilization Program assistance.

**Individual Responsibility Plan** – the self-sufficiency plan that the Family Re-Housing and Stabilization Program participant has entered into with the shelter, housing, Temporary Assistance for Needy Families (TANF), or other service provider that sets out the steps and goals necessary for the participant to achieve greater housing and economic self-sufficiency.

**Minor** – a child, including those by adoption, eighteen (18) years of age or younger.

**Progressive Engagement** – refers to a strategy of starting off offering a small amount of assistance initially, and, after reassessment, adding more assistance if needed to help each household reach stability. This strategy uses the lightest touch possible for a household to be successful, knowing more assistance can be added later if needed.

**Rapid Re-Housing** – is a supportive housing program that provides a homeless individual or family with financial assistance as a bridge to permanent housing, by providing some or all of a security deposit, first month's rent, short-term rental subsidy, and supportive services in order to help the recipient become self-sufficient. The District of Columbia's Family Re-Housing and Stabilization Program (FRSP) is a Rapid Re-Housing program.

**Rental payment** – a regular payment made by a tenant to an owner or landlord for the right to occupy or use property.

**Security deposit** – a sum of money paid in advance that is required by the owner or landlord for leasing property as security against the tenant's inability to fulfill the lease or security to cover damage to the rental premises.

**Service Provider** – an organization that receives Family Re-Housing and Stabilization Program funds and is authorized to deliver Family Re-Housing and Stabilization Program services.

**Vendor** – a provider of a service or product, including but not limited to landlords.

All persons who desire to comment on these proposed rules should submit their comments in writing to the Department of Human Services, 64 New York Avenue, N.E., 6th Floor, Washington, D.C. 20002, Attn: Darrell Cason, or by email to [Darrell.cason3@dc.gov](mailto:Darrell.cason3@dc.gov). All comments must be received by the Department of Human Services not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related

information may be obtained by writing to the above address, or by calling the Department of Human Services at (202) 671-4200.

**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA ADVISORY COMMITTEE TO THE  
OFFICE OF ADMINISTRATIVE HEARINGS****PUBLIC NOTICE OF MEETING**

In accordance with D.C. Code § 2-576(1), the Advisory Committee to the Office of Administrative Hearings hereby gives notice that it will meet on Wednesday, December 9, 2015, at 1:00pm. The members may vote to close a portion of the meeting pursuant to D.C. Code § 2-575(b) and (c). The meeting will be held at the following location:

Kennedy Recreation Center  
Multipurpose Room  
1401 7<sup>th</sup> St. NW  
Washington, DC 20001

For further information, please contact Shauntinique Steele at [nikki.steele@dc.gov](mailto:nikki.steele@dc.gov) or 202-741-5303.

**AGENDA**

- I. Call to Order
- II. Welcome and Introductions
- III. Notice Regarding Audio of September 9, 2015 Meeting
- IV. Remarks from OAH Chief Administrative Law Judge Eugene A. Adams
  1. Status Report
  2. Key updates regarding OAH operations
  3. Timeline for upcoming milestones
- V. Community Member Forum
- VI. Update from the Council for Court Excellence
- VII. Old Business
- VIII. New Business
- IX. Adjournment

**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA COMMISSION ON  
SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES OF****NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF  
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge Paul B. Handy.

This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Handy’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Handy has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of his six-year term on July 26, 2016.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Handy’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before January 4, 2016. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges  
Office of Administrative Hearings  
District of Columbia Government  
441 4<sup>th</sup> Street, N.W.  
Suite 450N  
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams  
Chief Administrative Law Judge Eugene A. Adams  
James W. Cooper, Esq.  
Nadine C. Wilburn, Esq.  
Joseph N. Onek, Esq.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, DECEMBER 2, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson  
Members:

Nick Alberti, Mike Silverstein, Ruthanne Miller, James Short

- |  |                |
|--|----------------|
| <b>Protest Hearing (Status)</b><br><b>Case # 15-PRO-00080;</b> CS Bond ST AB-Holding, LLC, t/a The Savoy Suites Hotel, 2505 Wisconsin Ave NW, License #90804, Retailer CH, ANC 3C<br><b>Substantial Change (Request an additional Summer Garden and Entertainment Endorsement for the Summer Garden, Expand the seating inside the Restaurant)</b> | <b>9:30 AM</b> |
| <b>Protest Hearing (Status)</b><br><b>Case # 15-PRO-00097;</b> Independence 4 U, LLC, t/a Declaration, 804 V Street NW, License #99556, Retailer CR, ANC 1B<br><b>Application for a New License</b>  | <b>9:30 AM</b> |
| <b>Protest Hearing (Status)</b><br><b>Case # 15-PRO-00096;</b> HRH Services, LLC, t/a The Alibi, 237 2nd Street NW License #97969, Retailer CR, ANC 6C<br><b>Application for a New License</b>   | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 14-CMP-00399;</b> Fetlework Wolde, t/a Ethiopia Restaurant & Market 4630 14th Street NW, License #91373, Retailer CR, ANC 4C<br><b>Failed to File Quarterly Statements (1st Quarter 2014)</b>  | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-251-00006;</b> Trinidad & Tobago Association, t/a T & T Association 5123 Georgia Ave NW, License #17426, Retailer CX, ANC 4D<br><b>Allowed the Establishment to be Used for an Unlawful or Disorderly Purpose, Trade Name Change Without Board Approval</b>                                     | <b>9:30 AM</b> |



Board's Calendar  
December 2, 2015

**Show Cause Hearing (Status) 9:30 AM**

**Case # 14-CMP-00734;** Notta Bike or Bar, LLC, t/a Joint Chiefs, 3400 11th Street NW, License #83926, Retailer CT, ANC 1A  
**Failed to Maintain Books and Records (two counts)**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00058;** 1606 K, LLC, t/a Fuel Pizza & Wings, 1606 K Street NW, License #88452, Retailer CR, ANC 2B  
**Failed to Take Steps Necessary to Ensure Property is Free of Litter, No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00359;** 1606 K, LLC, t/a Fuel Pizza & Wings, 1606 K Street NW, License #88452, Retailer CR, ANC 2B  
**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00341;** 600 F D.C., LLC, t/a Fuel Pizza & Wings, 600 F Street NW, License #88727, Retailer CR, ANC 2C  
**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 14-CC-00199;** Mahogany, LLC, t/a The Tap & Parlour/Bohemian Caverns, 2001 11th Street NW, License #74895, Retailer CT, ANC 1B  
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00315;** Prospect Dining, LLC, t/a Chinese Disco, 3251 Prospect Street NW, License #78058, Retailer CR, ANC 2E  
**Failed to Obtain a Cover Charge Endorsement**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-251-00125;** Chao Charles Zhou, t/a Eye Bar/Garden of Eden, 1716 I  
Street NW, License #83133, Retailer CN, ANC 2B  
**Failed to Follow Security Plan**

**Fact Finding Hearing\*** **9:30 AM**  
Pub Crawl,  
Applicant: Christine Benner  
Date of Event: December 12, 2015  
Event: Bad Santa Bar Crawl  
Neighborhood: Multiple Licensed Premises  
Size of Event: 500-1500  
*The names of the establishments participating in the Pub Crawl are available  
upon request.*

**Fact Finding Hearing\*** **9:30 AM**  
Pub Crawl  
Applicant: Cheryl Kirk  
Date of Event: December 19, 2015  
Event: 5<sup>th</sup> Annual SnowDay Bar Crawl  
Neighborhood: Multiple Licensed Premises  
Size of Event: 2000-3000  
*The names of the establishments participating in the Pub Crawl are available  
upon request.*

**Show Cause Hearing\*** **10:00 AM**  
**Case # 15-CMP-00278;** S & W D.C. LLC, t/a Smith & Wollensky, 1112 19th  
Street NW, License #60001, Retailer CR, ANC 2B  
**No ABC Manager on Duty**

**Show Cause Hearing\*** **11:00 AM**  
**Case # 15-CC-00036;** MCHAP, Inc., t/a The Saloon, 1205 U Street NW  
License #71086, Retailer CT, ANC 1B  
**No ABC Manager on Duty**

**Show Cause Hearing\*** **11:00 AM**  
**Case # 15-AUD-00060;** Nispero, LLC, t/a El Nuevo Migueleno, 1721  
Columbia Road NW, License #75403, Retailer CR, ANC 1C  
**Failed to File Quarterly Statements (4th Quarter 2014)**

**BOARD RECESS AT 12:00 PM**  
**ADMINISTRATIVE AGENDA**  
**1:00 PM**

Board's Calendar  
December 2, 2015

**Protest Hearing\***

**1:30 PM**

**Case # 15-PRO-00038;** Yoef, Inc., t/a Stanton Liquors, 1044 Bladensburg Road NE, License #71601, Retailer A, ANC 5D

**Application to Renew the License**

*This Hearing has been continued to January 20, 2016 at 1:30 pm., at the request of the Parties.*

**Fact Finding Hearing\***

**2:00 PM**

Georgene Thompson, t/a Player's Lounge, 2737 Martin Luther King, Jr., Ave SE, License #1271, Retailer CN, ANC 8C

**Request for a Fact Finding Hearing**

**(MPD Letter dated 10/27/2015)**

**Fact Finding Hearing\***

**2:30 PM**

Ekho Events, Inc., t/a Echostage, 2135 Queen Chapel Road NE, License #90250, Retailer CN, ANC 5C

**Request for a Fact Finding Hearing (MPD Letter dated 9/29/2015)**

**Fact Finding Hearing\***

**3:30 PM**

**Case # 15-251-00182;** Langston Bar and Grille, LLC, t/a Langston Bar and Grille, 1831 Benning Road NE, License #86271, Retailer Caterer, ANC 6A

**Request for a Fact Finding Hearing (MPD Letter dated 10/5/2015-Fashion One)**

**Fact Finding Hearing\***

**4:00 PM**

**Case # 15-251-00181;** MPAC, LLC, t/a The Scene, 2221 Adams Place NE License #78642, Retailer CN, ANC 5C

**Request for a Fact Finding Hearing (MPD Letter dated 10/14/2015)**

**Fact Finding Hearing\***

**4:30 PM**

**Case # 15-251-00156;** Connie M. Dickens, t/a Dan's Café, 2315 18th Street NW, License #785, Retailer CT, ANC 1C

**Assault Inside of the Establishment**

**\*The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
CANCELLATION AGENDA

WEDNESDAY, DECEMBER 2, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-085368 – **Tynan Coffee & Tea** – Retailer – C – Tavern – 1275 1<sup>ST</sup> STREET NE  
[The Licensee has requested cancellation of the license.]

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ABRA-099056 – **Hill Country Homestand** – Retailer – C – Tavern – 1244 SOUTH CAPITAL STREET SE  
[The Licensee has requested cancellation of the license.]

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ABRA- 001182 – **Delta Elite Social Club** – Retailer – C – Nightclub – 3734 10<sup>th</sup> STREET NE  
[The Licensee has not paid its annual payment for 2015 and appears to be Out of Business.]

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ABRA-086360 – **Ansonia Wines** – Wholesaler – B – 175 R STREET NE  
[The Licensee has requested cancellation of the license.]

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ABRA-095361 – **True Craft Holdings LLC** – Wholesaler – B - 4221 CONNECTICUT AVE NW  
[The Licensee did not make 2nd Year Payment and has requested cancellation of the license.]

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ABRA-071545 – **Yes Organic Market** – Retailer – B – Grocery – 656-658 PENNSYLVANIA AVENUE SE  
[The Licensee did not pay its renewal fees for 2014 and its License ABRA-079224 has been inactive since that time.]

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ABRA-079226 – **Micro Market Beer & Wines** – Retail – B – Grocery - 2007 1ST ST NW  
[Licensee did not make 2nd Year Payment and appears to be Out of Business.]

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ABRA-025740 – **8th Street Deli & Market** – Retail – B – Grocery - 717 D ST NW  
[Licensee did not make 2nd Year Payment and appears to be Out of Business.]

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ABRA-026649 – **D & B Deli Carryout** – Retail – B – Grocery - 3412 GEORGIA AVE NW  
[Licensee did not make 2nd Year Payment and appears to be Out of Business.]

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ABRA-073817 – **Lima Restaurant & Lounge** – Retail – C – Tavern - 1401 K ST NW B  
[Licensee did not make 3rd Year Payment and appears to be Out of Business.]

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ABRA-092054 – **Café Midar** – Retail – C – Tavern - 5413 GEORGIA AVE NW  
[Licensee did not make 3rd Year Payment.]

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ABRA-074500 – **Shop Express** – Retail – B – Grocery - 3900 BENNING RD NE  
[Safekeeping] [Licensee did not make 2nd Year Payment.]

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ABRA- 090459 – **To Be Determined** – Retail – B – 2203 14TH ST NW  
[Safekeeping] [Licensee did not make 2nd Year Payment.]

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ABRA-001111 – **Variety Market** – Retail – B – Grocery - 1511 7TH ST NW  
[Safekeeping] [Licensee did not make 2nd Year Payment.]

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ABRA-079966 – **Marvelous Market** – Retail – B – Grocery - 3217 P ST NW  
[Safekeeping] [Licensee did not make 2nd Year Payment.]

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ABRA-000909 – **Omega** – Retail – C – Tavern – 2123 TWINING CT NW  
[Safekeeping] [Licensee did not make 3rd Year Payment.]

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ABRA-087302 – **Tel'veh Café & Wine Bar** – Retail – C – Tavern – 401 MASSACHUSETTS  
AVE NW  
[Safekeeping] [Licensee did not make 3rd Year Payment.]

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ABRA-071743 – **Lux** – Retail – C – Nightclub – 649 NEW YORK AVE NW  
[Safekeeping] [Licensee did not make 3rd Year Payment.]

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**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, DECEMBER 2, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On December 2, 2015 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”**

1. Case#15-CMP-00612 Alero Restaurant and Lounge, 1301 U ST NW Retailer C Restaurant, License#: ABRA-071881

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2. Case#15-CC-00119 Rumors Restaurant, 1900 M ST NW Retailer C Nightclub, License#: ABRA-071717

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3. Case#15-CC-00058 Spices Restaurant, 3333 CONNECTICUT AVE NW Retailer C Restaurant, License#:ABRA-021676

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4. Case#15-CMP-00555 Johnny Pistolas, 2333 18TH ST NW Retailer C Restaurant, License#: ABRA-060401

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5. Case#15-CC-00115 Black Rooster Pub, 1919 L ST NW Retailer C Tavern, License#: ABRA-082034

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6. Case#15-CMP-00580 Lost Society, 2001 14TH ST NW Retailer C Tavern, License#: ABRA-083420

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7. Case#15-CC-00114 University Wine & Spirit, 333 Hawaii AVE NE Retailer A Retail - Liquor Store, License#:ABRA-089532

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8. Case#15-CMP-00628 & Pizza, 1005 E ST NW Retailer C Restaurant, License#: ABRA-094712

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9. Case#15-CC-00118 Georgetown Piano Bar, 3287 M ST NW Retailer C Tavern, License#: ABRA-095632

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10. Case#15-CMP-00578 Addis Ethiopian Restaurant, 707 H ST NE Retailer C Restaurant, License#: ABRA-097534

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11. Case#15-CMP-00662 Union Kitchen, 538 3RD ST NE Retailer B Retail - Grocery, License#: ABRA-098204

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12. Case#15-251-00187 SAX, 734 11th ST NW Retailer C Tavern, License#: ABRA-099955

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, DECEMBER 2, 2015 AT 1:00 PM  
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 3C. SMD 3C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Firehook Bakery*, 3411 Connecticut Avenue NW, Retailer CR, License No. 041370.
- 

2. Review Application for Safekeeping of License – Original Request. ANC 1B. SMD 1B12. Pending Enforcement Matters: Case #15-CMP-00574, 9/16/2015, No ABC Manager on Duty, Citation #4643, \$750 fine; Case #15-CMP-00573, 9/3/2015, No ABC Manager on Duty, Citation #4642, \$750 fine; Two pending Show Cause hearings. No Settlement Agreement. *U & Pizza*, 1250 U Street NW, Retailer CR, License No. 092159.
- 

3. Review Request for a Disposal Permit to transfer alcoholic beverage inventory to H & Pizza restaurant at 1118 H Street NE (ABRA-089158) upon approval of Safekeeping request. ANC 1B. SMD 1B12. Pending Enforcement Matters: Case #15-CMP-00574, 9/16/2015, No ABC Manager on Duty, Citation #4643, \$750 fine; Case #15-CMP-00573, 9/3/2015, No ABC Manager on Duty, Citation #4642, \$750 fine; Two pending Show Cause hearings. No Settlement Agreement. *U & Pizza*, 1250 U Street NW, Retailer CR, License No. 092159.
- 

4. Review Application for Class Change from Retailer DR to Retailer CR. ANC 6A. SMD 6A06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Sally's Middle Name*, 1320 H Street NE, Retailer DR, License No. 097355.
- 

5. Review Application for Summer Garden with seating for 22. ANC 6A. SMD 6A06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Sally's Middle Name*, 1320 H Street NE, Retailer DR, License No. 097355.



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6. Review Request for Change of Hours to Entertainment Endorsement. *Current Hours of Operation and Alcoholic Beverage Sales and Consumption*: Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. *Current Hours of Live Entertainment*: Thursday-Saturday 8pm to 2am. *Proposed Hours of Live Entertainment*: Monday-Saturday 8pm to 2am. ANC 2B. SMD 2B06. Pending Enforcement Matter: Case #15-CMP-00724, 10/18/2015, Substantial Change in Operation Must be Approved – This case has yet to go before the Board. No outstanding fines/citations. No Settlement Agreement. *Recessions II*, 1823 L Street NW, Retailer CT, License No. 060567.

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7. Review Request for Permit to administer the Washington, D.C. Alcohol Certification Training Program through the skillsoft.com.com online platform. *Skillsoft*, 107 Northeastern Boulevard, Nashua, New Hampshire.

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8. Review Application for Manager's License. *Tricia J. Boyle*-ABRA 101044.

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9. Review Application for Manager's License. *Frank G. Douglas Jr.*-ABRA 100847.

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10. Review Application for Manager's License. *Jose L. Herrera*-ABRA 100848.

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11. Review Letter from Syed Fahad Saghir, Attorney Agent representing The Choral Arts Society of Washington, requesting a Nonprofit Corporation Auction Permit to auction off items containing alcoholic beverages, such as wine donations, at two fundraiser events to be held Monday, December 14, 2015 from 7pm to 12:00am at the John F. Kennedy Center for the Performing Arts, 2700 F Street NW, and Sunday, December 20, 2015 from 9:30pm to 11:30pm at The Loft at The Hamilton, 600 14<sup>th</sup> Street NW.

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**\*In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

**OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS****DC MAYOR'S COMMISSION ON ASIAN AND  
PACIFIC ISLANDER AFFAIRS****NOTICE OF REGULAR MEETING**

The DC Mayor's Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on Monday, November 30, 2015 at 6:30 pm.

The meeting will be held at the MOAPIA office at One Judiciary Square, 441 4<sup>th</sup> Street NW, Suite 721N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact [oapia@dc.gov](mailto:oapia@dc.gov) or Christina Truong at [christina.truong@dc.gov](mailto:christina.truong@dc.gov). Telephone: (202) 727-3120.

The DC Commission on Asian and Pacific Islander Affairs convenes meetings to discuss current issues affecting the DC Asian American and Pacific Islander (AAPI) community.

**OFFICE OF DISABILITY RIGHTS**  
**DC COMMISSION ON**  
**PERSONS WITH DISABILITIES (DCCPD)**

**PUBLIC NOTICE OF MEETING**

**November 25, 2015, 9:00 AM to 10:30 AM**  
**441 4<sup>th</sup> St. NW, Ste. 729N**  
**Washington, DC 20001**  
**Toll Free: (866) 628-2987**  
**Passcode: 8488992**

**Meeting Agenda**

|  |                   |            |
|--|-------------------|------------|
| 1. Welcome and Introductions                   | All               | 05 Minutes |
| 2. Review Agenda and Previous Meeting          | Denise            | 05 Minutes |
| 3. Emergency Services Subcommittee Update      | All               | 10 Minutes |
| 4. Health Care Subcommittee Update             | All               | 10 Minutes |
| 5. Shakira and Julia Subcommittee              | Julia and Shakira | 10 Minutes |
| 6. Review: Mayor's Expo & White Cane Day       | Kali              | 10 Minutes |
| 7. Plan 2016 Activities                        | All               | 10 Minutes |
| 8. Baltimore Visit                             | All               | 05 Minutes |
| 9. Open Discussion                             | All               | 15 Minutes |
| 10. Closing Remarks, 2016 Meetings and Adjourn | All               | 10 Minutes |

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
EDUCATION LICENSURE COMMISSION**

**REVISED NOTICE OF MEETING SCHEDULE**

Pursuant to the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; 23 D.C. Reg. 8734; D.C. Official Code § 38-1301 *et seq.*), and the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*), the Education Licensure Commission (“Commission”) hereby gives notice of a revision to the schedule for the Commission’s December 2015 Executive and Public meetings, which was last published in the D.C. Register on March 27, 2015.

The meeting, which was originally scheduled to take place on Thursday, December 3, 2015, was rescheduled to enable the Commission to participate in a local professional development conference scheduled for the same date and time:

| DATE              | START TIME | END TIME | LOCATION  | MEETING TYPE                  | REASON FOR CLOSURE (if applicable)                                |
|-------------------|------------|----------|---|-------------------------------|---|
| December 10, 2015 | 9:00 AM    | 10:00 AM | 810 First Street, NE<br>3 <sup>rd</sup> Floor Grand Hall<br>B | Executive Session<br>(closed) | D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)       |
| December 10, 2015 | 10:00 AM   | 11:30 AM | 810 First Street, NE<br>3 <sup>rd</sup> Floor Grand Hall<br>B | Public Session                | N/A   |
| December 10, 2015 | 12:00 PM   | 2:00 PM  | 810 First Street, NE<br>3 <sup>rd</sup> Floor Grand Hall<br>B | Work Meeting<br>(closed)      | D.C. Official Code §§ 2-575(b)(1), (4), (12); 5 DCMR § A8204.1(c) |

If you have questions regarding this schedule of Commission meetings and/or New Applicant Workshops, please contact the Executive Director of the Education Licensure Commission, Angela Lee at (202) 724-2095 or at [Angela.Lee@dc.gov](mailto:Angela.Lee@dc.gov).

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS****Certification of Filling a Vacancy  
In Advisory Neighborhood Commission**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Isaiah Burroughs  
Single-Member District 5A04

**OFFICE OF THE DEPUTY MAYOR FOR  
HEALTH AND HUMAN SERVICES**

**AVAILABILITY OF  
2016 OLMSTEAD PLAN  
FOR PUBLIC REVIEW AND COMMENT**

The Deputy Mayor for Health and Human Services announces availability of the Olmstead Plan for public review and comment.

In August 2015, Mayor Muriel Bowser created an Olmstead Working Group to bring advocates, stakeholders, and government together to assess the District of Columbia's programs for enabling *Everyone* in the District of Columbia to be on a solid pathway to the middle class.

The 2016 Olmstead Plan presents the District's roadmap to becoming a city that supports all of its residents to be on a solid pathway to the middle class.

The Olmstead Plan is available for review in the November 27, 2015 issue of the DC Register and on the Web page for the Office of the Deputy Mayor for Health and Human Services at <http://dmhhs.dc.gov/>.

Comments should be sent via email to [olmstead@dc.gov](mailto:olmstead@dc.gov) beginning on Friday, November 27, 2015 through NOON on Monday, December 28, 2015.

If you have questions or require additional information, please contact:

Tanya Reid  
500 K Street, NE,  
Washington, DC 20002  
[olmstead@dc.gov](mailto:olmstead@dc.gov)

Olmstead Plan | 2016

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Dear Fellow Washingtonians:

A fundamental measure of any great city is how well it supports all residents to live successfully in thriving communities. *Everyone* in the District of Columbia should be on a solid pathway to the middle class, with real education, employment, and housing opportunities paving the way.

For people with disabilities, making good on this promise means ensuring access to a full slate of supportive resources; responding to crises and needs with robust assistance; and strengthening families, community organizations and technology, among other supports.

Our city has made significant progress towards these goals. We have reduced to a bare minimum the number of “institutional beds” we rely on, focusing instead on supporting people to live fully integrated lives at home or in the community. This year, United Cerebral Palsy ranked us eighth in the nation (and the most improved state) for how well we serve individuals with intellectual and developmental disabilities. In 2014, AARP ranked the District 11<sup>th</sup> on its scorecard of states’ efforts to provide long-term services and supports for older adults, people with physical disabilities, and family caregivers.

But despite our successes, we still have some work to do. In many areas, our performance is not where we want it to be, and a history of limited data collection makes it hard to know with precision how we are doing. The District’s “2015 Olmstead Plan” illustrates our legal compliance with the vision and directives of the Americans with Disabilities Act and other court orders. I want us to do even more.

To reach our goals we will rely on people to leverage the support of family and friends. We will also need strong working partnerships between government and the community – an inclusive effort in which people with disabilities drive how the city does its work while also holding us accountable for the results we all want. Our ethos must be to do “with” and not “for.”

To that end, in August 2015 I created an Olmstead Working Group to bring advocates, stakeholders and government together to assess in detail where we are and where we need to go. I am proud to present here the initial results of that work. This 2016 Olmstead Plan is our roadmap to becoming a city that supports all of its residents living the robust and independent lives they want and deserve.

Sincerely,

Muriel Bowser, Mayor

## Contents

### Section 1: Overview

- What is an Olmstead Plan?
- Understanding DC's Service Structure for People with Disabilities
- District-Level Work to Improve Long Term Services and Supports

### Section 2: The 2016 Olmstead Plan

- A Person-Centered Culture
- Community Engagement, Outreach and Training
- Employment
- Housing
- Intake, Enrollment and Discharge Processes
- Quality of Institutional and Community-Based Services, Providers and Workforce
- Supporting Children and Youth
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### Glossary of Acronyms

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## SECTION 1: Overview

### I. What is an Olmstead Plan?

In 1990, the Americans with Disabilities Act (ADA) was signed into law, prohibiting state and local governments from discriminating against people with disabilities and/or excluding them from participating in, or receiving benefits from, government services, programs, or activities. One part of the federal regulations implementing the ADA requires state and local governments to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”<sup>i</sup> This is often called the ADA’s “integration mandate.”

Nearly 10 years later, disagreement over what the integration mandate required made its way to the U.S. Supreme Court. In *Olmstead v. L.C.*,<sup>ii</sup> the Supreme Court ruled that people with disabilities have the right, under certain circumstances, to live and receive care in the community rather than in an institutional setting. In this 1999 decision, the Supreme Court also indicated that states could have a “comprehensive, effectively working plan” to demonstrate compliance with the ADA’s integration mandate. These plans are often referred to as “Olmstead plans.”

Under *Olmstead*, states must provide services to people with disabilities in integrated setting, within certain limits:

- First, the person must want community-based services.
- Second, a person’s treatment team must consider community-based services appropriate.
- Third, it must be reasonable to accommodate the community-based services, taking into account state resources and the needs of others with disabilities.

More than half of the states have an Olmstead plan to ensure that services, programs, and structures comply with the vision and directives of the integration mandate.

### *Olmstead Planning in the District of Columbia*

In 2006, the District of Columbia government passed the Disability Rights Protection Act, which created the Office of Disability Rights (ODR). Among other things, ODR was given responsibility for developing and submitting an Olmstead Compliance Plan. ODR published the District's first Olmstead Plan in 2011, and the city has since made numerous revisions based on stakeholder feedback.

On January 2, 2015, Muriel Bowser was inaugurated as the eighth Mayor of the District of Columbia. Under her leadership, the District created an Olmstead Working Group to make recommendations for revisions to the Olmstead Plan for 2016, and into the future. The Olmstead Working Group was developed with the advice and recommendations of ODR and other agencies serving people with disabilities. The group is comprised of representatives from District agencies as well as community stakeholders, including people with disabilities and advocates for people with disabilities.<sup>iii</sup>

ODR is the agency in charge of developing the Olmstead Plan, and the Deputy Mayor for Health and Human Services has provided substantial support and oversight in development of this 2016 iteration. ODR will continue to coordinate the reporting required under the Olmstead Plan and submit recommendations to the Mayor as appropriate.

### *Which People are the Focus of DC's Olmstead Plan?*

There is currently no single source of data on the number of people in the District of Columbia who have a disability. Estimates vary based on the definition of disability that is used, whether people self-identify as having a disability, and other factors. The ADA uses an expansive definition of disability because it is a comprehensive civil rights law.

While all District residents are supported by a city that is fully accessible, in FY 2015, 21,496 people were directly served in some way by the District government with Medicaid-funded services commonly considered to be supportive of people with disabilities.<sup>iv</sup> Among these individuals:

1. About 1 in 5 (approximately 4,000 people, or 18% of the estimated total) were receiving support in an institutional setting, such as a nursing home, psychiatric residential treatment facility or intermediate care facility.
2. The remaining 82% (approximately 17,000 people) were living in a community-based setting.
3. In FY 2015, 1,016 people entered institutional care and 357 transitioned from such care to life in the community.

The Olmstead Plan is intended to focus, in particular, on people with disabilities who are at risk of institutionalization. There are currently 3,650 people with disabilities (or 21% of those currently living in the community) whose level of need qualifies them for institutional care, but who are receiving services designed to enable them to remain in the community instead. For purposes of this 2016 plan, these people represent the group considered most “at risk” for institutionalization.

## II. Understanding DC’s Service Structure for People with Disabilities

People with disabilities can have a broad range of medical and personal care assistance needs, from support for daily living activities – like preparing meals, managing medication and housekeeping – to help accomplishing basic activities like eating, bathing, and dressing. They may require help training for and securing a job, or special accommodations to do the job as required. These various forms of assistance (known as “Long Term Services and Supports,” or LTSS) are most often provided informally through unpaid caregivers like family and friends. But they can also be provided by professionals who serve people in institutions, in a person’s home, or in a community-based setting.

### *Who Provides These Services?*

The District’s service system for people with disabilities is comprised of multiple government agencies, public and private institutions that provide residential care, as well as local organizations that receive District and federal funds to provide home- and community-based services. All of these components of the service system are described below.

### Government Agencies

- **Department of Behavioral Health (DBH)**

DBH provides prevention, screening and assessment, intervention, and treatment and recovery services and supports for children, youth, and adults with mental health and/or substance use problems. Services include emergency psychiatric care, residential services and community-based outpatient care. DBH also operates Saint Elizabeths Hospital, which is the District’s inpatient psychiatric facility.

- **Department of Health (DOH)**

The DOH Health and Intermediate Care Facility Divisions administer all District and federal laws and regulations governing the licensure, certification and regulation of all health care facilities in the District of Columbia<sup>v</sup>. In this role, Health Regulation and Licensing Administration (HRLA) staff inspect health care facilities and providers who participate in the Medicare and Medicaid programs, certified per District and federal laws, respond to consumer and self-reported facility incidents and/or complaints, and conduct investigations, if indicated. When necessary, HRLA takes enforcement actions to compel facilities, providers and suppliers to come into compliance with District and Federal law.

- **Department of Health Care Finance (DHCF)**

DHCF is the District's Medicaid agency and the primary payer for all long term services and supports the city provides. In fiscal year 2014,<sup>vi</sup> the District spent a total of \$781 million in Medicaid funds on these services; \$245 million (or 30%) were local dollars. These funds pay for care in institutional settings including nursing facilities and Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IDDs), as well as a variety of home and community-based services (HCBS), described below. Approximately 45% of total Medicaid funds spent on LTSS are spent on institutional care while 55% are spent on home and community-based services.

- **Department of Human Services (DHS)**

Across its extensive range of programming, DHS routinely serves people with disabilities. For example, in income-based programs such as TANF, SNAP, and Medicaid, approximately 17% of applicants were assessed as likely to have a mental disorder of some magnitude, and 4% to have a learning disability. In the homeless services program, 40% of singles and 16% of adult head of families entering shelters were assessed by DHS to have a disability in at least one of eight categories.<sup>vii</sup> In the Adult Protective Services program -- which investigates reports of abuse, neglect, exploitation and self-neglect, and provides temporary services and supports in some founded cases - - an estimated 45% of those served area assessed to have a disability.

- **D.C. Office on Aging (DCOA)**

DCOA manages the Aging and Disability Resource Center (ADRC) and funds the Senior Service Network, which together consist of more than 20 community-based nonprofit organizations, operating more than 40 programs for District residents age 60 and older, people living with disabilities (age 18-59), and their caregivers. In addition, the ADRC

provides information, coordinates service access, and provides direct social work services to help people stay in the community for as long as possible. In FY 2015, the ADRC served 5,860 people, 23% of whom were 18 to 59 years old, living with a disability. The remaining individuals served by ADRC are people age 60 and older who may also have a disability.

- **Department on Disability Services (DDS)**

DDS oversees and coordinates services for District residents with disabilities through a network of community-based, service providers. Within DDS, the Developmental Disabilities Administration (DDA) coordinates person-centered home and community services for over 2,250 adults with intellectual disabilities so each person can live and work in the neighborhood of his or her choosing. DDA promotes health, wellness and a high quality of life through service coordination and monitoring, clinical supports, and a robust quality management program.

DDS's Rehabilitation Services Administration (RSA) provides comprehensive, person-centered employment services and supports for people with disabilities, pre-employment and transition services for youth with disabilities, independent living services and services for people with visual impairments. In FY 2015 RSA served 9,075 people.

- **Office of Disability Rights (ODR)**

ODR assesses and evaluates all District agencies' compliance with the ADA and other disability rights laws, providing informal pre-complaint investigation and dispute resolution. ODR also provides expertise, training and technical assistance regarding ADA compliance and disability sensitivity and rights training to all DC agencies. ODR's current initiatives include efforts to increase access to District-owned and leased facilities, worksites and community spaces; leading monthly disability-wellness seminars and managing the District's Mentoring Program for students with disabilities.

- **Office of the State Superintendent for Education (OSSE).**

The office of the State Superintendent of Education (OSSE) is the District's state education agency. OSSE is responsible for ensuring that all education-related public agencies identify and evaluate children who may have a disability and provide an education that meets the children's individualized needs alongside peers without disabilities to the maximum extent appropriate. OSSE also has oversight of nonpublic special education schools -- the most restrictive educational placements for children with disabilities. DC currently serves 12,173 children with qualifying disabilities ages 3-

21. In addition, OSSE oversees early intervention services for approximately 700 infants and toddlers with qualifying disabilities (age 3 and under). Finally, OSSE provides daily transportation to school for eligible children with approximately 650 buses running over 500 routes each weekday.

- **Other Government Agencies**

Many other agencies in the District of Columbia serve and support people with disabilities. In doing so, they interface on a regular basis with the agencies listed above. These other government agencies include:

- The DC Housing Authority (DCHA)
- The DC Public Libraries (DCPL)
- The DC Public Schools (DCPS)
- The Department of Child and Family Services (CFSA)
- The Department of Corrections (DOC)
- The Department of Housing and Community Development (DHCD)
- The Department of Employment Services (DOES)
- The Department of Parks and Recreation (DPR)
- The Department of Youth Rehabilitation Services (DYRS)

### Institutional Care Providers

Over the last several decades, the District of Columbia has worked to reduce the number of institutional care settings for people with disabilities in favor of home and community based alternatives. In 1991, the city closed the Forest Haven facility for children and adults with intellectual and developmental disabilities and, over the course of the past 25 years, the population of St. Elizabeths Hospital has been reduced from several thousand to less than 300. Today, the District operates or pays for services in only three types of institutional care settings: inpatient facilities, intermediate care facilities, and nursing facilities.

- **Inpatient Facilities**

Saint Elizabeths Hospital is the only inpatient psychiatric facility operated by the District of Columbia. This 292-bed tertiary care facility provides in-patient psychiatric treatment to individuals with serious mental illnesses.

- Total bed capacity: 292
- Average daily census during FY15: 275<sup>viii</sup>
- Total new admissions monthly: 458 admissions in total (38 per month)<sup>ix</sup>
- Total discharges to the community: 464 discharges in total (39 per month):

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- 1-20 days: 48 (10%)
- 21-90 days: 253 (55%)
- 90+ days: 163 (35%)<sup>x</sup>
- Median length of stay (LOS): for 'discharge cohort' (measured at discharge) was 58 days and average LOS was 483 days. Median LOS for individuals remaining in care at end of FY15 (9/30/15) was 466 days and their average LOS was 2400 days.
- Average cost per person/funding source: The per diem rate for all individuals in care (both forensic and civil) was \$901.

Through Medicaid, the District also pays for inpatient psychiatric care for youth in 50 facilities (known as psychiatric residential treatment facilities, or PRTFs), all of which are located outside of the District.

- Total Census:<sup>xi</sup>128 District youth were in PRTF placements during FY14
- Total new admissions monthly: 6.3 admissions per month
- Total discharges to the community:
  - 1-20 days – one youth
  - 21-90 days-14 youth
  - 90+ days- 113 youth
- Average length of stay: 8 months

Finally, the District's Hospital for Sick Children, provides long-term chronic, acute or rehabilitative services for children.

- Total bed capacity: 130 licensed beds/118 operating beds
- Total census: 39
- Total new admissions: 173
- Total transitions to the community: 199
- Average cost per patient per day: \$2,485 (85% Medicaid)
- Average length of stay: 69 days

- **Intermediate Care Facilities (ICFs)**

ICFs for people with intellectual and developmental disabilities (ICF/IDD) provide comprehensive residential, day, clinical and medical services by a certified provider. The District does not operate any ICF/IDDs, but pays for intermediate care in 68 private facilities.

Between FY 2007 and FY 2015, the District intentionally reduced the total ICF/IDD capacity by 233 beds, and residents by 213 people -- a 40% reduction in the use of these institutional services. As of the close of FY 2014:

- Total bed capacity: 400
  - Total census: 354
  - Total new admissions: 4
  - Total transitions to the community: 3
  - Average length of stay: People typically live in an ICF/IDD home for a number of years (as many as 20 for example).
  - Average annual cost per person: \$177,886
- **Nursing Facilities**

Nursing facilities, regulated by the Department of Health, provide both short- and long-term care for individuals who require skilled nursing, supervision and assistance with activities of daily living. The District does not directly operate any nursing facilities. Medicaid is the single largest payer for nursing facility services, along with Medicare and private pay.

- Total number of DC-based facilities: 21<sup>xii</sup>
- Total bed capacity: 2,770
- Total current census: 2,717 total users in Q4
- Total new admissions: 975
- Total transitions to the community<sup>xiii</sup>:
  - 1-20 days: 9 individuals
  - 21-90 days: 37 individuals
  - More than 90 days: 37 individuals<sup>xiv</sup>
- Average length of stay: 537 days
- Average cost per person per day: Medicaid paid \$193.50/person per day for nursing facility services in FY14.

### Home and Community-Based Services

The District of Columbia offers a wide variety of home and community-based supports and services (HCBS) for people with disabilities. These range from comprehensive adult day health programs to vocational rehabilitation to wellness classes. Depending on the program or service, eligibility is based on a person's age, income and/or the level of care they need.



- **Medicaid Waivers & Demonstration Projects**

The District operates three Medicaid programs that enable community living for people who would otherwise be eligible for institutional care based on their level of care need (in an ICF or nursing home). The long-term services and supports provided under these programs are funded with a combination of federal and local Medicaid dollars.

- The ID/DD Waiver offers 24 different services for individuals with developmental and intellectual disabilities offered by community providers certified by DDS. These include: day services such as supported employment and individualized day supports; residential services such as supported living and in home supports; clinical supports such as creative art therapies, wellness, and physical and occupational therapy; and assistive supports such as environmental accessibility adaptations, personal and emergency response services and vehicle modification.<sup>xv</sup>
  - Enrollees: 1,644<sup>xvi</sup>
  - Cap: 1,692
  - FY 2015 total budgeted: \$192,837,582
  - FY 2015 total spent: \$191,940,457
- The Elderly and Persons with Disabilities (EPD) Waiver supports individuals who are age 65 and older, or between 18 and 64 and have a physical disability. As of January 1, 2016, there are 13 services offered in the EPD waiver including: case management, personal care assistance, respite, environmental accessibility, occupational and physical therapy, assisted Living, and others.<sup>xvii</sup>
  - Enrollees: 2,006<sup>xix</sup>
  - Cap: 4,960
  - Total budgeted: \$26,488,352
  - Total spent: \$26,703,283
- The Money Follows the Person Program (MFP) supports individuals who are making the transition from institutional care to an HCBS setting. The intensive wrap-around services also include funds to cover “set-up” costs incurred as part of the transition. Since 2008, the Demonstration has provided transition coordination services for over 200 Medicaid beneficiaries to return to the community.

- **“State Plan” Support**

People with disabilities may also access community based services and supports through the District’s Community Medicaid program (called the “State Plan”). Covered services include personal care assistance, hospice, adult day health, home health, occupational therapy, physical therapy, and skilled nursing services. The Developmental Disabilities Administration also provides service coordination for people receiving state plan services or local funding. State Plan services for mental health, substance use disorder, and Health Homes for people with mental illness are described separately below.

- Number of state plan enrollees receiving Long Term Services and Supports: 15,315

- **Assisted Living<sup>xx</sup>**

Assisted living facilities (ALFs) provide housing, health and personalized assistance according to individually developed service plans. These facilities vary greatly in the room configurations and amenities they offer. The District licenses 13 ALFs, three of which are used by Medicaid recipients via the EPD waiver. One of these, The Marigold, is a public housing assisted living facility operated by the city’s Housing Authority (DCHA) in partnership with a private contractor. In the three facilities:

- Total bed capacity: 61
- Total current census: 34
- Total new admissions: 16

The Department of Behavioral Health operates two types of assisted living facilities, called Mental Health Community Residence Facilities (MHCRFs):

- Supported Residences (SR) for individuals who need less intense support to live in the community. S
  - Total bed capacity: 432
  - Total current census: 385
- Supported Rehabilitative Residences (SRR) which provide twenty-four hour supervision for individuals with severe and persistent mental illness who need an intense level of support to live within the community. S

- Total bed capacity: 205
- Total current census: 198

To support assisted living, the District also participates in the Optional State Supplemental Payment Program which supplements the income of low-income older adults and individuals with disabilities to help them pay for housing in licensed Adult Foster Care Home (AFCHs). AFCHs include licensed Community Residential Facilities (CRFs), Assisted Living Facilities (ALFs) and Mental Health Community Residential Facilities (MHCRFs). For 2016, the OSSP payment (issued directly to the participant) ranges from \$620 to \$730 for an individual and from \$1,606 to \$1,825 for a couple. In FY 2014, 7,807 people received OSSP support.

- **Employment and Wrap Around Services for People with Disabilities**

The Department on Disability Services uses a person-centered approach to provide extensive wrap around services to support eligible people with disabilities to live as independently as possible in the community. Services include:

- Counseling and guidance
- Payment for vocational and other training services, or college
- Assistive technology (e.g., I-pad touch, Zoom Text; Dragon Speak; hearing aids, etc.)
- Visual impairment services
- Transportation necessary to participate in training
- Clothing and equipment needed for work
- Transition services for youth still in school

In addition, the Independent Living Services (ILS) program partners with the DC Center for Independent Living and other private agencies to provide four core independent living services: advocacy; independent living skills training; information and referral; and peer support. The Independent Living Older Blind Program (ILOB) provides in-home and community-based services for this specialized population.

- **Housing Support**

Securing affordable, appropriate housing is often a significant challenge for people with disabilities whose incomes may be limited and their physical needs very specific. There are some housing resources targeted for this population. For example, the Department of

Behavioral Health provides a range of housing options for individuals with mental illness including over 2,000 subsidized community-based housing units. DDA funds housing supports for approximately 960 people enrolled in the IDD waiver who require out of home residential supports. In addition, there are 65 funded housing choice vouchers for people in the MFP initiative described above.

The Department of Housing and Community Development (DHCD)'s Handicapped Accessibility Improvement Program (HAIP) supports critical home modifications and adaptations costing \$10,000-\$30,000. Home modifications up to \$10,000 are also covered expenses in the EPD and the IDD waivers.

- **Mental health and substance abuse services**

There are currently eleven Mental Health Rehabilitation Services: diagnostic and assessment; mediation somatic; counseling; community support; crisis/emergency; rehabilitation day services (mentioned above); intensive day treatment; community based intervention for children and youth; assertive community treatment for adults; trauma-focused cognitive behavioral therapy for youth and child-parent psychotherapy – Family Violence, also for youth. These services are offered through community providers - Core Services Agencies (CSAs) or specialty providers - who are certified by DBH. At least 60% of the services are required to be provided in the community in natural settings, rather than at the clinic.

In addition to Medicaid-reimbursable treatment services, DBH offers numerous other supportive services for people with mental illness such as rental subsidies and Supported Employment. DBH also certifies Substance Use Disorder (SUD) treatment and recovery providers in the District who provide clinical care coordination; assessment/diagnostic and treatment planning; counseling; medication management and a variety of other services

- **Wellness, Fitness and Nutrition**

The DC Office on Aging and Department of Parks and Recreation combine to provide a broad range of wellness and fitness programs, classes and activities that support people in maintaining healthy lives in their communities. In addition to wellness and day treatment programs, services include transportation, home delivered meals, congregate meals, and nutritional supplements.

- **Day Services**

DDS, DCOA, DHCF, DBH and a host of community-based providers combine to offer a variety of day services for adults with intellectual disabilities, frail elderly, people with physical disabilities, and people with mental health diagnoses. These services all work to support individuals in living an integrated and independent life in the community. Program examples include:

- Individualized Day Supports (IDS) to foster independence, encourage community integration, and help people build relationships. IDS include vocational exploration and can supplement employment services.
- Adult Day Health Services offer non-residential medical supports and supervised therapeutic activities in an integrated community setting.
- Geriatric Day Care provides supervision, socialization, rehabilitation, training, therapy and supportive services for functionally-impaired seniors to help them remain in their homes.
- Rehabilitation Day Services is a structured clinical program to develop skills and foster social role integration through a range of social, psycho educational, behavioral and cognitive mental health interventions.

- **Transportation**

The District provides Medicaid-funded emergency and non-emergency transportation support to people who are eligible, as well as non-Medicaid transportation through several providers. The primary objective is to provide low-income, functionally impaired District residents with transportation to life-sustaining medical appointments so they can maintain maximum functioning and independence in the community.

In addition, the District Department of Transportation (DDOT) works with the Washington Metro Area Transit Authority (WMATA) and the D.C. Taxi Commission to provide broader transportation services to District residents living with a disability. "MetroAccess" is a shared-ride, door-to-door, paratransit service for people whose disability prevents them from using bus or rail. The "Transport DC" program (formerly CAPS-DC) provides alternative taxicab transportation for MetroAccess customers. The D.C. Office on Aging also funds a transportation program through Seabury Resources for the Aging, primarily for medical appointments, but also available for group social outings.

### *How Do People Access Long Term Services and Supports (LTSS)?*

The District's goal is to make it as simple and seamless as possible for people with disabilities to access the variety of Long Term Services and Supports described above. If an individual is living at home or in the community, multiple agencies provide information and referrals to these services. For people temporarily in an institutional care setting, discharge and community transition processes can be set in motion.

### Information and Referral to Services within the Community

Information about Long Term Services and Supports (what's offered, who's eligible, how to apply) is available through multiple District agencies. These agencies either support people in applying for services they offer, or provide referrals to other agencies.

District residents are also directed to the city's **Aging and Disability Resource Center (ADRC)**, which is the most comprehensive source of information for connecting residents to Long Term Services and Supports. The ADRC is operated by the DC Office on Aging and has eight satellite offices around the city, one in each Ward. The ADRC's Information and Referral/Assistance Unit uses "Person-Centered Options Counseling" and refers people to:

- Community-based, private sector resources.
- DC government health and human service programs.
- A Medicaid Enrollment Specialist who can assist with pre-enrollment for the EPD Waiver.
- Community case managers or social workers, if the resident is eligible and in need of home- and community-based services and supports right away.

The DC Office on Aging also uses Benefits Checkup through its Senior Service Network and the ADRC to help people identify which services they might be eligible for (including local and federal programs) that are close to where they live. Benefits Checkup uses a simple online questionnaire; users do not have to provide identifying information such as name or social security number. The system identifies eligibility matches for all available home and community-based services in the District.

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## Transitioning from an Institutional Setting

The District government has established processes by which people with disabilities are helped to transition from institutional care settings to a less restrictive environment.

- For people with intellectual and developmental disabilities, DDS coordinates transition planning and support. If a person had already been served by DDA, admission to a nursing home would trigger enhanced monitoring to ensure the setting remains the least restrictive to meet the person's needs. People who reside in ICF/IDD settings are offered on at least an annual basis the opportunity to receive services under the IDD HCBS waiver as an alternative to ICF services during person-centered planning meetings.
- For people over the age of 60 or adults with physical disabilities, transition assistance is conducted by staff in the facility in conjunction with the ADRC. The process uses a uniform preference screening tool and transition services checklists. Decisions about the appropriateness of a less restrictive setting are ultimately made by the resident and his or her legally authorized representative, social worker, medical professional, and other members of the individual's care team. Once the individual has been successfully transitioned back to the community, ongoing case management services are available through the District's EPD Waiver program, Money Follows the Person Program, or DCOA's Senior Service Network<sup>xxi</sup>.
- For youth with mental health issues being discharged from PRTFs, DBH has a very vigorous process to ensure youth are successfully integrated back into the community. DBH has staff assigned to every youth in a PRTF, visiting the youth in person and participating in all treatment team meetings. Prior to discharge, a Core Service Agency (CSA) is assigned if no relationship previously existed. Working with the youth and his or her family (if any), the PRTF staff, DBH monitor, CSA and any other involved District agencies develop a discharge plan that includes not only mental health services but also housing, education and other support services as needed.
- For people discharged from Saint Elizabeths Hospital, transition planning starts from the day of admission. A Core Service Agency (CSA) is assigned if no relationship previously existed, and CSA staff participate in all aspects of discharge planning. Upon anticipation of discharge, but no earlier than 90 days prior, the individual can be referred to Rehabilitation Day Services, which occur in the community, to enable him or her to start the transition out of the hospital. The type of housing needed is identified, and the individual is supported to identify a residence to move to upon discharge. The discharge plan is developed with the individual so that services can begin immediately upon discharge.

### III. District-Level Work to Improve Long Term Services and Supports

The District has yet to achieve its goal of fully seamless access to Long Term Services and Supports. Many individuals and families seeking this help encounter a fragmented, inconsistent and siloed system that requires multiple assessments and applications as well as lengthy delays in approval. Once enrolled, the quality of services can be inconsistent. Residents who have limited English proficiency may face additional barriers in accessing linguistically appropriate services.

Section 2 of this Plan details these challenges and lays-out specific action steps in nine strategic areas. That work will take place within the context of a number of District-level initiatives aimed at systems improvement. A strong advocacy community lends its support and oversight.

#### On-Going District-Level Initiatives

There are a number of initiatives currently underway in the District working to assess, and make concrete improvements to, various aspects of the Long Term Services and Supports system. These initiatives include:

- **Age-Friendly DC**

In 2012, DC adopted World Health Organization (WHO) guidance to prepare for the growing number of residents aged 50 and older, by transforming built, natural, and social environments into great places to grow up and grow older. The WHO outlined a framework for creating age-friendly cities and communities through four phases: 1) assessment; 2) planning; 3) implementation; and 4) evaluation. The District is implementing 75 strategies led by 38 DC agencies to transform the city by 2017 into an easier city to live and visit. The Age-Friendly DC strategies are closely aligned with this Olmstead Plan and will help it move forward. Data in the 2017 Olmstead Plan will also help measure progress in transforming DC into an age-friendlier community. More information at: [www.agefriendly.dc.gov](http://www.agefriendly.dc.gov).

- **DHCF System Reform Efforts**

DHCF is undertaking major system reforms to improve the quality and delivery of Medicaid-funded Long Term Services and Supports. The work is focused in three areas: organizational change; program evolution and growth; and quality improvement. The



numerous specific activities in this effort can be found in the nine priority areas detailed in Section 2 of this plan.

- **Employment First State Leadership Mentoring**

People with disabilities in the District experience disproportionate unemployment. In 2012, a Mayoral Proclamation made the District of Columbia the 20<sup>th</sup> “Employment First State,” a commitment to supporting people with disabilities in pursuing competitive employment in integrated settings and *as the first option explored in publicly-funded services*. To realize this vision, a cross-agency Employment First State Leadership Mentoring Program is helping develop initiatives to increase the capacity of provider and District staff in key agencies to more effectively advance Employment First strategies with a focus on transition age youth and customized employment. More information at: <http://dds.dc.gov/page/employment-first>

- **The National Core Indicators (NCI)**

The National Core Indicators (NCI) initiative helps state agencies gather a standard set of performance and outcome measures that can be used to track their own progress over time and compare results across the country. Until recently, NCI has focused on efforts by public developmental disabilities agencies on employment, rights, service planning, community inclusion, and other areas. NCI recently expanded its scope to support states in assessing their performance for older adults, individuals with physical disabilities, and caregivers. For the last two years, the District has participated in NCI and will begin to use the expanded scope in 2017 and 2018. DDA’s current NCI reports can be reviewed on-line at: <http://www.nationalcoreindicators.org/states/DC/>.

- **No Wrong Door (NWD)**

In 2014, DC was one of 25 states to receive a year-long federal planning grant through the U.S. Administration for Community Living to develop a comprehensive, “No Wrong Door” (NWD) approach to the delivery of Long Term Services and Supports. In FY 2015, DC was one of five states to receive a three year NWD implementation grant. DC’s goal is a visible, trustworthy, easy-to-access system in which people encounter person- and family-centered systems and staff with core competencies that facilitate their connection to formal and informal LTSS, regardless of where they enter the system.<sup>xxii</sup> The NWD Work Plan is referenced frequently in Section 2 of this report as it targets many of the same goals, outcomes, challenges, and strategies as the Olmstead plan.

- **State Innovation Model (SIM)**

In a year-long, federally funded planning process, multiple agencies and stakeholders<sup>xxiii</sup> are coming together to develop DC's strategy for health system transformation. The work is focusing on care delivery; payment models; community linkages; Health Information Exchange; and quality measurement as well as design of the District's second Medicaid Health Home State Plan benefit. This benefit will achieve whole-person, person-centered integrated care services coordination for people with two or more physical chronic health conditions. Many people with disabilities, due to co-morbid physical chronic conditions, will be eligible for this Health Home benefit.

### The Advocacy Community

The District of Columbia has a robust community of advocates and stakeholder organizations actively involved in working to improve services and supports for people with disabilities. Examples include:

- **The DC Developmental Disabilities Council (DDC)**

The DDC is an independent, federally-funded, Mayorally-appointed body. The DDC works to strengthen the voice of people with developmental disabilities and their families in DC in support of greater independence, inclusion, empowerment and the pursuit of life as they choose. The DDC strives through its advocacy to create change that eliminates discrimination and removes barriers to full inclusion.

- **Project ACTION!**

Project ACTION! is a coalition of self-advocates and self-advocacy groups that shares personal experiences of living with developmental disabilities and trains and encourages peers to speak out on issues important to them. The group's motto, is "Nothing About Us without Us." Many members have joined boards, committees, work groups, and commissions that make decisions that affect their lives.

- **Supporting Families Community of Practice**

For the past three years, the District has been working to create an active, broad-based "Supporting Families of People with Intellectual and Developmental Disabilities Across the Lifespan Community of Practice (the DC SFCoP). The group's State Team meetings often engage 50 or more people, most of whom are people with disabilities and their families. The DC SFCoP has developed processes for strengthening the voices of families and self-

advocates, trained trainers, and helped pass legislation to create a Family Support Council and to provide stipends for family and self-advocates for expenses related to participating in stakeholder engagement activities.

- **The DC State Rehabilitation Council (DC SRC).**

The DC SRC advises on the needs of District residents with disabilities who receive, or are seeking, vocational services from DDS's Rehabilitation Services Administration. DC SRC partners with RSA on increasing meaningful employment outcomes, developing the agency's annual goals and priorities, crafting agency policies, and tracking performance. Members of the DC SRC are appointed by the Mayor, and include consumers of RSA services, advocates, and other stakeholders.

- **The DC Statewide Independent Living Council (SILC)**

The DC SILC promotes independent living services for DC residents with disabilities. Members are appointed by the Mayor and include advocates, individuals with disabilities, and other stakeholders in IL services. The goals for the DC SILC this year are to expand IL services District-wide; ensure that residents with disabilities are aware of IL services; increase advocacy; and support an effective and efficient IL service delivery system.

### The 2016 and 2017 Olmstead Plans

While Long Term Services and Supports in the District have seen improvements since the first Olmstead Plan was developed in 2011, much work remains to be done.

#### **The Vision**

By the end of 2017, the work under the Olmstead Plans results in a person-centered, user friendly LTSS system that supports all people with disabilities to maintain their independence as long as possible in their homes; and remain fully included members of their communities.

But the Olmstead promise of community integration is more than just moving people out of institutions and into group homes in the community. The spirit of Olmstead means recognizing that all people with disabilities can and should be a part of the community and have lives that are full of opportunities:

- To work real, competitive jobs, in the community, and be paid full wages for their efforts.
- To volunteer and contribute.

- To make and be friends.
- To make decisions about their lives.
- To have a full life in a place where people with disabilities are encouraged to have hopes and dreams and are supported to reach their goals.

In collaboration with the agencies, partners and initiatives described above, the Olmstead Working Group envisions a two-stage process for building a Plan that it is a vehicle for achieving this vision.

#### **Phase I: Establishing the Needed Knowledge Base**

Recognizing significant gaps in core data about both the population and the current service system, the Working Group sees 2016 as the period during which the Olmstead Plan – with greater input and participation from a broad array of stakeholders – drives the city towards the knowledge base that will be required to make needed policy and systems decisions and then move them forward. Where there is already sufficient data to inform clear objectives, the 2016 Plan includes this information. Where data are not available, this plan establishes a marker so that the gap can be addressed in the near future.

#### **Phase II: Development of the 2017 Olmstead Plan**

With improved data – or a plan to secure this information where it does not yet exist – the District will be positioned to articulate and move forward a comprehensive set of improvements to the city’s system of Long Term Services and Supports for people with disabilities.

The District will continue reporting its progress on the goals identified in the 2016 Olmstead Plan on a quarterly basis. In 2016, the quarters end on March 31, June 30, September 30, and December 31. The Office of Disability Rights will post quarterly reports within 45 days of these dates. In addition, ODR will post a year-end report within 45 days of the end of the calendar year, summarizing the District’s progress for the year.

The Olmstead Working Group will continue to meet on at least a quarterly basis (after the quarterly reports are posted) to review and discuss the District’s progress. By September 30, 2016, the Olmstead Working Group will present any recommendations for the 2017 Olmstead Plan to the Mayor (through the Deputy Mayor for Health and Human Services) for consideration.

## SECTION 2: The 2016 Olmstead Plan

The Olmstead Working Group has identified nine strategic areas in which the District must improve data collection and the provision of services and supports. While there is certainly overlap among these, for organizational purposes each is presented separately here. The nine areas (presented alphabetically) are:

- A Person-Centered Culture
- Community Engagement, Outreach and Training
- Employment
- Housing
- Intake, Enrollment and Discharge Processes
- Quality of Institutional and Community-Based Services, Providers and Workforce
- Supporting Children and Youth
- Waiver Management and Systems issues
- Wellness and Quality of Life

In each strategic area, this plan lays out:

**The Backdrop.** The importance of the issue and some of the specific challenges in DC's current operations, both for institutions and for providers of home and community-based services.

**The Vision.** Where work in this area is headed and aspirations for the end result.

**The Data.** What is currently known and what is missing.

**Key Problems.** The barriers and challenges that make it difficult to achieve goals in this area.

**Action Steps and Lead Entities.** Needed actions and the agencies and entities that will take the lead on pursuing them, and be accountable for results.

## I. A Person-Centered Culture

### *Why is this important?*

Person-centered thinking is a philosophy underlying service delivery that supports people in exerting positive control and self-direction in their own lives. Person-centered thinking is important for the promotion of health, wellness and safety, and for supporting people with disabilities to be valued and contributing members of the community.

While the use of person-centered thinking is important in all service contexts, its adoption by service providers working with people transitioning out of institutionalized settings is particularly crucial. It can increase the likelihood that service plans will be used and acted upon, that updating service plans will occur “naturally,” needing less effort and time, and that the person’s ability to lead a fulfilling, independent life will be maximized.

### *What is the Vision?*

The vision is for a culture in our city that deeply respects each person’s right to make independent decisions about all facets of his or her life. We envision an LTSS system that fully embraces person-centered thinking – in the kinds of services and supports that are provided, the ways in which they are provided and the central role of people with disabilities in all aspects of decision-making about the programs and services they wish to utilize.

### *What are Some of the Challenges the District Faces?*

**The road to culture change is long.** While a few departments have had notable success in fully embedding person-centered thinking and practice into its culture and work, looking across the city government, awareness, capacity and competence in this area is uneven and can vary depending on agency or source of funding. There are no specified cross-system expectations or performance measures in this area for District agencies.

### *Action Steps, Lead Entities and Timeframes*

The District’s *No Wrong Door* initiative has articulated and is moving forward on a series of specific objectives for establishing a person-centered culture. These objectives center around improved accountability for the use of person-centered practice; widespread training in the methodology to increase capacity; and a reduction in duplicative intake and planning processes that tend to undermine person-centered approaches.

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*No Wrong Door's* cross-agency Leadership Council and project team will lead the work to accomplish the following objectives during the first year of the city's implementation grant (fiscal year 2016):

1. Develop and implement clear expectations, competency criteria, standards, policies and protocols for all LTSS staff in the consistent use of person-centered approaches to service and planning, including using principles of supported decision-making (regardless of whether individuals have guardians or other substitute healthcare decision-makers).
2. Add person-centered practice standards to District personnel job descriptions for staff in key LTSS agencies.
3. Develop procedures and protocols for supporting family members and others in a person's support network to ensure that plans accurately and continuously reflect the individual's preferences and needs.

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in the use of person-centered approaches are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- #/% of core LTSS agencies that have implemented person-centered service protocols.
- #/% of performance measures (for agencies and providers) linked to person-centered practice and the use of supported decision-making.
- #/% of core LTSS agencies and staff that have completed training.
- #/% of HCBS provider staff who have completed training.

## II. Community Engagement, Outreach and Training

### *Why is this important?*

A robust, transparent system of Long Term Service and Supports requires the active participation of people with disabilities, family members and caretakers, advocates and local service providers. The active engagement of broad stakeholders also demonstrates the District's commitment to supporting people to make their own choices and lead their lives as they choose. Finally, ensuring people with disabilities are involved and engaged will keep agencies and providers focused on the right outcomes, and ensure they are addressing the barriers that people are facing every day -- many of which may not be obvious when the experience is not lived.

### *What is the Vision?*

We envision a wide variety of high-impact community engagement, outreach and training strategies to ensure people with disabilities have ongoing, meaningful involvement in planning for, and executing, their own service and support plans. We envision an engagement, outreach and training infrastructure and support system that is efficient, effective, and person-centered; and that government commitments in these areas are not only transparent to the community, but are met in the defined timeframes.

### *What are Some of the Challenges the District Faces?*

**Limited community engagement opportunities.** Much of the planning around community engagement work currently leaves key decision-makers (i.e. people with disabilities, service recipients, caregivers and families) out of the process altogether. In addition, participation in decision-making is often limited to formal work development and comment periods, which are not accessible to a broad range of stakeholders.

**Current outreach misses key targets.** Finding and engaging at-risk populations can be difficult, as is developing messages that resonate across all stakeholder groups. That said, current outreach and information dissemination across agencies and settings is not coordinated, resulting in duplication and confusion among recipients of the material. Further, there are few opportunities for in-person exposure to the Long Term Services and Supports that are available – outreach efforts are almost exclusively through printed materials as well as electronic, TV, radio, and social media communication. The District does not currently measure the effectiveness of its outreach efforts.



**Planful training.** Community trainings tend to be general or conducted *ad hoc*, rather than following a plan that is based on a needs analysis, goal setting, and attendee feedback. There are no District-wide training goals or basic training expectations for all agency staff. Trainings are often conducted in places that are not convenient for attendees and they are rarely evaluated in a meaningful way.

### *Action Steps, Lead Entities and Timeframes*

Through the *No Wrong Door* initiative, DC has made strides in moving toward a unified approach to community engagement, outreach, and training. The NWD Stakeholder Engagement Workgroup developed a comprehensive contact list across all affected communities and convened the Outreach or Public Engagement staff at each NWD partner agency to brainstorm strategies for better work and inter-agency collaboration. The Workgroup also conducted several stakeholder engagement sessions and held preliminary focus groups with people with I/DD, physical disabilities, older adults, District-wide intake staff, and ADRC staff.

Building on this work:

1. Develop and promulgate policy and protocols to increase linguistically and culturally diverse stakeholder involvement in the development, implementation and ongoing evaluation of engagement and outreach activities (NWD/DDS by December, 2016).
2. Develop mandatory training for front line staff of District *No Wrong Door* partner agencies about the key plans and practice changes being developed through NWD. (NWD/DDS by December, 2016).
3. Develop a unified messaging and marketing “look” for outreach materials and replicate on all *No Wrong Door* partner agencies’ websites (NWD/DDS by December, 2016).
4. Launch and publicize an “Olmstead-comments-and-questions” email address that is permanently live. ODR will collect comments and present them to the Olmstead Working Group’s quarterly meetings for review (ODR by January 2016).

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in community engagement, outreach and training are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- % of customers and # of caregivers reached through outreach and training.
- #/% reached who are not currently connected to services but may be at-risk.
- % of outreach meetings conducted in languages other than English.
- % of sessions receiving positive participant rating.
- # of active website information links, total and per agency; # of hits/month.

## **III. Employment**

### *Why is this important?*

Competitive and integrated employment – and the access to stable housing that it can bring – is a key pathway to the middle class. For people with disabilities employment also increases connections to the community, builds self-confidence and can lower rates of isolation and depression. Our city gains much from the perspectives and talents people with disabilities bring to the workforce, in addition to their positive impact on the economy in wages earned, taxes paid, and the purchase of goods and services.

### *What is the Vision?*

All working-age people have access to – and are prepared for -- competitive and integrated employment that meets their individual interests, preferences and informed choices. Pursuing these opportunities is the first option explored in publicly-funded services and people with disabilities have the support they need to do so. The District of Columbia strives to be a model employer of people with disabilities.

### *What are Some of the Challenges the District Faces?*

**Disproportionate unemployment for people with disabilities.** There is a significant gap in employment rates between DC residents with and without disabilities. According to the Census Bureau, 31% of DC residents with disabilities are employed, compared with 72% of people without disabilities. For working age District residents with cognitive disabilities (defined as having serious difficulty concentrating, remembering, or making decisions because of a physical, mental, or emotional condition) only 27% are employed.<sup>xxiv</sup> Only 13% of people with intellectual and developmental disabilities supported by DDA were competitively employed, slightly below the national rate of about 15%.<sup>xxv</sup> Many young people with disabilities are not successfully transitioning from school to work.

**Support structures need strengthening.** Agencies and community providers working to support employment for people with disabilities need targeted support to build capacity, ensure efforts utilize best practices in the field and are coordinated and aligned. While long-term employment supports are available through the HCBS IDD waiver, the EPD waiver does not offer such supports. Transportation, a critical work support, is also a barrier for many.

**Larger employment trends in the District.**<sup>xxvi</sup> The District's economy is thriving in many respects, with an overall unemployment rate of only 6.8% and demand for middle and high-skilled jobs improving steadily. However, there are also significant disparities in our city on several key economic indicators. For example, nearly 30% of DC households earn only about half of the city's median household income. Similarly, while unemployment city-wide is low and declining, in Wards 7 & 8 it remains in the double digits at 11.8 and 14.7% respectively. Further, unemployment amongst certain populations, such as African Americans and youth is high and significantly exceeds the national average.

The skills gap is an important factor in unemployment. Approximately 10% of DC residents have a high school diploma or less and 50% of these individuals are unemployed or under-employed. In a labor market where the demand for low skilled jobs is declining, the competition for low skilled jobs can be substantial.

### *Action Steps, Lead Entities and Timeframes*

As described in Section I, the District is an *Employment First* state with multiple initiatives and collaborations underway seeking to improve employment outcomes for youth and adults with disabilities. Building on this work:

1. Review and realign (if necessary) structures across the workforce development system to better support people with disabilities. (WIC by December 2016).

2. Increase the capacity of staff across the system, focusing on managers and supervisors in developmental disability and vocational rehabilitation programs through a train-the-trainer model and virtual community of practice to reinforce onsite training and provide virtual coaching to support best practices (DDS by December, 2016).

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in employment for people with disabilities are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- #/% of people referred from DDA to RSA who maintain employment and have their cases successfully closed.
- #/% of people referred from DBH to RSA who maintain employment and have their cases successfully closed.
- # of people jointly served by RSA, DDA, DBH, DOES, DCPS.

## **IV. Housing**

### *Why is this important?*

The need for accessible, affordable, and consistent housing is the very foundation for any individual to obtain a stable, secure quality of life. Without housing, life is always in flux and focusing on addressing other needs like employment, social activities, and self-care is made substantially more difficult.

### *What is the Vision?*

Quality permanent housing will be accessible, affordable, and available to all people with disabilities.

### *What are Some of the Challenges the District Faces?*

**An increasingly constricted housing market.** As a jurisdiction that is entirely urban, DC faces some unique challenges. Residential and retail development are booming, creating a highly competitive rental market not favorable for low-income people, especially for people who have been living in long term care facilities for years, have limited sources of income, and need to identify rental housing to return to the community.

**Lack of a housing continuum.** In the District, the most viable housing options for low-income people with long term care needs (especially those under age 55), hover at two ends of the spectrum: either in long term care facilities or in completely independent apartments or single family homes. There are currently only three Assisted Living Facilities operating under the District's EPD Waiver Program, with a total of 61 beds. "Affordable housing" may be targeted for people in the 50-80% Adjusted Median Income (AMI) level, meaning it is not affordable to people with incomes at or below 30% of the area AMI.

**Limited subsidies.** For many people with disabilities who need rental assistance, housing subsidies are not readily available. The DC Housing Authority stopped accepting new applications for housing assistance in 2013 because there was no meaningful movement on its waiting list.

**Environmental accessibility.** In cases where people with disabilities have identified housing, but there are accessibility issues, it is often difficult to access needed home modification funds. In fact, some residents are unable to leave institutions due to lack of modifications such as grab bars or ramps. While the District does have programs that provide funds for such modifications, they are for limited populations (e.g., only for people on the EPD or ID/DD Waivers) and/or funds may be difficult to access because of program design.

**Homelessness.** Ending homelessness is one of the District's priority focus areas. In the homeless services program, the Department of Human Services assessed 40% of singles and 16% of adult heads of families entering shelters to have a disability in at least one of eight categories.<sup>xxvii</sup> This Olmstead plan recognizes that people with disabilities living in long term care facilities who want to return to the community, and do not have a home, may be at risk of joining DC's homeless population.

### *Action Steps, Lead Entities and Timeframes*

1. Evaluate and improve access to the Handicapped Accessibility Improvement Program (HAIP), which provides assistance for housing adaptations costing \$10,000-\$30,000 (DHCD by December 2016).

2. Implement environmental accessibility pilot program to fund expedited housing adaptations up to \$10,000 per person (DCOA and DHCD, by January 2016).
3. Determine methodology to evaluate housing needs for individuals who have been referred to the ADRC because they want to live in the community (DCOA by December 2016).

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in housing are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- #/% of people with disabilities whose discharge from an institutional setting is pending only housing.
- #/% of people who, during discharge planning, are successfully helped to secure permanent, affordable, suitable housing they did not have prior to entry.
- % of existing affordable DC housing stock (units) that is fully ADA compliant and accessible to this population.
- % of planned housing stock (units) that will be fully ADA compliant and accessible to this population.

## **V. Intake, Enrollment and Discharge Processes**

### *Why is this important?*

Consistent, coordinated and person-centered intake, enrollment and discharge processes increase people's decision-making power and reduce potential barriers to community integration. Further, streamlined processes reduce duplication and save resources that can be redirected elsewhere.

### *What is the Vision?*

The District seeks intake, enrollment and discharge processes that are easy to access, efficient, coordinated, transparent and reflect throughout a person-centered approach. The vision is that discharge planning begins on the day of a person's admission into a facility and that all needed

discharge services and support start on the day a person leaves institutional care. In addition, all people with disabilities and their family members and supporters who encounter the LTSS system understand these processes and can utilize them seamlessly.

### *What are Some of the Challenges the District Faces?*

**Limited Data and Information Sharing.** One of the principal barriers to seamless intake, enrollment and discharge processing is the inability of multiple involved agencies and partners to easily share information and data. This delays processing and necessitates duplication of work. At best, this is frustrating for consumers, but it can also have a negative impact on their choices, well-being and successful integration into the community.

**Staff capacity.** Staff from multiple agencies involved in multiple processes often do not have the full-system knowledge they need to effectively help people navigate through to a successful outcome. In addition, although most DC human services agencies have trained staff on person-centered thinking and planning, the full culture shift needed to infuse all of these processes with this approach has not yet been achieved.

**Public understanding and awareness.** Given the complexity of these processes, and a lack of a unified communication effort, it is not surprising that much of the public that would be eligible for LTSS has a limited or inaccurate understanding of what is available and how to access it.

### *Action Steps, Lead Entities and Timeframes*

One of the primary objectives of the *No Wrong Door* initiative is the development of agency process and work flows that improve coordination and integration of functions while reducing or eliminating duplication of efforts in intake, screening, eligibility determinations, application processes, case management and other areas. Building on this work, the District will:

1. Develop a “person-centered profile” for use in District LTSS agencies with common information that can be collected by referral sources or state systems and shared to avoid duplication of effort (NWD/DDS by December, 2016).
2. Develop guidance and training for case managers and service coordinators to ensure that the plans they create at intake and enrollment reflect a person’s preferences and needs, and plans are adjusted as necessary (NWD/DDS by December, 2016).
3. Develop a discharge manual to be used by both institutional and community-based professionals in collaboration with the Interagency Council on Homelessness (ICH) and make recommendations to improve the process, if needed (DCOA, DHCF, DBH, DOH, DDS, ICH by December, 2016).

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in intake, enrollment and discharge processes are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- % of relevant DC agency staff receiving training on HCBS services and discharge procedures.
- Average EPD and IDD Waiver enrollment times.
- # of public events/participants on LTSS system access and Medicaid Waiver protocols and processes.

## **VI. Quality of Institutional and Community-Based Services, Providers and Workforce**

### *Why is this important?*

People with disabilities rely on critical services and supports, as well as on the people who are employed to help them carry out basic personal care needs and activities of daily living. From receiving health care treatments, to accomplishing everyday tasks at home, to obtaining and maintaining employment, people who are dependent on someone else for support in critical areas are especially vulnerable to the quality of those services.

Quality, consumer-directed care and supports will lead to greater health and well-being; poor quality service can lead to depression, lack of self-confidence and reduced functioning. Quality services help ensure that people with disabilities will have a higher likelihood of achieving their dreams and being integrated in the community.

### *What is the Vision?*

The goal of the District's LTSS service delivery system is to provide high quality care and services that are consistent with people's needs and preferences and promote independence and quality of life in the most integrated settings. Quality means:



- *Reliability*: will the person arrive on time?
- *Competence*: Is the person properly trained in the specific support needs? Is the person properly supervised?
- *Safety*: has the agency complied with required background checks? Is equipment properly maintained?
- *Respect*: Does the agency embrace and ensure the dignity and rights of people are respected and protected?
- *Choice*: are there a sufficient number of provider agencies available to provide needed supports when they are needed?

These are just a few of the questions that must be answered in the affirmative for people who rely on a service system.

### *What are Some of the Challenges the District Faces?*

**Workforce turnover and availability.** In both institutions and among HCBS providers, maintaining high quality, high performing staff is a challenge, as is filling vacancies. With five major hospitals located in DC, there is significant competition for qualified providers to deliver clinical services including nursing, physical, occupational and speech therapy and mental health services. Licensing and regulatory requirements, while intended to ensure quality, can sometimes slow the recruitment of new providers of these services.

**Service Gaps, Duplication and Underutilization.** The District's current system is not fully aligned. There are gaps in services for some populations, duplication of other services, or services that are underutilized, and varying performance standards depending on the source of funding. For example, Medicaid does not fund case management outside of the two Medicaid Waivers, leaving some individuals without this critical support. At the same time, some individuals may be receiving case management from two or more agencies as not all case management is funded through Medicaid.

**Meeting Quality Standards.** Virtually all LTSS providers must comply with a panoply of Federal and District regulations that set standards for provider qualifications and quality of care. However, a robust regulatory environment does not, by itself, guarantee that services are high quality, consumer-focused and designed around the needs of the individual. Disparate, complicated standards and certification and licensing requirements across District agencies contribute to the problem.

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**Services for Individuals with Limited English Proficiency.** The District must increase its capacity to provide multi-lingual LTSS as increasing numbers of people with limited English proficiency age and require more services.

### *Action Steps, Lead Entities and Timeframes*

1. Assess and reduce duplication of services offered by Medicaid and DCOA (DHCF and DCOA by September, 2016).
2. Review and strengthen regulatory options to more effectively deal with quality issues when they arise (DHCF, DDS, DBH, DOH by December, 2016).
3. Review all providers' Language Access plans to ensure residents with limited English proficiency have access to linguistically and culturally appropriate services (DHCF and DDS by December, 2016).
4. Create a customer satisfaction survey to cover the five components of quality described above (Olmstead Working Group by December, 2016).

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in the quality of providers are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- #/% of ICF/IDDs that pass certification and licensing reviews with only standard level deficiencies or better.
- #/% of adult day health recertifications completed within designated timeframes.
- % of people who receive the services for which they have been assessed/referred.
- % of mandatory, annual HBCS training requirements that providers meet.
- #/% of people receiving supports from DDA spending fewer days/week in facility-based day programs.

## VII. Supporting Children and Youth

### *Why is this important?*

Ensuring that children and youth with disabilities are fully and equally integrated into the life of our city sends the clear message that the District values them. Encouraging and challenging all children and youth with disabilities to succeed academically will position them for success in the workforce and in life. Individuals with high school diplomas are less likely to be institutionalized or dependent on public benefits down the road. Further, seamless coordination between secondary school systems and adult service delivery systems can ensure a smooth transition for students with disabilities from child to adult supports, thus lowering the risk of institutionalization and the need for emergency or crisis services.

### *What is the Vision?*

Children and youth with disabilities, and their families, will be supported so they can achieve self-determination, interdependence, productivity, integration, and inclusion in all facets of community life, including competitive, integrated employment.

### *What are Some of the Challenges the District Faces?*

**Information-sharing.** There is limited data and information sharing across agencies working with transitioning youth and there remains low public awareness of the need for students to be trained on workforce competencies, and have a paid work experience prior to exit from high school.

**Service gaps.** Employers have limited capacity to work with students with disabilities who have complex needs, and limited job coaching is available to support on the job training for most students. Further, the city does not offer comprehensive peer-to-peer support for families to help them identify and connect with needed formal and informal supports for their children and youth with disabilities. And, families have further identified a need for better coordinated services and supports across the lifespan, particularly during the transitions from infant and toddler services to school, from school to employment and, as needed, to adult services.

**Limited end goals.** Guardianship is often seen as the only option for parents of children with disabilities rather than self-determination and supported decision-making.

*Action Steps, Lead Entities And Timeframes*

1. Develop an inter-agency plan to ensure that students with disabilities who graduate with a certificate (rather than a diploma), have at least one community-based, integrated paid work experience prior to school exit (DDS/RSA, DC public and charter schools, and DOES by December, 2016).
2. Increase the timely submission and completion of applications for adult DDA services for children with IDD who are in out of state residential facilities (DDA, CFSA by December, 2016).
3. Develop NWD Person-Centered Practices curriculum and train 2 NWD staff to deliver the training to public LTSS agencies, community partners (NWD/DDS by December, 2016).

*Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in supporting children and youth are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- #/% of youth receiving employment services in an integrated environment.
- #/% of students with disabilities who graduate with a certificate (rather than a diploma), who have at least one community-based, integrated paid work experience prior to school exit.
- # and ages of children and youth with intellectual disabilities currently in nursing facilities.
- #/% of youth in out of state residential facilities for whom submission and completion of applications for adult DDA services is completed 2-3 years before they age out.

## VIII. Medicaid Waiver Management and Systems issues

### *Why is this important?*

Home and community-based services (HCBS) offered through Medicaid Waiver programs are the backbone of the support system that people with disabilities need to remain in the community. The development and implementation of these Medicaid Waiver services must be cost effective and sustainable, yet also sufficient to meet the needs of a wide range of people. The effective management of the Medicaid Waivers improves access to the programs and increases visibility, satisfaction and, for participating individuals, quality of life. Simpler applications and systems can ensure a person with a disability understands the system and can make decisions on his or her own behalf.

### *What is the Vision?*

The District's Medicaid Waiver HCBS services meet people's varied needs so they can avoid institutional services altogether, or minimize a necessary stay and transition back into the community without delay and receiving services on the day of discharge. People with disabilities are fully integrated in the community and able to live as independently as they can.

### *What are Some of the Challenges the District Faces?*

**Needed service Improvements.** Medicaid Waiver services would be significantly improved through the increased use of technology to supplant some paid supports and implementation of self-directed services to increase choice and control on the part of people receiving services. People with disabilities in the District also need a broader range of services and supports, with an emphasis on employment.

**Process Consistency.** Medicaid Waiver service enrollment processes can be inconsistently followed and not maximally aligned across agencies and providers. As a result, people may exit institutional care without services being fully in place. A lack of coordinated communication protocols for stakeholders and the public at large exacerbates process concerns.

**Trained Workforce.** Service providers must have full knowledge about community resources and services as well as discharge planning and service enrollment processes. They must understand and be able to apply the principles of person-centeredness.

**Unserviced Populations.** In the District, people with developmental disabilities and brain injury are not eligible for services from either the DDA or EPD Waiver program, even though they may be at significant risk for institutionalization. People diagnosed with DD after the age of 18, or with brain trauma/injury resulting in significant cognitive impairments are not eligible for DDA services if the injury occurred after age 18. If they are not physically disabled, they are not eligible for services under the EPD program either.

**Costs.** Medicaid Waiver costs continue to grow approximately 5% per year.

### *Action Steps, Lead Entities and Timeframes*

Both DHCF and DDS have identified a need to procure a new case management system that can also perform critical quality management functions, and interface with existing eligibility and payment systems for the Medicaid program. Such a system should improve the efficiency in the operations of the Medicaid Waiver programs, quality assurance and subsequent satisfaction with service delivery.

Under No Wrong Door, District agencies will be collaborating to improve stakeholder engagement, outreach, marketing and communication regarding all LTSS services.

Building on this work:

1. Research a new Medicaid Waiver program for people with IDD who live in family homes, including services targeted to help families continue their support (DDS, DHCF by December, 2016).
2. Research trach-dependent residential supports in the IDD Waiver and for DOH/HRLA regulations (DDS, DOH by December, 2016).
3. Develop training on how to access Medicaid Waiver services and troubleshooting for agency and provider staff involved in the EPD Waiver process (DHCF, ADRC, DOH).
4. Develop and implement a Participant Directed Program, allowing people receiving EPD Waiver services to have responsibility for managing and directing all aspects of service delivery, including who provides the services and how the services are provided (DHCF by December 2016).

### *Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements to Medicaid Waiver management and systems are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- % decrease in average length of IDD and EPD Waiver application processes.
- #/% of Medicaid Waiver case managers who are conflict free.
- % of cases for which intake processes are followed 100% of the time.

## **IX. Wellness and Quality of Life**

### *Why is this important?*

Full community integration for people with disabilities is inextricably linked to good health, wellness and a host of other “intangibles” that contribute to the feeling that one has a high quality of life. While it may be difficult to define “high quality of life” precisely – and certainly the definition varies by individual – there are some core pillars, including: accessible, effective health care; abundant opportunities for recreation (indoor and outdoor); healthy and nutritious meals; and convenient and easy transportation to work, play and personal appointments. These are among the staples of a high quality life that all residents of the District should equally enjoy.

### *What is the Vision?*

People with disabilities will have opportunities to fully engage in their communities and connect with others in ways that are meaningful and aligned with their personal choices and desires. People with disabilities will have access to a wide range of integrated services to ensure their health, well-being and quality of life.

### *What are Some of the Challenges the District Faces?*

**Health and Wellness Disparities.** Across the country, and no less true in the District, people with disabilities are more likely to experience difficulties or delays in getting the health care they need; to not have had recommended annual check-ups and tests; to be overweight or obese, have lower rates of participation in fitness activities, and to use tobacco. People with

disabilities are also more likely to have high blood pressure, experience psychological distress, and receive less social and emotional support.<sup>xxviii</sup>

**Community Integration and Engagement.** In the District, 34% of adults with ID who participated in the National Core Indicators survey reported that they had no friends other than family or paid staff; this is higher than the national the rate of 24%.<sup>xxix</sup>

**Limits in Transportation.** While the District offers a wide array of transportation options, the programs are not aligned with each other. For example, WMATA's MetroAccess program has specific requirements, which are also used by Transport DC, operated by the Taxi Commission, but DCOA's transportation program operated by its grantee Seabury, does not use the same guidelines. This is also true of the transportation services offered by Medicaid for medical appointments. Knowledge about the nuances of available programming is not consistent across agencies and as a result, some services are oversubscribed, while others are underutilized. In order to fully leverage the District's transportation services for people with disabilities, the District must align and focus each entity's transportation offerings.

#### *Action Steps, Lead Entities and Timeframes*

1. More broadly implement a medical home primary care model successfully piloted with adults with IDD in community based residential settings (DDS, DHCF by December, 2016).
2. Increase inclusive daytime programming offerings and provide technical assistance and training to improve staff capacity at Adult Day Health providers, Senior Wellness Centers, Senior Centers, public libraries and DPR recreation centers (DPR, DCPL, DCOA, DDS by December 2016).
3. Assess and align the capacity of transportation providers to support the transportation needs of people with disabilities (DDS with DDOT, DCOA, WMATA, MTM by December, 2016).



*Measuring Progress Going Forward*

Baseline data and planned metrics to evaluate improvements in the wellness and quality of life are listed here without numerical values, as markers for the 2017 Olmstead Plan. During 2016, the Olmstead Working Group will develop specific strategies for gathering these data.

- #/% of medical professionals using the medical home primary care model.
- #/% of inclusive daytime program offerings.
- % of residents with disabilities who have access to parks, open spaces, and recreation facilities within a half-mile of where they live.
- #/% of people with disabilities using various transportation mechanisms.

## Glossary of Acronyms

|           |   |
|-----------|---|
| ADA:      | Americans with Disabilities Act   |
| AFCH:     | Adult Foster Care Home  |
| ALFs:     | Assisted living Facilities  |
| APS:      | Adult Protective Services in DHS  |
| ARDC:     | Aging and Disability Resource Center in DCOA                                |
| CFSA:     | Child and Family Services Agency  |
| CMS:      | Center on Medicaid Services (federal agency)                                |
| CRFs:     | Community Residential Facilities  |
| CSAs:     | Core Services Agencies (DBH subcontract)                                    |
| DBH:      | Department of Behavioral Health   |
| DCSRC:    | DC State Rehabilitation Council   |
| DCHA:     | DC Housing Authority  |
| DCOA:     | D.C. Office on Aging  |
| DCPL:     | DC Public Libraries   |
| DCPS:     | District of Columbia Public Schools   |
| DCRA:     | DC Regulatory Authority   |
| DD:       | Developmental Disabilities  |
| DDC:      | DC Developmental Disabilities Council                                       |
| DDOT:     | DC Department of Transportation   |
| DDS:      | Department on Disability Services in DDS                                    |
| DHCD:     | Department of Housing and Community Development                             |
| DHCF:     | Department of Health Care Finance   |
| DHS:      | Department of Human Services  |
| DMHHS:    | Deputy Mayor for Health and Human Services                                  |
| DOC:      | Department of Corrections   |
| DOES:     | Department of Employment Services   |
| DOH:      | Department of Health  |
| DPR:      | Department of Parks and Recreation  |
| DYRS:     | Department of Youth Rehabilitation Services                                 |
| EPD:      | Elderly and Persons with Disabilities                                       |
| HAIP:     | Handicapped Accessibility Improvement Program in DHCD                       |
| HCBS:     | Home and Community Based Services   |
| HRLA:     | Health Regulation and Licensing Administration in DOH                       |
| ICF/IDDs: | Intermediate Care Facilities for individuals with Intellectual Disabilities |
| ICFs:     | Intermediate Care Facilities  |
| ID:       | Intellectual Disabilities   |

ID/DD: Individuals with Developmental and Intellectual Disabilities  
ILOB: Independent Living Older Blind Program  
ILS: Independent Living Services  
LOC: Level of Care  
LOS: Length of Stay  
LTSS: Long Term Services and Supports  
MFP: Money Follows the Person Rebalancing Demonstration Grant  
MH/BH: Mental Health/Behavioral Health  
MHCRFs: Mental Health Community Residence Facilities  
MTM: DC Non-Emergency Transportation  
NCI: National Core Indicators  
NWD: No Wrong Door  
ODR: Office on Disability Rights  
OSSE: Office of the State Superintendent for Education  
PCP: Person-Centered Practice  
PRTFs: Psychiatric Residential Treatment Facilities  
RSA: Rehabilitation Services Administration in DDS  
SILC: DC Statewide Independent Living Council  
SIM: State Innovation Model  
SNAP: Supplemental Nutrition Assistance in DHS Program  
TANF: Temporary Assistance for Needy Families in DHS  
VR: Vocational Rehabilitation  
WMATA: Washington Metropolitan Area Transit Authority

## Appendix A: ID/DD Waiver Services

### DAY SERVICES

#### **Employment Readiness**

Employment Readiness (also known as Prevocational supports) services are designed with the intent to assist persons to learn basic work-related skills necessary to acquire and retain competitive employment based on the person's vocational preferences and abilities. Services include teaching concepts such as following and interpreting instructions; interpersonal skills, including building and maintaining relationships; Communication skills for communicating with supervisors, co-workers, and customers; travel skills; respecting the rights of others and understanding personal rights and responsibilities; decision-making skills and strategies; support for self-determination and self-advocacy; and budgeting and money management. Developing work skills which include, at a minimum, teaching the person the appropriate workplace attire, attitude, and conduct; work ethics; attendance and punctuality; task completion; job safety; attending to personal needs, such as personal hygiene or medication management; and interviewing skills. Services are expected to specifically involve strategies that enhance a person's employability in integrated community settings. Competitive employment or supported employments are considered successful outcomes of Employment Readiness services.

#### **Day Habilitation Services**

Day habilitation services are aimed at developing activities and skills acquisition to support or further integrate community opportunities outside of a person's home and assist the person in developing a full life within the community. Day habilitation services are aimed at developing meaningful adult activities and skills acquisition to: support or further community integration, inclusion, and exploration, improve communication skills; improve or maintain physical, occupational and/or speech and language functional skills; foster independence, self-determination and self-advocacy and autonomy; support people to build and maintain relationships; facilitate the exploration of employment and/or integrated retirement opportunities; help a person achieve valued social roles; and to foster and encourage people on their pathway to community integration, employment and the development of a full life in the person's community. Day habilitation can be provided as a one-to-one service to persons with intense medical/ behavioral supports who require a behavioral support plan or require intensive staffing and supports. Day habilitation services may also be delivered in small group settings at a ratio of one-to-three for people with higher intensity support needs. Small group day habilitation settings must include integrated skills building in the community and support access to the greater community

**Individualized Day Supports**

Individualized day supports services provide crucial habilitation supports in the community to ensure that a person's community integration is increased and the particular skills necessary for independence and community involvement outside the home are developed and maintained in ways that enhance community integration outcomes. These services and activities operate totally in the community and are focused on opportunities to increase a person's abilities. All Individualized Day Supports activities must be structured learning based events. Individualized Day Supports can be provided to people who choose to participate in structured activities in community settings; are transitioning into retirement activities; are interested in volunteerism and community services; or for those who previously participated in a day habilitation service setting and now wish to participate in a smaller and more individualized setting.

**Supported Employment Services**

Supported employment facilitates competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, and who, because of the nature and severity of their disability, need ongoing support services in order to perform their job. Supported employment provides assistance such as job coaching, travel training, and customized employment. Supported Employment services can be delivered individually, entrepreneurial or in a small group settings.

## RESIDENTIAL SERVICES

### **Companion Services**

Companion services provide non-medical assistance and supervision to support a person's goals, desires, and needs as identified in the person's Individual Support Plan (ISP), and reflected in his or her Person-Centered Thinking and Discovery tools. Goals may be related to the person's safety, promotion of independence, community integration, and/or retirement. Companion services may be provided in a person's home or in the community.

### **Host Home Services**

Host Home providers enables people to live in the community in a family-type setting that will support them to achieve their goals, participate in community life and activities, maintain their health, and retain or improve skills that are important to them, which may include activities of daily living, money management, travel, recreation, cooking, shopping, use of community resources, community safety, and other adaptive skills they identify that are needed to live in the community.

### **In-Home Support Services**

In-Home Support Service is provided to persons living in their own home or living in their family member's home. In-Home Support services are blended services that provide habilitation, personal care and other support services to the person in their home. These services assist the person to reside successfully in their home as their primary place of residence.

### **Personal Care Services**

Personal Care services are the activities that assist the person with activities of daily living (ADL's) including bathing, transferring, dressing, grooming, and assistance during meals, and assistance with difficulties with incontinence. Personal Care Services through the Waiver is offered an extension through the DC State Medicaid Plan Personal Care services. DC State Medicaid Plan Personal Care services must be exhausted prior to Waiver Personal Care can be used. Personal Care services through the DC State Medicaid Plan and the wavier must be provided by a Home Health Agency.

### **Respite Care Services**

Respite care services are the provision of short-term, temporary relief to those who are caring for family members enrolled in the Waiver. Respite care will ensure that persons will continue to receive services and have access to community activities as described in their ISP/Plan of Care including transportation to and from the activities.

**Residential Habilitation Services**

Residential Habilitation Service is provided by an agency in a licensed home serving four to six persons that is owned or leased and operated by the agency. Residential Habilitation is a blended service that provides habilitation, personal care, nursing, other residential supports, and transportation to the persons living in the home.

**Supported Living Services**

Supported Living Service is provided by an agency in a home serving one to three persons. Supported Living is a blended service that covers habilitation, personal care, nursing, and other residential supports. Supported Living services can be provided either with or without transportation. A provider choosing to provide Supported Living services with transportation, must ensure the provision of transportation services are used to gain access to Waiver and other community services and activities for all persons living in the home.

## CLINICAL SUPPORTS

### **Creative Art Therapies**

Creative Art Therapies are professional services which include Art Therapy, Music Therapy, Dance Therapy, or Drama Therapy and are provided by a licensed or certified professional in their respective field of expertise. Art Therapies are intended to help a person to express and understand emotions through artistic expression and the creative process. The service can be used for the treatment of a person's behavioral or physiological health needs, including but not limited to improving self-image; fine and gross motor skill development; increasing communication skill; reducing maladaptive behaviors; and enhancing emotional expression and/ or adjustment. This service can be delivered at the provider's place of business, in a day habilitation program, one's own or family home, or provider operated home. Creative Arts Therapies services are available both as a one-to-one service for a person, and in small-group settings, not to exceed 1:4.

### **Dental**

Dental services under this Waiver are identical to Dental services offered under DC Medicaid State Plan. Dental services for persons enrolled in the Waiver or Intermediary Care Facilities (ICF's) are reimbursed at an enhanced rate if the person requires additional support to successfully complete dental treatment. The Dentist must bill for the enhanced rate when providing services to those enrolled in the Waiver or ICF's. For persons enrolled in the Waiver between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment benefits (EPSDT) are fully utilized and the Waiver service is not replacing or duplicating the service.

### **Behavior Support Services**

Behavioral Support services are preventive and consultative services that focus on long-term behavioral supports to improve and maintain a person's long-term health, attitude, and behavior rather than short-term responses to immediate crises. Behavioral Support services assist to improve the person's independence and inclusion in their community.

### **Family Training Services**

Family Training services provides coaching, consultation and other professional supports services offered to families or unpaid primary caregivers of persons enrolled in the Wavier. The training focuses on how to improve the caregivers support the person or gain a better understanding of the services outlined in the person's ISP/Plan of Care.



**Skilled Nursing**

Skilled Nursing Services are medical and preventative care activities related to serious or persistent health issues that treat and manage a condition. These services include health assessments and treatment, health related trainings, and education for persons receiving Waiver services and their caregivers. Skilled Nursing Services through the Waiver is offered an extension through the DC State Medicaid Plan. DC State Medicaid Plan Skilled Nursing Services must be exhausted prior to Waiver Skilled Nursing Services can be used. Skilled Nursing Services through the DC State Medicaid Plan and the Wavier must be provided by a Home Health Agency

**Speech, Hearing and Language Services**

Speech, Hearing and Language services are designed to evaluate and treat people with communicative, hearing, cognitive or swallowing disorders and assist them in achieving the highest level of functioning possible. These services should be provided in accordance with the person's ISP/Plan of Care. All Speech, Hearing and Language Therapy services should be monitored to determine which services are most appropriate to enhance the person's well-being and to meet the therapeutic goals

**Occupational Therapy Services**

Occupational therapy services are designed for a person to gain independence and promote development of fine, gross, and sensory motor skills, that are needed to function and socialize in their home, work, and community. In the case of an injury or debilitating illness, services focus on rehabilitation, allowing people to return to their daily routines at their highest level of function. All Occupational Therapy services should be monitored to determine which services are most appropriate to enhance the person's well-being and to meet the therapeutic goals. This service is delivered by a licensed practitioner and is delivered in the person's home or day service setting. For persons enrolled in the Waiver between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment benefits (EPSDT) are fully utilized and the Waiver service is not replacing or duplicating the service.

**Physical Therapy Services**

Physical therapy services are designed to remediate impairments and disabilities that limit a person's physical ability. The services promotes functional mobility and physical abilities, improves quality of life and movement through examination, evaluation, diagnosis and physical intervention to maximize independence, prevent further disability, and maintain health. These services should be provided in accordance with the person's ISP/Plan of Care. All Physical Therapy services should be monitored to determine which services are most appropriate to enhance the person's well-being and to meet the therapeutic goals. This service is delivered by a licensed practitioner and is delivered in the person's home or day service setting. For persons enrolled in the Waiver between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic

Screening, Diagnostic and Treatment benefits (EPSDT) are fully utilized and the Waiver service is not replacing or duplicating the service.

**Wellness Services**

Wellness services are professional services which include Bereavement Counseling, Nutritional Counseling, Fitness Training, Massage Therapy, and Sexuality Education and are provided by a licensed or certified professional in their respective field of expertise. Fitness services can be delivered in small group settings at a ratio of one-to-two for people who want to exercise with a partner. These services assist in increasing persons' independence, participation, emotional wellbeing, and productivity in their home, work, and community. This service can be delivered at the provider's place of business, in a day habilitation program, one's own or family home, or provider operated home.

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## ASSISTIVE SUPPORTS

### **Environmental Accessibility Adaptations (EAA)**

Environmental accessibility adaptations are adaptations to a home which are necessary to ensure the health, welfare and safety of the person, or which enables the person to function with greater independence in the home, and without which, the person would require institutionalization. Adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing. **Environmental Accessibility Adaptations** cannot increase the square footage of the person's home.

### **One-Time Transitional Services**

One-Time Transitional Services are non-recurring set-up expenses for people who are transitioning from an institutional or another provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for their own living expenses. One-Time Transitional Services is limited up to \$5,000 (One-Time). Allowable expenses are those necessary to enable a person to establish a basic household and may include: (a) security deposits; (b) essential household furnishings; (c) set-up fees or deposits for utility or service access; (d) services necessary for the participant's health and safety such as pest eradication and one-time cleaning prior to occupancy; (e) moving expenses; (f) necessary home accessibility adaptations; and, (g) activities to assess need, arrange for and procure need resources.

### **Personal and Emergency Response Services (PERS)**

A Personal and Emergency Response service is an electronic device that provides access to emergency assistance through a two-way communication system. The system connects to a twenty-four (24) hour operated call center and the person's home. PERS services are available to those who live alone, or who are alone for significant part of the day and have no regular caregiver for extended periods of time, and who otherwise would require extensive routine supervision.

### **Vehicle Modification Services**

Vehicle Modifications services are physical adaptations or modifications to a vehicle, including the installation of a lift or other adaptations. Vehicle modifications can be made to vehicles owned by the person or the person's family, guardian, or other primary care giver that is not compensated through other Waiver support services. Vehicle Modifications are designed to help the person function with greater independence through the use of the adaptation.

## Appendix B: EPD Waiver Services

### HCBS Waiver for the Elderly and Persons with Physical Disabilities (EPD)

- Adult Day Health
- Assisted Living
- Case Management
- Chore Aide
- Environmental Accessibilities Adaptations (EAA)
- Home maker
- Individual Directed Goods and Services
- Occupational Therapy
- Participant-directed Community Services (PDCS)
- Personal Care Aide (PCA)
- Personal Emergency Response System (PERS)
- Physical Therapy
- Respite

## Appendix C:

# ADRC Transition Planning Process

### 1. Referral to Aging and Disability Resource Center (ADRC) for Community Transition Services

Nursing facility social worker makes a referral to ADRC's Community Transition Program at request of resident and/or legally authorized representative. Upon receipt of the referral, ADRC assigns Transition Coordinator to follow-up with referring social worker to confirm that resident is eligible for transition services. If so, Transition Coordinator schedules appointment to meet with resident at the nursing facility for assessment.

### 2. Assessment/Preference Interview Tool

Within three business days of establishing contact with the referring social worker, an assessment process is initiated using the Preference Screening Tool (see attachment X), which solicits information about the individual's living preferences in the community, community resources and informal supports available to him/her, and general health needs. The Preference Screening Tool is administered on-site at the facility by the ADRC Transition Coordinator after he/she has reviewed the community transition process with the resident and/or legally authorized representative and a consent form authorizing transition services has been signed by the aforementioned parties.

### 2. Initial Transition Services Checklist & Identifying Transition Needs

The ADRC Transition Coordinator utilizes an "Initial Transition Services Checklist" to guide the process of gathering all documentation required to advance the community transition process. The Checklist includes items such as: personal identification documents, financial and medical documentation, and applications for transportation services or public housing (see attachment X).

### 3. Decision-Making

Decisions about the appropriateness of a less restrictive setting are ultimately made by the resident and his or her legally authorized representative. In lieu of a legally authorized representative, a resident may elicit the support and input of family, friends, and/or other chosen supporters who can assist them with making decisions based on recommendations provided by the facility's interdisciplinary treatment team, commonly referred to as the "IDT." The IDT typically consists of the facility's physician, social worker, nurse, dietitian, and physical or occupational therapist.

If a resident, and/or their legally authorized representative disagrees with the IDT's assessment that treatment in a less restrictive setting is inappropriate (given the home and community-based supports for which the individual is eligible), the District's Long-Term Care (LTC) Ombudsman is available to serve as an independent advocate for the resident's position.

#### **4. Developing Discharge Plan/Putting Services and Supports in Place**

If a less restrictive setting is determined to be appropriate by the resident and/or legally authorized representative; and housing and sufficient resources to support transition have been identified, the ADRC Transition Coordinator works collaboratively with facility's social worker, and other DC agency partners (DHCF, ESA, DBH, DDS), to secure those resources. These might include: durable medical equipment, behavioral health services, day treatment services, home health services including skilled nursing care and personal care aide services, occupational therapy and physical therapy, and support for seeking employment. The Transition Coordinator also coordinates with the resident's informal supports when applicable (i.e. faith-based groups, family members, social clubs, and neighbors, as identified by the resident as key supporters).

#### **5. Discharge and Transition to the Community**

When the resident and/or legally authorized representative and IDT have collectively determined that all necessary supports and services have been put in place, the nursing facility's social worker convenes discharge planning meetings to schedule the resident's date of discharge and to finalize plans to ensure treatment in a less restrictive setting is safe for the individual.

Once the resident has been successfully transitioned back to the community, there are a number of options for ongoing case management services through the District's EPD Waiver program, ADRC's Money Follows the Person Demonstration, and the DCOA's Senior Service Network.

## Appendix D



### DISTRICT OF COLUMBIA NO WRONG DOOR SYSTEM

The District envisions a user-friendly No Wrong Door (NWD) system that is designed for all people with disabilities, older adults, and their families/caregivers to have easy access to a full range of integrated long-term services and supports (LTSS) that is culturally and linguistically appropriate and competent, and tailored and responsive to all cultures. The NWD system will assist all people with disabilities and older adults to live their lives in dignity, maintain their independence long as possible in their homes, and remain fully included members of their communities.

#### Mission Statement

The District will create a network comprised of government and non-profit organizations that will engage in person and family/caregiver-centered planning and provide responsive and comprehensive information about and referrals for LTSS. The information received will enable people with disabilities, older adults, and their families/caregivers to make informed choices regarding the LTSS they prefer and need in order to live with dignity in their homes and be fully included in their communities.

#### Outcomes

- Access to LTSS will be streamlined by developing and implementing a single application process that is easy to use, available in multiple languages, and linked to the full range of LTSS across agencies and programs available in the District.
- The application process will result in increased awareness about the LTSS options available in the District, and provide people with disabilities, older adults, and their families/caregivers with reliable information about LTSS from government agencies and/or non-profit organizations they trust.

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- LTSS planning will be person and family/caregiver-centered, culturally and linguistically competent, and focused on identifying what is important to and for each person who needs LTSS and their families/caregivers. The goal of person and family-centered LTSS planning is to enable all people with disabilities and older adults to live in their homes with dignity and be fully included in their communities.
- All people with disabilities, older adults, and their families will have streamlined access to integrated LTSS that are a blend of family/informal supports, community, and paid services that support dignity, independence, and community inclusion.
- The District's No Wrong Door system will promote and embody the principles of person-centeredness, self-determination, cultural and linguistic competency, and accessibility.

### Goals

To accomplish the vision and mission, the District of Columbia's No Wrong Door system will:

- Offer one-on-one person- and family/caregiver-centered counseling that provides all people with disabilities and older adults access to LTSS based upon what is important to and for them and their families/caregivers;
- Be responsive to the cultural preferences, needs, and the diverse languages spoken by people with disabilities, older adults, and their families/caregivers who reside in the District; and
- Offer excellent customer service.

### Objectives

The District of Columbia's No Wrong Door system will:

- Be easy to access, use, and understand;
- Be responsive to all ages and disability groups;
- Connect people to desired services and supports regardless of where they start seeking services;
- Respond to a person's stated and assessed preferences and needs through either the provision of direct services or linkages to other appropriate community-based, private and/or public services and supports;



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- Use uniform methods to collect and/or summarize intake, assessment, and planning information that provides for streamlined application and eligibility processes for all public LTSS;
- Use consistent person-centered approaches;
- Coordinate comprehensive information, referral, and assistance to support informed choice;
- Support knowledgeable, well-trained, respectful, and culturally and linguistically competent staff.
- Support people to live with dignity in their homes, with the services they prefer and need to live as independently as possible and be fully included in all aspects of their communities;
- Be fiscally responsible and efficient and ensure all sources of services and support are offered and accessed to their fullest capacity; and,
- Link people with community-based LTSS through a coordinated and comprehensive network of public and private supports.

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## Endnotes

<sup>i</sup> 28 C.F.R. § 35.130(d)

<sup>ii</sup> 527 U.S. 581

<sup>iii</sup> Organizations participating in the Olmstead Working Group: DC Center for Independent Living; DC Coalition on Long Term Care; DC Department of Behavioral Health; DC Department of Health; DC Department of Health Care Finance; DC Department of Transportation; DC Department on Disability Services; DC Developmental Disabilities Council; DC Housing Authority; DC Long Term Care Ombudsman Program; DC Office on Aging; DC Office on Disability Rights; DC Quality Trust; DC Supporting Families Community of Practice; DC University Center on Developmental Disabilities; Executive Office of the Mayor; Office of the Deputy Mayor for Health and Human Services; United Spinal Association; Washington Legal Clinic for the Homeless.

<sup>iv</sup> The number of unique individuals receiving any institutional or community-based care that is paid for by Medicaid.

<sup>v</sup> This does not include IDD HCBS Waiver providers.

<sup>vi</sup> Due to a claims lag, fiscal year 2015 Medicaid expenditures are not available at the time of publishing.

<sup>vii</sup> DHS assesses the following categories of disability: "Alcohol Abuse," "Drug Abuse," "Both Alcohol and Drug Abuse," "Chronic Health Condition," "Developmental," "HIV/AIDS," "Mental Health Problem," and "Physical."

<sup>viii</sup> FY 2015

<sup>ix</sup> FY 2015

<sup>x</sup> FY 2015

<sup>xi</sup> All numbers are for fiscal year 2015, October 1, 2014-September 30, 2014, unless otherwise noted. Numbers for calendar year 2015, January 1, 2015-December 31, 2015, were not available at the time of publishing.

<sup>xii</sup> Out of 3,529 unique individuals who received nursing facility services in FY14, 2,996 received services at an in-state facility, and 575 received services at an out-of-state facility. Given the overlap, some individuals received services at both in-state and out-of-state facilities during the year.

<sup>xiii</sup> For 4 individuals, length of stay is unknown.

<sup>xiv</sup> Includes transitions for those assisted by NHT and MFP, as well as those identified in MMIS data.

<sup>xv</sup> A complete listing and brief description of services available through the Home and Community Based Services Waiver for People with Intellectual and Developmental Disabilities can be found at Appendix A

<sup>xvi</sup> As of October 21, 2016.

<sup>xvii</sup> A complete list of the EPD Waiver services can be found at Appendix B.

<sup>xviii</sup> The enrollment and cap numbers for the Medicaid Waivers are based on the 2015 calendar year.

<sup>xix</sup> As of October 2016.

<sup>xx</sup> This total does not include assisted living facilities that do not receive Medicaid reimbursement. There are several assisted living facilities in the District that only accept private-pay patients.

<sup>xxi</sup> For a full description of the transition planning process used by the ADRC, see Appendix C.

<sup>xxii</sup> A more detailed description of the NWD mission, outcomes, goals and objectives can be found at Appendix D.

<sup>xxiii</sup> Led by DHCF, the SIM work brings together DOH, DBH, DHS, the Office of the DMHHS, Councilmember Yvette Alexander's office; community-based health and social service providers; private health insurers and beneficiary advocates.

<sup>xxiv</sup> 2013 American Community Survey (ACS), U.S. Bureau of the Census.

<sup>xxv</sup> John Butterworth *et al.*, StateData: The National Report on Employment Services and Outcomes (Institute for Community Inclusion (UCEDD) University of Massachusetts Boston 2014).

<sup>xxvi</sup> Data provided by the DC Department on Employment Services

<sup>xxvii</sup> DHS assesses the following categories of disability: "Alcohol Abuse," "Drug Abuse," "Both Alcohol and Drug Abuse," "Chronic Health Condition," "Developmental," "HIV/AIDS," "Mental Health Problem," and "Physical."

<sup>xxviii</sup> *Healthy People 2020, Disability and Health*, available on-line at:

<http://healthypeople.gov/2020/TopicsObjectives2020/overview.aspx?topicid=9>

<sup>xxix</sup> <http://www.nationalcoreindicators.org/states/DC/>.

**DEPARTMENT OF HEALTH CARE FINANCE**

**PUBLIC NOTICE**

**MEDICAID FEE SCHEDULE UPDATES FOR ADULT SUBSTANCE ABUSE REHABILITATIVE SERVICES**

The Department of Health Care Finance (DHCF), pursuant to the requirements set forth in Section 988 of Chapter 9 Title 29 of the District of Columbia Municipal Regulations (DCMR), published on October 2, 2015 (62 DCR 13060), announces changes to the Medicaid reimbursement rates of Medicaid-reimbursable Adult Substance Abuse Rehabilitative Services (ASARS) billed by Medicaid enrolled substance use disorder (SUD) treatment providers. DHCF is updating the Medicaid fee schedule for ASARS services to reflect treatment standards set forth by DBH in Chapter 63 of Title 22-A of the DCMR. The change set forth below will become effective on December 1, 2015. The update to ASARS services is as follows:

| <b>Service</b>  | <b>Code</b> | <b>Rate per unit</b> | <b>Unit</b> |
|---|-------------|----------------------|-------------|
| Behavioral Health Screening, Initial, Determine eligibility | H0002HF     | 85.34                | Per service |

For further information or questions regarding this fee schedule update, please contact Amy Xing, Reimbursement Analyst, Department of Health Care Finance, at [amy.xing2@dc.gov](mailto:amy.xing2@dc.gov), or via telephone at (202) 481-3375.

## DEPARTMENT OF HEALTH CARE FINANCE

## PUBLIC NOTICE OF PROPOSED AMENDMENT TO THE

## DISTRICT OF COLUMBIA STATE PLAN FOR MEDICAL ASSISTANCE

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.774; D.C. Official Code §1-307.02 (2012 Repl. & 2014 Supp.)) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)) hereby gives notice of the intent to amend the District of Columbia State Plan for Medical Assistance (State Plan).

The proposed State Plan Amendments (SPA) is designed to implement a new reimbursement methodology for Medicaid-reimbursable School Based Health Services (SBHS). The goal of Medicaid's SBHS benefit is to support children with disabilities who are entitled to necessary and appropriate health services as a means of accessing free, appropriate public education. SBHS are designed for Medicaid enrollees who are three (3) through twenty (20) years old and meet the requirements of the Individuals with Disabilities Education Act (IDEA), approved April 13, 1970 (84 Stat.175; 20 U.S.C. §1400 *et seq.*). Under IDEA, the Individualized Education Program (IEP) describes all of the services and supports that an interdisciplinary team of educators and health professionals has determined would best support the child's educational needs. Medicaid-reimbursable SBHS include audiology services, behavioral supports and counseling services, nutrition services, occupational therapy, orientation and mobility, physical therapy, psychological evaluations, skilled nursing, specialized transportation, speech-language pathology, and specialized transportation.

The SBHS SPA seeks to amend the current reimbursement methodology for school based health services ("SBHS") rendered by District of Columbia Public Schools ("DCPS"), District of Columbia Public Charter Schools ("DCPCS"), and the Office of the State Superintendent of Education ("OSSE") in all approved delivery settings by removing the personal care aide (PCA) service. DHCF is not proposing any changes to the delivery of PCA to Medicaid beneficiaries. DHCF assures that this SPA complies with 42 C.F.R. § 440.345 and does not alter the maximum availability of access to those services. PCA services, as prescribed, will continue to be delivered to students during school hours as a DCPS and DCPCS locally-funded schools service. This local schools service is generally referred to as "dedicated care aide" service. Copies of the proposed SPA may be obtained by calling (202) 442-9115, or by sending an email to [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov).

Comments on the SPA will be accepted until December 28, 2015, and may be submitted to the attention of Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-9115, via email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov).

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY****DISTRICT OF COLUMBIA HOMELAND SECURITY COMMISSION****NOTICE OF CLOSED MEETING**

Pursuant to DC Code § 2-575(b)(8), § 7-2271.04(a)(2), and § 7-2271.05, the Homeland Security Commission hereby provides notice that it will hold a **CLOSED MEETING** on the date, time and place noted below for the purposes of discussing its Annual Report to the Mayor.

December 2, 2015  
2121 Eye Street, N.W.  
Suite 701  
Washington, DC 20052  
3:00 pm to 5:00 pm

For more information, please contact: Nicole Chapple, Assistant Director, External Affairs and Policy, District of Columbia Homeland Security and Emergency Management Agency, 2720 Martin Luther King Jr. Avenue, SE, Washington, DC. Telephone: (202) 481-3049. Email: [Nicole.Chapple@dc.gov](mailto:Nicole.Chapple@dc.gov).

**HOWARD UNIVERSITY MIDDLE SCHOOL OF  
MATHEMATICS AND SCIENCE**

**NOTICE OF REQUEST FOR PROPOSALS/QUOTATIONS**

In Compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, Howard University Middle School of Mathematics & Science hereby posts notices that it will be will be accepting bids for the following five services:

1. **Organizational Communications Planning:**  
Development and execution of Stage 2, organization-wide communications plan development, and implementation.
  
2. **Middle School Curriculum:**  
Complete curricular resources and professional development for all middle grades subjects.

Interested parties should contact Mr. Dayton Watkins at (202) 806-7725, or via email at [dayton.watkins@hu-ms2.org](mailto:dayton.watkins@hu-ms2.org), to receive a copy of the bid package. The deadline for responses for item #1 is December 10th at 5 pm, while the deadline for responses for items #2-3 is December 3<sup>rd</sup> at 5 pm.

**DC INTERAGENCY COUNCIL ON HOMELESSNESS****NOTICE OF PUBLIC MEETING****Committee of the Whole**

The DC Interagency Council on Homelessness (ICH) will be holding a meeting on Tuesday, December 1, 2015 at 2:00 pm. The meeting will be held at 801 East Shelter (2700 Martin Luther King Jr. Ave SE). Below is the draft agenda for this meeting.

For additional information, please contact the ICH info line at (202) 724-1338 or [ich.info@dc.gov](mailto:ich.info@dc.gov).

**Meeting Details**

Date: Tuesday, December 1, 2015  
Time: 12:30p – 1:30p Pre-Meeting for Providers/Consumers  
(Topic: Improving Case Management Services)  
2:00p – 3:30p Full Council

Location: 801 East Shelter (2700 Martin Luther King Jr. Ave SE)

**Draft Agenda**

- I. Welcome and Opening Remarks
- II. Public Comments
- III. Shelter Redevelopment Update
- IV. Youth Census and Strategic Plan Update
- V. Homeward DC Year One Update
- VI. Hypothermia Season Updates
- VII. Adjournment



**KIPP DC PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****Full Service Catering**

KIPP DC is soliciting proposals from qualified vendors for Full Service Catering. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on December 4, 2015. Questions can be addressed to [megan.hawkins@kippdc.org](mailto:megan.hawkins@kippdc.org).

**DISTRICT OF COLUMBIA OFFICE OF PLANNING****NOTICE OF FUNDING AVAILABILITY****Crossing the Street: Building DC's Inclusive  
Future through Creative Placemaking**

The District's Office of Planning (OP) invites the submission of applications for qualified curators/project managers to define and implement temporary creative placemaking projects. OP has received a Kresge Foundation grant to undertake creative placemaking and civic engagement activities in select neighborhoods throughout the District. Creative placemaking refers to the intentional use of arts and culture to shape the physical, social, and economic future of communities.

The goal of "Crossing the Street: Building DC's Inclusive Future through Creative Placemaking" is to promote community-building in neighborhoods that are experiencing rapid demographic and social change, engage residents in conversations on the future of the District as OP embarks on an update of DC's Comprehensive Plan, and demonstrate or test select placemaking recommendations articulated in OP's neighborhood plans and District Department of Transportation (DDOT) transit corridor studies and livability studies. OP seeks to support creative placemaking interventions that showcase innovation and engagement.

The awards will be composed of two project phases. Phase I covers a concept development process during which curators will work with stakeholders in generating creative placemaking project ideas, and then guide stakeholders in the identification of the project(s) for implementation. Phase II covers the project implementation period during which curators will be responsible for all activities related to successful project management and execution. Projects may be of varying scales, and locations may include public as well as private properties and spaces. All projects must be implemented within the District of Columbia. **Phase I must be launched by March 1, 2016. Phase II must be launched by June 30, 2016 and conclude by December 15, 2016.**

The maximum grant per award is \$125,000. The funding is available for costs associated with: project planning; curator fees and fees for artists; design, installation, and programming; insurance and permitting; leasing of space; operations and maintenance of the project; and project promotion, stakeholder engagement, and project reporting.

Eligible applicants include professional organizations with site-specific curatorial and/or creative placemaking experience. Preference will be given to organizations that are located in the District of Columbia. Applicants should have demonstrated experience in developing and promoting creative placemaking events, curating or selecting creative programs and activities, managing entrepreneurs (artists/creatives), designing unique arts-based experiences, and overall project and budget management.

Additional applicant and eligibility requirements, project objectives, award information, and evaluation criteria are detailed in the Request for Applications (RFA).

**The RFA will be released on December 11, 2015, and the deadline for submission is January 8, 2016, at 4:00 p.m.**

The RFA will be posted on the District's Grants Clearinghouse website at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> and OP's website at <http://planning.dc.gov/>

For additional information, please contact OP's Edward Giefer at [edward.giefer@dc.gov](mailto:edward.giefer@dc.gov).

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**  
**NOTICE OF PROPOSED TARIFF**

**FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA**

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code,<sup>1</sup> of its intent to act upon the proposed tariff amendment of the Potomac Electric Power Company (“Pepco” or “Company”)<sup>2</sup> in not less than thirty (30) days from the date of publication of this Notice of Proposed Tariff (“NOPT”) in the *D.C. Register*.

2. Pepco’s proposed tariff amendment updates the retail transmission rates included in the Rider Standard Offer Service “to reflect the current Federal Energy Regulatory Commission (‘FERC’) approved wholesale transmission rates, which went into effect [on] June 1, 2015.”<sup>3</sup> Pepco states that the “updated Network Integrated Transmission Service rate is based on the data in the 2014 FERC Form 1 for Pepco, which was filed with the FERC on April 16, 2015.”<sup>4</sup> According to Pepco, the filed wholesale transmission rate for the Pepco Zone effective June 1, 2015 is \$26,521 per megawatt-year for Network Integrated Transmission Service, which is currently reflected in Attachment H-9 of the PJM Open Access Transmission Tariff.<sup>5</sup> This \$26,521 per megawatt-year rate must be adjusted in order to derive the \$27,518 per megawatt-year rate overall wholesale transmission rate for load in the Pepco Zone. Those adjustments are detailed in Attachment D in Pepco’s filing.<sup>6</sup>

3. The Network Integrated Transmission Service rate reflects a rate of \$22,566 per megawatt-year, which is net of the Schedule 12 Transmission Enhancement Charges due to projects within the Pepco Zone.<sup>7</sup> In addition, the load in the Pepco Zone is responsible for Schedule 12 Transmission Enhancement Charges due to transmission projects outside of the Pepco Zone and the rate for these projects is \$4,952 per megawatt-year.<sup>8</sup> Combining these two

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<sup>1</sup> D.C. Code §§ 2-505 and 34-802 (2001).

<sup>2</sup> *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, Letter from Dennis P. Jamouneau, Assistant General Counsel, Legal Services, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed August 6, 2015 (“Pepco Letter”).

<sup>3</sup> Pepco Letter.

<sup>4</sup> Pepco Letter.

<sup>5</sup> Pepco Letter.

<sup>6</sup> Pepco Letter. Attachment D.

<sup>7</sup> Pepco Letter. Attachment E.

<sup>8</sup> Pepco Letter. Attachment D.

rates results in an overall wholesale transmission rate for load in the Pepco Zone of \$27,518 per megawatt-year. After calculating the retail transmission revenue requirement, Pepco has reflected the revised retail rates for the Transmission Service Charge for each rate class on its revised tariff pages.<sup>9</sup>

4. Pepco proposes to amend the following thirteen (13) tariff pages:

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1**  
**Seventy-Seventh Revised Page No. R-1**  
**Seventy-Seventh Revised Page No. R-2**  
**Seventieth Revised Page No. R-2.1**  
**Forty-Sixth Revised Page No. R-2.2**  
**Twenty-First Revised Page No. R-41**  
**Twenty-First Revised Page No. R-41.1**  
**Twenty-First Revised Page No. R-41.2**  
**Twenty-First Revised Page No. R-41.3**  
**Twenty-First Revised Page No. R-41.4**  
**Twenty-First Revised Page No. R-41.5**  
**Twenty-First Revised Page No. R-41.6**  
**Twenty-First Revised Page No. R-41.7**  
**Twenty-First Revised Page No. R-41.8**

5. The filing may be reviewed at the Office of the Commission Secretary, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff amendment is available upon request, at a per-page reproduction cost from the Office of the Commission Secretary or via the Commission's website at [www.dcpsc.org](http://www.dcpsc.org).

6. Comments and reply comments on Pepco's proposed tariff amendment must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, at the address above. All comments and reply comments must be received not later than thirty (30) and forty-five (45) days, respectively, after publication of this NOPT in the *D.C. Register*. Once the comment period has expired, the Commission will take final action on Pepco's tariff filing.

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<sup>9</sup> Pepco Letter. Attachment A. Pepco indicates that Attachment A also shows the "corresponding retail transmission revenue requirements." Pepco indicates that Attachment B provides the "Proposed Rider 'SOS' containing the revised retail rates for Transmission Service" as well as "the updated Rider 'SOS' showing additions and deletions from the current Rider 'SOS.'" Finally, Pepco indicates that Attachment C provides "[w]orkpapers showing the details of the rate design calculations."

**OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**  
**RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC**

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after January 2, 2016.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on November 27, 2015. Additional copies of this list are available at the above address or the website of the Office of the Secretary at [www.os.dc.gov](http://www.os.dc.gov).

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public**

**Effective: January 2, 2016**

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|             |                  |  |       |
|-------------|------------------|--|-------|
| Agormeda    | Abigail I.       | Wells Fargo Bank<br>2119 Bladensburg Road, NE                                      | 20018 |
| Akinsitan   | Angela E.        | Hogan Lovells, US LLP<br>555 Thirteenth Street, NW                                 | 20004 |
| Al-Hedaithy | LaTonja SA       | Speedy Accounting Resources LLC<br>4409 Nash Street, NE                            | 20019 |
| Arias       | Edward           | Citibank NA<br>1225 Connecticut Avenue, NW   | 20036 |
| Armwood     | Thomasina M.     | Gonzaga College High School<br>#19 Eye Street, NW                                  | 20001 |
| Ayalew      | Mekedelawit      | Wells Fargo Bank<br>1301 Pennsylvania Avenue, NW                                   | 20004 |
| Banawoye    | Bedemwe          | International Finance Corporation<br>2121 Pennsylvania Avenue, NW                  | 20433 |
| Barlow      | Andre            | Doyle, Barlow, Marzard PLLC<br>1110 Vermont Avenue, NW, Suite 715                  | 20005 |
| Bell        | Sabrina Kalender | Alderson Court Reporting<br>1155 Connecticut Avenue, Suite 200                     | 20036 |
| Bentley     | A'sia L.         | McDermott Will & Emery LLP<br>500 North Capital Street, NW                         | 20001 |
| Bever       | Cassandra        | Arent Fox<br>1717 K Street, NW   | 20006 |
| Boadu       | Priscilla        | Justice Federal Credit Union<br>500 12th Street, SW                                | 20024 |
| Booker      | Camry L.         | American Foreign Service Protective<br>Association<br>1620 L Street, NW, Suite 800 | 20036 |
| Bouton      | Karen G.         | Georgetown Law<br>600 New Jersey Avenue, NW, Suite<br>332                          | 20001 |

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public****Effective: January 2, 2016  
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|          |               |   |       |
|----------|---------------|---|-------|
| Brown    | Dominique A.  | Wells Fargo Bank<br>444 North Capital Street, NW                    | 20001 |
| Catoe    | Esther        | Self<br>637 K Street, NE  | 20002 |
| Cooper   | Denise        | DeCarlo & Shanley, PC<br>101 Constitution Avenue, NW, 10th<br>Floor | 20001 |
| Crawford | Deborah       | Sant Associates, LLC<br>1717 K Street, NW, Suite 1050               | 20006 |
| Dunn     | Lashunda P.   | SunTrust Bank<br>1340 Good Hope Road, SE                            | 20020 |
| Fanok    | Justin Edward | Self (Dual)<br>649 Kenyon Street, NW                                | 20010 |
| Ferguson | Ashlei        | DC Office of Human Rights<br>441 4th Street, NW, Suite 570N         | 20001 |
| Fleming  | Claire        | MVB Mortgage<br>1400 K Street, NW, Suite 1200                       | 20005 |
| Franklin | Tishea Araina | (Self)<br>301 Rhode Island Avenue, NW                               | 20001 |
| Gibson   | Dawn E.       | International Medical Corps<br>1313 L Street, NW, Suite 220         | 20005 |
| Goodwin  | Michelle Y.   | MetLife Real Estate Investment<br>600 13th Street, NW               | 20005 |
| Heath    | Nichole       | The Brattle Group<br>1850 M Street, NW, Suite 1200                  | 20036 |
| Hilliard | Karen E.      | Morgan Stanley<br>1747 Pennsylvania Avenue, NW, Suite<br>900        | 20006 |
| Holiday  | Janice L.     | Self<br>2513 Fairlawn Avenue, SE                                    | 20020 |



**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public**

**Effective: January 2, 2016  
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|            |                 |  |       |
|------------|-----------------|--|-------|
| Islam      | Abdul-Jihad     | Office of the Comptroller of the Currency<br>400 7th Street, SW, Suite 3E-218                        | 20219 |
| James      | Nettie          | WFB Cleaning Solutions LLC<br>2572 University Place, NW  | 20009 |
| Jenkins    | Belva J.        | Johnson & Jenkins Funeral Home, Inc.<br>716 Kennedy Street, NW                                       | 20011 |
| Jones      | Rev. Matilda E. | Self<br>210 Varnum Street, NW  | 20011 |
| Kaunan     | Kouadio D.      | Wells Fargo Bank<br>2119 Bladensburg Road, NE  | 20018 |
| Kelly      | Jonetta         | Religious Action Center<br>2027 Massachusetts Avenue, NW   | 20036 |
| Kennedy    | Neal            | Accion International<br>1101 15th Street, NW, Suite 400  | 20005 |
| Lalla      | Pamela          | The Catholic University of America<br>620 Michigan Avenue, NE  | 20064 |
| Lapcharoen | Natashaa        | AECOM<br>2020 K Street, NW, Suite 300  | 20006 |
| Lincoln    | Lori V.         | Washington Mathematics Science Technology<br>Public Charter High School<br>1920 Bladensburg Road, NE | 20002 |
| Luning     | Jessica         | Neal R. Gross & Company, Inc.<br>1323 Rhode Island Avenue, NW  | 20005 |
| Miller     | Kimball W.      | Hogan Lovells US LLP<br>555 13th Street, NW  | 20004 |
| Miller     | Wendy Y.        | UATP<br>1425 K Street, NW, Suite 700   | 20005 |
| Millett    | Robert J.       | US Senate Disbursing Building Office<br>127 Hart Senate Office Building                              | 20510 |

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public**

**Effective: January 2, 2016  
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|            |                 |  |       |
|------------|-----------------|--|-------|
| Monteiro   | Alenjandrina R. | Citadel Firm<br>5335 Wisconsin Avenue, NW, Suite<br>410  | 20015 |
| Namulanda  | Kizito          | Self (Dual)<br>4959 6th Street, NE, Suite 218  | 20017 |
| Parker     | Valerie A.      | District of Columbia Hospital Association<br>1152 15th Street, NW, Suite 900   | 20005 |
| Pearson    | David A.        | Self (Dual)<br>2516 Sheridan Road, SE, Unit 205  | 20020 |
| Powell Jr. | Gene Delano     | SunTrust<br>1445 New York Avenue, NW   | 20005 |
| Quezada    | Vickie          | M&T Bank<br>1680 K Street, NW  | 20006 |
| Rice       | Robert M.       | Self (Dual)<br>1127 42nd Street, NE  | 20019 |
| Robinson   | Shawanda        | Self<br>412 Varnum Street, NW  | 20011 |
| Sakyi      | Andrea          | Progressive Life Center<br>1704 17th Street, NE  | 20002 |
| Scott      | Maureen O.      | International Association of Bridge, Structure,<br>Ornamental and Reinforcing Iron Workers<br>1750 New York Avenue, NW | 20006 |
| Shermet    | Dorothy Ellen   | Lichtman & Elliot, PC<br>1666 Connecticut Avenue, NW, Suite<br>500   | 20009 |
| Shin       | Younga          | The Employment Law Group<br>888 17th Street, NW, Suite 900   | 20006 |
| Shiple     | Devin           | Neal R. Gross & Company, Inc.<br>1323 Rhode Island Avenue, NW  | 20005 |
| Stryker    | Amy             | Gore Brothers Reporting<br>1025 Connecticut Avenue, NW, Suite<br>1000  | 20036 |

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries PublicEffective: January 2, 2016  
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|           |                  |  |       |
|-----------|------------------|--|-------|
| Sweitzer  | Scott T.         | Prime Settlement, Inc.<br>1100 Connecticut Avenue,<br>NW, Suite 304                          | 20036 |
| Thomas    | Kelli J.         | AARP<br>601 E Street, NW   | 20049 |
| Thompson  | O'Tisha Kenyetta | United States Secret Service<br>950 H Street, NW   | 20223 |
| Thompson  | Shirlene A.      | Self<br>1200 Delaware Avenue, SW, #227   | 20024 |
| Turner    | Hope             | Office of the State Superintendent of Education<br>(OSSE)<br>810 First Street, NE, 5th Floor | 20002 |
| Vinci     | Alina Maria      | Bailey & Ehrenberg PLLC<br>1015 18th Street, NW, Suite 204                                   | 20036 |
| Webb, Jr. | Charles E.       | Demers Real Estate, Inc.<br>1664 Columbia Road, NW, #23                                      | 20010 |
| Weiss     | Randy Alan       | Weiss LLP<br>1150 Connecticut Avenue, NW, #900   | 20036 |
| Zarfoss   | Tyler A.         | Miller & Long DC, Inc.<br>5151 Wisconsin Avenue, NW, Suite<br>307                            | 20016 |

**SOMERSET PREPARATORY DC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Project Management, Architectural or General Contractor Services**

Somerset Prep invites all interested parties to submit proposals to provide either project management, architectural or general contractor services for the development of a public charter school facility that has yet to be identified. The anticipated delivery date for the facility is August 1, 2016. Proposals are due no later than 12:00 PM on December 18, 2015. The complete RFP can be obtained by contacting [rfp@bhope.org](mailto:rfp@bhope.org), please indicate which RFP you are requesting.

## GOVERNMENT OF THE DISTRICT OF COLUMBIA

## DC TAXICAB COMMISSION

## NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold its regularly scheduled General Commission Meeting on Wednesday, December 9, 2015 at 10:00 am. The meeting will be held at our new office location: 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2032. Visitors to the building must show identification and pass through the metal detector. Allow ample time to find street parking or to use the pay-to-park lot adjacent to the building.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at [www.dctaxi.dc.gov](http://www.dctaxi.dc.gov).

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers. Time and agenda permitting, nonregistered speakers may be allowed 2 minutes to address the Commission. To register, please call 202-645-6002 no later than 3:30 p.m. on December 8, 2015. Registered speakers will be called first, in the order of registration. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Secretary to the Commission no later than the time they are called to the podium.**

## DRAFT AGENDA

- I. Call to Order
- II. Commission Communication
- III. Commission Action Items
- IV. Government Communications and Presentations
- V. General Counsel's Report
- VI. Staff Reports
- VII. Public Comment Period
- VIII. Adjournment

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

## BOARD OF DIRECTORS

## NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, December 3, 2015 at 9:30 a.m. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at [www.dewater.com](http://www.dewater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [linda.manley@dewater.com](mailto:linda.manley@dewater.com).

## DRAFT AGENDA

- |    |   |                       |
|----|---|-----------------------|
| 1. | <b>Call to Order</b>                                | Board Chairman        |
| 2. | <b>Roll Call</b>                                    | Board Secretary       |
| 3. | <b>Approval of November 5, 2015 Meeting Minutes</b> | Board Chairman        |
| 4. | <b>Committee Reports</b>                            | Committee Chairperson |
| 5. | <b>General Manager's Report</b>                     | General Manager       |
| 6. | <b>Action Items</b><br>Joint-Use<br>Non Joint-Use   | Board Chairman        |
| 7. | <b>Other Business</b>                               | Board Chairman        |
| 8. | <b>Adjournment</b>                                  | Board Chairman        |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Order No. 18309-A of Jubilee Housing, Inc., Motion for Minor Modification of Approved Plans in Order No. 18309**, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (70 infants and children and 25 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children under § 334.1, in the D/R-5-B District on the ground floor of premises 1474 Columbia Road, N.W. (Square 2669, Lot 825).

The application, as modified<sup>1</sup>, is pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (48 children and 16 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children and two other community service center uses for preparing meals to be served off-site and for a program-based market pantry under § 334.1, in the D/R-5-B District on the ground floor of premises 1474 Columbia Road, N.W. (Square 2669, Lot 825).

|   |                   |
|---|-------------------|
| <b>HEARING DATE</b> (Application No. 18309):  | February 14, 2012 |
| <b>DECISION DATE</b> (Application No. 18309): | February 14, 2012 |
| <b>FINAL ORDER ISSUANCE DATE</b> (No. 18309): | February 27, 2012 |
| <b>MINOR MODIFICATION DECISION DATE:</b>      | November 10, 2015 |

**SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 26 in the record of Application No. 18309.)

**BACKGROUND**

On February 14, 2012, the Board of Zoning Adjustment (“Board” or “BZA”), by a vote of 5-0-0, approved the Applicant’s original request for special exception approval exception to allow a child development center (70 infants and children and 25 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children under § 334.1, in the D/R-5-B District. In BZA Order No. 18309 (the

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<sup>1</sup> The application was amended by the modification of the approved plans by reducing the size of the area used for the child development center and consequently lowering the number of children and staff at the child development center and by repurposing that space to allow two new community service center uses: to wit, an area of approximately 1,470 square feet for the preparation of meals to be served offsite, and another area of approximately 102 square feet for a program-based market pantry as accessory to the meal preparation area. The caption was changed accordingly.

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“Order”), the Board approved the Applicant’s original request, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (70 infants and children and 25 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children under § 334.1, in the D/R-5-B District on the ground floor of premises 1474 Columbia Road, N.W. (Square 2669, Lot 825). The Order approving the original request was issued on February 27, 2012. (Exhibit 1D.) That approval was conditioned on the Applicant carrying out the construction in accordance with the architectural drawings included in the application at Exhibit 29, Tab A in the record of Case No. 18309 to renovate the existing four-story building at the subject property with residential and community-serving uses and six other specific conditions, including a term of seven years. Order No. 18309 became effective on March 8, 2012.

**MOTION FOR MINOR MODIFICATION OF APPROVED PLANS**

On September 14, 2015, the Applicant submitted a request for a minor modification to the Board’s previous approval, in particular of the approved plans, in Application No. 18309 and also, pursuant to 11 DCMR § 3100.5, asked for a waiver of the two-year deadline under § 3129.3 for filing such a request. (*See*, Exhibits 1 and 3-3E in Case No. 18502-A.)

In Application No. 18309-A, the Applicant requested modification of the approved plans to reduce the size of the area used for the child development center and thereby lowering the number of children and staff at the child development center, and by repurposing that space to allow for two new community service center uses: to wit, an area of approximately 1,470 square feet for the preparation of meals to be served offsite, and another area of approximately 102 square feet for a program-based market pany as accessory to the meal preparation area. The Applicant submitted the proposed revised plans showing these changes with Application No. 18309-A. (Exhibit 1B.)

The reason for the modification request was that after the original BZA approval, the nonprofit which was to operate the child development center at the subject property determined that it was no longer in their best interest to expand programming at the subject property. This determination occurred as the project was reaching final approval of certain financing commitments. Another nonprofit organization, Martha’s Table, was in need of space in the vicinity of their current property for an existing child development center, but there were not many suitable locations in that area. The subject property of this application would work from a size and layout perspective and given that the child development space at the subject property was available, the Applicant and Martha’s Table would be able to move forward on opening the child development center at the subject property quickly. The Applicant needed a new user for the child development space to be able to continue to offer the early childhood education programming. Martha’s Table, which has a strong track record of successfully running such a program at another nearby location, is expected to be able to replicate its operations at the subject property and thus was considered an ideal tenant for the Applicant’s project.



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The financial viability of the project would be undermined if there was not a user located in the child development space. Martha's Table requires the co-location of the child development center and McKenna's Wagon/Market Pantry use and would only be interested in the project if it could bring in those uses, i.e. their child development center and the McKenna's Wagon/Market Pantry use. Additionally, the child development center space, as approved (70 children and 25 staff) would be too large for the operational needs of Martha's Table. Thus, the Applicant requires this modification to reduce the size of the child development center and allow for the co-location of other community serving uses at the subject property. The modification would allow for delivery of the originally planned early childhood education programming while also offering additional services to the community in the form of the food access initiatives of the McKenna's Wagon/Market Pantry use. (Exhibit 1A.)

*Waiver of Two-Year Filing Deadline.*

Subsection 3129.3 of the Zoning Regulations indicates that a request for minor modification "of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." Order No. 18309 had a final date of February 27, 2012, and became effective on March 8, 2012. The motion for minor modification was filed beyond the two-year period cited in § 3129.3. As a result, the Applicant requested a waiver of that deadline, pursuant to 11 DCMR § 3100.5.

Previously, the Board granted special exception relief at the subject property under § 205 to allow a child development center use by Jubilee Jumpstart and under § 334.1 to allow community service uses by the Teen Renaissance Center and the Family Resource Center. In this application for minor modification, the Applicant is proposing to modify the original community serving uses within the same, existing terrace level footprint to allow for the use of these areas by a new tenant, Martha's Table, which would be using the space for two new community service uses, i.e. for the preparation of meals to be served offsite and a program-based market panty.

By the time the two-year period following the approval of the Order expired on February 27, 2014, the Applicant and Martha's Table were not yet in discussions to use the property. The Applicant did not have an opportunity to work with Martha's Table, which precipitated this application, until after that date. Both the Applicant and Martha's Table would like to take advantage of the possibility of working together on behalf of the community while they have that opportunity. The Applicant asserts, and the Board agrees, that the additional 18 months deviation from February 27, 2014 would not undermine the intended effect of § 3129.3 or adversely affect any party, neighbor, or the community. The Project remains the same in concept, as approved, and continues to deliver affordable housing and a package of related community serving uses on the terrace level. Finding that the request would simply shift some of the child development center use area to community service center uses, both of which are approved use categories at the site, the Board granted the waiver. The Board found that the waiver was justified, as the need to modify the plans stems from a change in tenants that occurred after the project was approved. The waiver would not prejudice the rights of any party and is not prohibited by law.

**BZA APPLICATION NO. 18309-A****PAGE NO. 4***Determination That the Modification Was Minor.*

Subsection 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.) The Board found that no material facts upon which the Board had based its original approval of the application were changed by this request to shift some of the child development center use area to community service center uses, both of which are approved use categories at the site. The Board determined that the modification is minor, does not require a hearing, and that the change was in keeping with the intent of the original application.

*The Merits of the Minor Modification of Approved Plans.*

The Applicant's request for a minor modification of Order No. 18309 complies with 11 DCMR § 3129. Subsection 3129.2 states that "[t]he Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested." The Applicant's request for minor modification met all of these requirements. The Board also found that the addition of the new tenant, Martha's Table, meets the special exception requirements of §§ 334.2 – 334.5 of the Zoning Regulations.

Pursuant to § 3129.4, all requests for minor modifications of plans shall be served on all other parties to the original application and those parties are allowed to file comments within 10 days of the filed request for minor modification. The Applicant provided proper and timely notice of the request for minor modification to the other parties to the original application, including Advisory Neighborhood Commission ("ANC") 1A and the Single Member District ANC 1A03 as well as the Office of Planning ("OP") and the District Department of Transportation ("DDOT").

The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. An ANC report dated October 16, 2015, was submitted to the record, recommending approval of the request for minor modification to Order No. 18309 and citing no concerns with the proposed modification. The ANC's report stated that at a regularly scheduled and properly noticed meeting on October 14, 2015, at which a quorum was present, the ANC voted (11-0-0) in support of the modification application. (Exhibit 3.)

The Office of Planning submitted a timely report dated November 3, 2015, recommending approval of the modification request subject to seven amended conditions and the waiver of the requirement under § 3129.3 that a minor modification be filed within two years after the date of the Board's Order is issued approving the original application. (Exhibit 4.)

DDOT submitted a timely report dated November 3, 2015, stating that it had no objection to the granting of the medication. (Exhibit 5.)

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The only parties to the case were the ANC and the Applicant. No parties appeared at the public meeting in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for minor modification of approval, including approved plans, in Case No. 18309. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a minor modification to the original approval and plans in Case No. 18309, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification and amendment of the Board's approval in Application No. 18309 is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS IN EXHIBIT 1B AND SUBJECT TO THE FOLLOWING REVISED CONDITIONS:**

1. Approval shall be for a period of **SEVEN (7) YEARS** commencing on the issuance of the first certificate of occupancy for the child development center or community service center uses at the property.
2. There shall be a maximum of 48 children and 16 staff at the child development center at any one time during its core hours of 7:00 AM to 6:00 PM. There shall be a maximum of 25 children and eight staff at the child development center at any one time from 6:00 PM to 7:00 AM, provided that there shall be no use of the outdoor play area after dark.
3. There shall be a maximum of 30 students and four staff at the Teen Renaissance Center space at any one time from 3:00 PM to 10:00 PM.
4. The Family Resource Center shall be used from 9:00 AM to 6:00 PM, and shall also be permitted to operate until 9:00 PM a maximum of three times per week.
5. The McKenna's Wagon and Market Pantry shall operate between the hours of 10:00 AM to 6:45 PM and 9:00 AM to 5:00 PM respectively. There shall be a maximum of 13 volunteers and one staff at any one time with a maximum 20 program-enrolled visitors per day to the Market Pantry.
6. The Applicant shall implement the Traffic Management Plan, as provided.

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- 7. The Applicant shall make best efforts to work with DDOT to locate a bike rack adjacent to the property on 15th Street, if permitted through the historic review process.

In all other respects, Order No. 18309 remains unchanged.

**VOTE ON ORIGINAL APPLICATION ON FEBRUARY 14, 2012: 5-0-0**

(Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull to Approve.)

**VOTE ON MODIFICATION OF APPROVAL: 4-0-1**

(Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle (by absentee vote), and Peter G. May to Approve; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this summary order.

**FINAL DATE OF ORDER: November 17, 2015**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 18891 of 14 & H, LLC**, pursuant to 11 DCMR § 3103.2, for variance relief from the requirements regarding lot occupancy (§ 772), floor area ratio ("FAR") (§ 771), and parking (§ 2101.1); and pursuant to 11 DCMR § 3104, for special exception relief regarding new construction on a lot greater than 6,000 square feet (§ 1320.4), to allow the Applicant to construct a multifamily residential building with ground floor retail in the C-3-A/HS-A Zone District at premises 1401 Florida Avenue N.E. and 1402, 1404, 1406, and 1410 H Street, N.E. (Square 1049N, Lots 5, 6, 802, 803, and 804).

**HEARING DATES:** January 6, 2015 and February 3, 2015

**DECISION DATE:** February 3, 2015

**DECISION AND ORDER**

On September 29, 2014, 14 & H, LLC (the "Applicant"), the owner of 1401 Florida Avenue N.E. and 1402, 1404, 1406 and 1410 H Street, N.E. (Square 1049N, Lots 5, 6, 802, 803, and 804), filed a self-certified application with the Board of Zoning Adjustment (the "Board") for zoning relief. The Board held public hearings on the application on January 6 and February 3, 2015. Following its February 3<sup>rd</sup> hearing, the Board voted to approve the application.

**PRELIMINARY MATTERS**

*Self-Certification.* The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

*Notice of Public Hearing.* Pursuant to 11 DCMR § 3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 6A, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing and timely submitted an affidavit to the Board to this effect.

*The Applicant's Case.* The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Mehari Sequar testified on behalf of the Applicant and Jeff Goins testified on behalf of PGN Architects, PLLC.

*ANC 6A.* The Property is located within the area served by ANC 6A, which is automatically a party to this application. ANC 6A filed a letter and resolution, dated December 22, 2014, indicating that ANC 6A, at its regularly scheduled meeting on December 11, 2014, which was properly advertised and where a quorum was present, voted unanimously in support of the application. (See ANC 6A Report at Exhibit 37.) The ANC concluded that the lot occupancy

**BZA APPLICATION NO. 18891****PAGE NO. 2**

relief was appropriate in view of the unusual shape of the lot and the small area of the square that it occupies. As to the parking variance, the ANC made its support conditional upon the Board conditioning its approval on the recordation of a covenant and the adoption of condominium bylaws prohibiting building residents from obtaining residential parking permits. As to the FAR variance, the ANC noted that if the lot occupancy variance was granted, any floor of the structure will be significantly greater than what is permitted by right. Therefore, any incremental increase in FAR over the matter of right 4.8 FAR limit will result in a disproportional increase in the square footage of the building. Nevertheless, the ANC concluded that a limited increase in FAR is justified in view of the limited size of the lot compared to the size of its square and the lot's triangular shape. However, the ANC conditioned its approval of the FAR variance upon the Applicant's promise not to exceed a FAR of 5.2 and advised the Board that an approval of more than 5.2 FAR would be of "grave concern" to the ANC and establish "an unfortunate precedent." Finally, the ANC indicated that it supported the special exception because the application met the regulatory criteria.

*Office of Planning ("OP") Report.* OP submitted a report dated December 30, 2014 and a Supplemental Report dated February 2, 2015. (See OP Report at Exhibit 38 and OP Supplemental Report at Exhibit 43.) In its December 30<sup>th</sup> report, OP recommended approval of the special exception and lot occupancy relief, and further indicated that it could support the parking relief if additional information was provided. As to FAR, OP concluded that since the Applicant has shown a layout based upon a double-loaded corridor, the triangular shape of the building posed no practical difficulty. OP further found that granting the requested FAR increase would impair the public good and the intent of the zone plan because the overlay only permits up to a 0.5 FAR increase when there is façade preservation. In its supplemental report, OP stated that the core factor justification relied upon by the Applicant is only justified when there is an existing building where the core could affect the distribution of floor area in a retrofit, but is inapplicable to this project, which involves a new building. At the hearing, OP stated that it recommended approval of the special exception pursuant to § 1320.4(f), approval of the area variance relief from lot occupancy and parking, and denial of the FAR relief.

*District Department of Transportation ("DDOT") Report.* DDOT filed a memorandum dated December 30, 2014. Following supplemental information from the Applicant, DDOT then filed a supplemental filing dated January 29, 2015, indicating that "adverse impacts on the travel conditions of the District's transportation network are not anticipated" and that "DDOT has no objection to the approval of the requested variance." (See DDOT Report at Exhibit 39 and DDOT Supplemental Report at Exhibit 42.)

*Party in Opposition.* There were no Parties in opposition.

*Persons in Opposition.* There were no Persons in opposition.

**The Subject Property and Surrounding Area**

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1. The Property is located at premises 1401 Florida Avenue N.E. and 1402, 1404, 1406, and 1410 H Street, N.E. (Square 1049N, Lots 5, 6, 802, 803, and 804) in southeast Washington D.C.
2. The property contains approximately 6,648 square feet of lot area.
3. The Property has approximately 156 feet of frontage along H Street, N.E., 177 feet of frontage along Florida Avenue, N.E., and 85 feet of frontage along 14<sup>th</sup> Street, N.E.
4. Directly east of the Property is the Starburst Intersection, a complicated junction where H Street, Florida Avenue, Bladensburg Road, Benning Road, and Maryland Avenue N.E. intersect. Across Florida Avenue are a gas station and the Delta Towers Apartments.
5. Square 1049N is a small, triangular Square bounded by H Street, N.E. to the south, 14<sup>th</sup> Street, N.E. to the west, and Florida Avenue, N.E. to the north.
6. Square 1049N is currently made up of three two-story commercial structures, surface level parking, and vacant gated areas.
7. The Property is located within the C-3-A Zone District and the H Street – Arts Overlay.
8. The C-3-A District “shall permit medium density development, with a density incentive for residential development within a general pattern of mixed-use development.” (11 DCMR § 740.4.) C-3-A Districts “shall be compact in area and located on arterial streets, in uptown centers, and at rapid transit stops.” (11 DCMR § 740.5.)
9. The purpose of the H Street – Arts Overlay is, in part, to “encourage residential uses along the H Street N.E. corridor” and “[e]ncourage the clustering of uses into unique destination districts along the corridor, specifically . . . an arts and entertainment district from 12<sup>th</sup> Street to 15<sup>th</sup> Street, N.E.” (11 DCMR § 1320.2.)
10. The Property is not located within any historic District, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.

**The Applicant’s Project**

11. The Applicant’s project consists of construction a six-story multiunit dwelling with first floor retail and 28 residential units.
12. The first story will likely contain a restaurant.
13. The second through fourth stories will contain seven residential units each. The fifth and sixth stories will be made up of seven two-story units.
14. The Property will provide covered, secure bicycle parking for residents and will include a publicly accessible outdoor bicycle rack.

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15. The Applicant has provided a Transportation Demand Mitigation (“TDM”) Plan.

**Zoning Relief Requested**

**Variances**

*Lot Occupancy (§§ 772 and 2604)*

16. Under § 772 and § 2604, the maximum permitted commercial lot occupancy is 100% and the maximum permitted residential lot occupancy is 80%.

17. The commercial lot occupancy is 99% and the residential lot occupancy is 99%, though the residential lot occupancy has been reduced on several residential floors.

*FAR (§§ 771 and 2604)*

18. Under § 771 and § 2604, the maximum permitted FAR at the Property is 4.8 FAR.

19. The total FAR is 5.25 FAR.

20. Thus, the FAR request is 0.45 FAR.

*Parking (§ 2101.1)*

21. Pursuant to § 2101.1, the parking requirement is 21 parking spaces.

22. The Applicant requested complete relief from the parking requirement.

**Exceptional Circumstance**

23. The Property has a long, narrow, triangular shape.

24. The Property has street frontage on all sides.

25. The Property has an exceptionally large “public parking” area along Florida Avenue and 14<sup>th</sup> Street, N.E.

26. The Property has no alley access.

27. The Property is located at the easternmost end of the H Street Corridor, adjacent to a Starburst Intersection.

**Practical Difficulty**

28. Due to the size, shape, and street frontage of the lot, the options for designing a functional structure are extremely limited.



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29. The fire code provides that for habitable space the separation distance of the exit doors or exit access doorways shall not be less than one-fourth of the length of the maximum overall diagonal dimension of the area served. It is particularly difficult to comply with this requirement on a narrow, triangular lot without sacrificing a considerable amount of the usable space of the structure.
30. The size of the building's core and the limitations on its location, present design challenges such that strict application of the lot occupancy and FAR requirement would result in a practical difficulty to the Applicant.
31. The need for lot occupancy and FAR relief is a direct result of the inefficiency of the structure, particularly toward the corners of the triangular lot, and the resulting challenges to the unit layout and design.
32. The triangular shape produces awkward units, layouts, and dead space on all three units facing Florida Avenue, N.E.
33. Compliance with the lot occupancy requirement, on this triangular lot with street frontage on three sides, requires a substantial setback from H Street, 14<sup>th</sup> Street, N.E., Florida Avenue N.E., or the east corner of the structure.
34. Providing at-grade parking would reduce the already limited buildable area at the Property and would be in direct conflict with specific H Street Overlay requirements.
35. Underground parking at the facility would be an extremely inefficient use of space at an exorbitant cost-per-space provided.
36. The Applicant's turning radius diagram illustrates the impact of the shallowness and narrowness of the Property on the ability to provide an adequate turning radii and ramping system.

**The Intent of the Zone Plan and the Public Good**

37. The existing unkempt commercial structures and fenced in concrete will be replaced with a mixed-use structure that is in keeping with the surrounding pattern of development on this stretch of H Street, N.E.
38. The proposed structure suits the prominence of this corner as the gateway onto H Street.
39. Although the H Street Overlay permits a 0.5 increase in FAR for façade preservation, such preservation is not feasible for this project because it would conflict with other provisions of the H Street Overlay and the floor and window locations would not correlate with the building plan.

**BZA APPLICATION NO. 18891****PAGE NO. 6****Special Exception***Lot Greater than 6,000 square feet ("sq. ft.") (§ 1320.4(f))*

40. Under § 1325.1, the buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District are permitted by special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided that several criteria are met.
41. The proposed project, by providing a ground-floor restaurant and residential units above, will effectuate the intentions of both § 1324 and the H Street Development Plan by enhancing the pedestrian experience, providing space for those enjoying the cultural activities, and bringing residents to support the prosperity of the businesses at the eastern end of the corridor.
42. The structure as designed promotes urban design features at the eastern end of the H Street Corridor.
43. The ingress and egress to the Property promotes safe and efficient pedestrian movement.
44. The area is both extremely walkable and transit-rich with the new DC Streetcar stopping at the Property, as well as bikeshare and carshare facilities.
45. The residential and restaurant use will not adversely affect adjacent or nearby residences. Residential and ground-floor residential uses will not generate a substantial amount of noise.
46. The size, type, scale, and location of signs, if any, will be compatible with the surrounding neighborhood and consistent with the H Street N.E. Strategic Development Plan.

**CONCLUSIONS OF LAW***Variance Standard of Review*

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3), to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR § 3103.2.)

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The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Applicant is seeking a variance from the zoning regulations regarding lot occupancy, FAR, and parking. As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested area variances in this case.

*Exceptional Circumstance*

The Board concludes that based on a confluence of factors an exceptional circumstance exists at the Property. The Property has a long, narrow, triangular shape and street frontage on all sides. The Property has an exceptionally large "public parking" area along Florida Avenue and 14<sup>th</sup> Street, N.E. and no alley access. The Property is located at the easternmost end of the H Street Corridor, adjacent to a Starburst Intersection.

*Practical Difficulty*

The Board concludes that the confluence of these exceptional conditions creates practical difficulties for the Applicant in complying with the requirements regarding lot occupancy, FAR, and parking.

The practical difficulty associated with the lot occupancy relief and FAR relief go hand-in-hand, both relating the extreme inefficiency associated with developing on this narrow, cone-shaped Property. Due to the size, shape, and street frontage of the lot, the options for designing a functional structure are extremely limited. The orientation of the structure is driven primarily by the size and location of the core of the structure. In addition, the fire code requires that for habitable space, the separation distance of the exit doors or exit access doorways shall not be less than one-fourth of the length of the maximum overall diagonal dimension of the area served, and it is particularly difficult to comply with this requirement on a narrow, triangular lot without sacrificing a considerable amount of the usable space of the structure. The size of the building's core and the limitations on its location, present design challenges such that strict application of the lot occupancy and FAR requirement would result in a practical difficulty to the Applicant. The need for lot occupancy and FAR relief is a direct result of the inefficiency of the structure, particularly toward the corners of the triangular lot, and the resulting challenges to the unit layout and design.

The triangular shape produces awkward units, layouts, and dead space on all three units facing Florida Avenue, N.E. The challenges associated with unit layout would be magnified by strict compliance with the lot occupancy or FAR requirement. Compliance with the lot occupancy requirement, on this triangular lot with street frontage on three sides, requires a substantial setback from H Street, 14<sup>th</sup> Street, N.E., Florida Avenue, N.E., or the east corner of the structure.

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The challenges associated with building on this narrow, triangular lot are particularly evident when compared to building on a rectangular lot of the same size.

The Board, agreeing with the Office of Planning's recommendation, concludes that compliance with the parking requirement would result in a practical difficulty. Providing the required parking underground or at grade is not feasible. Providing at-grade parking would reduce the already limited buildable area at the Property and would be in direct conflict with specific H Street Overlay requirements. Similarly, providing underground parking would be extremely burdensome, if not impossible, for the Applicant. Underground parking at the facility would be an extremely inefficient use of space at an exorbitant cost-per-space provided. The Applicant's turning radius diagram illustrates the impact of the shallowness and narrowness of the Property on the ability to provide an adequate turning radii and ramping system.

*No Detriment to the Public Good or Zone Plan*

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the project as proposed.

The requested variance is in furtherance of the public good and zoning regulations. The existing unkempt commercial structures and fenced in concrete will be replaced with a mixed-use structure that is in keeping with the surrounding pattern of development on this stretch of H Street, N.E. The proposed structure suits the prominence of this corner as the gateway onto H Street.

Based on the location of the Property adjacent to the complicated Starburst Intersection and with street frontage on all three sides, including two wide commercial avenues, the requested flexibility with respect to lot occupancy and FAR will not be a substantial detriment to the Zone Plan or neighboring properties. The Property is uniquely capable of accommodating the structure with the surrounding public space along 14<sup>th</sup> Street and Florida Avenue N.E. Specifically with respect to lot occupancy, a reduction of the relief requested would create an aesthetically awkward break in street frontage, which the H Street Overlay's design requirements specifically try to prevent. While the Applicant is seeking parking relief at the Property, the exceptional proximity to available transit options, including the new DC Streetcar, and TDM Plan mitigate parking demand generated by the project. For these reasons, approval of the variance relief requested will not cause a detriment to the public good or zone plan.

*Special Exception Standard of Review*

Special exception relief is required to allow new construction on a lot greater than 6,000 square feet ("sq. ft.") (*See* 11 DCMR § 1320.3.) Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special

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conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

The Applicant meets the burden of proof for special exception relief regarding new construction on a lot greater than 6,000 sq. ft. Under § 1325.1, the buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District are permitted by special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided that several criteria are met. The proposed project, by providing a ground-floor restaurant and residential units above, will effectuate the intentions of both § 1324 and the H Street Development Plan by enhancing the pedestrian experience, providing space for those enjoying the cultural activities, and bringing residents to support the prosperity of the businesses at the eastern end of the corridor. The structure as designed promotes urban design features at the eastern end of the H Street Corridor. The ingress and egress to the Property promotes safe and efficient pedestrian movement. The area is both extremely walkable and transit-rich with the new DC Streetcar stopping at the Property, as well as bikeshare and carshare facilities. The residential and restaurant use will not adversely affect adjacent or nearby residences. Residential and ground-floor residential uses will not generate a substantial amount of noise. The size, type, scale, and location of signs, if any, will be compatible with the surrounding neighborhood and consistent with the H Street N.E. Strategic Development Plan.

The Board is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 6A. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The Board is also required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) to give great weight to OP recommendations.

The Board agrees with the ANC and OP that the special exception and the lot occupancy variance requests should be granted. As to parking relief, the Board has added conditions of approval that are substantially similar to those that the ANC recommended.

With respect to the FAR relief, the 5.25 FAR granted is consistent with the limit requested by the ANC. OP and the ANC disagree as to whether the exceptional conditions of the property, in particular its long, narrow, and triangular shape result in a practical difficulty in complying with the FAR limit. For the reasons stated above, the Board finds the ANC’s advice that such a practical difficulty exists to be the more persuasive.

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Finally, as to the effect on the intent of the zone plan and the public good, OP argues that because the overlay permits a 0.5 increase in FAR as the result of façade preservation, permitting the same result through a variance is inconsistent with the overlay and the public good. The Board must disagree. First, as noted in the findings of fact, façade preservation is not feasible for this project. Second, OP in essence argues that a FAR variance of 0.5 or less must always be denied for overlay properties because the 0.5 bonus is available. Such a ruling would be inconsistent with the principle that a variance may be granted or denied only on a case by case basis. Further, if a property, such as this one, has exceptional conditions that create a practical difficulty in comply with the FAR limit, its owner should not be compelled to undertake costly and complex façade preservation work to obtain what the variance law says it is entitled to receive.

**CONCLUSION**

Based upon the record before the Board, and having given great weight to the ANC, OP, and DDOT reports filed in this case, the Board concludes that the Applicant has met the burden of proof for variance relief pursuant to 11 DCMR § 3103.2 from the zoning regulations regarding lot occupancy (§ 772), FAR (§ 771), and parking (§ 2101.1) and special exception relief, pursuant to 11 DCMR § 3104, regarding new construction on a lot greater than 6,000 sq. ft. (§ 1320.4), to allow the Applicant to construct a multifamily residential building with ground floor retail in the C-3-A/HS-A Zone District at premises 1401 Florida Avenue, N.E. and 1402, 1404, 1406, and 1410 H Street, N.E. (Square 1049N, Lots 5, 6, 802, 803, and 804). Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO APPROVED PLANS AT EXHIBITS 41A1 & 41A2 – REVISED ARCHITECTURAL PLANS, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall include in its condominium declaration and bylaws a provision that prohibits unit owners or their tenants from obtaining a Residential Parking Permit ("RPP") or Visitor Parking Pass ("VPP") at the building from the D.C Department of Motor Vehicles ("DMV") for the life of the project. The bylaws shall include consent and authorization to the Condominium Board to police and enforce this prohibition;
2. The Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any lessee or owner of the Property from obtaining an RPP or VPP at the building approved by this BZA Order for the life of the project;
3. The Applicant shall provide each new occupant of each residential unit a \$100 car sharing membership, or a \$150 Capital Bikeshare membership, or a \$200 Smart Trip card for a period of five years;
4. The Applicant shall provide at least 21 bicycle parking spaces and a bicycle repair facility in a covered and secure location within the building and 20 short term bicycle parking spaces outside;

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5. The Applicant's marketing program shall provide detailed carpooling and transportation information and promote walking, cycling, and transit and shall utilize and provide website links to CommuterConnections.com and goDCgo.com. Printed materials related to local transportation alternatives shall be made available to residents and retail employees twice annually; and
6. The Applicant shall install a TransitScreen in the residential lobby.

**VOTE:**       **5-0-0** (Lloyd J. Jordan, Marcie I. Cohen, Marnique Y. Heath, Jeffrey L. Hinkle, and S. Kathryn Allen to Approve).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 13, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 18984 of Kateh Zahraie**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3103.2, for area variances from the requirements for lot area (§ 401.3), lot occupancy (§ 403.2), and enlargement of a nonconforming structure (§ 2001.3), to convert a row flat to a three-unit apartment building in the R-4 District at premises 1546 New Jersey Avenue, N.W. (Square 510, Lot 50).

**HEARING DATES:** April 28, 2015; July 14, 2015  
**DECISION DATE:** July 14, 2015

**DECISION AND ORDER**

On February 19, 2015, Kateh Zahraie (“Applicant”), the owner of 1546 New Jersey Avenue, N.W. (Square 510, Lot 50) (“Subject Property”), filed a self-certified application with the Board of Zoning Adjustment (“Board”) for zoning relief. The application requests area variances from the requirements for lot area under § 401.3, lot occupancy under § 403.2, and enlargement of a nonconforming structure under § 2001.3. Following a public hearing, the Board voted to deny the application. The factual and legal basis for the Board’s decision follows.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated February 27, 2015, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6E, the ANC for the area in which the Subject Property is located; and Single Member District/ANC 6E02. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on March 9, 2015, providing notice of the hearing to the Applicant, ANC 6E, and the owners of all property within 200 feet of the Subject Property. Notice of the hearing was published in the *D.C. Register* on March 13, 2015 (62 DCR 3014).

Party Status. The Applicant and ANC 6E were automatically parties to this proceeding. No other persons requested party status.

Applicant’s Case. The Applicant proposed to convert an existing flat (*i.e.* a two-family dwelling) into a three-unit apartment building. In addition to the Applicant, Navid Zahraie and

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<sup>1</sup> The original application was amended to eliminate the request for a special exception under § 400.7(b) that was referenced in the original Self-Certification form at Exhibit 5 but removed per the Applicant’s Prehearing Statement (Exhibit 31, p. 7), and to include variance relief pursuant to § 2001.3 in accordance with the Zoning Administrator’s memorandum of April 7, 2015. (See Revised ZA’s Memorandum, Exhibit 22, and Revised Self-Certification, Exhibit 25.)

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Frederick Rubens, who are co-owners of the Subject Property, testified in support at the hearings on the application. The Applicant asserted that the application met the requirements for variance relief. Specifically, the Applicant alleged that the Subject Property is affected by an exceptional situation based on the following: the Subject Property is surrounded by other multi-family buildings; the structure is currently nonconforming as to lot occupancy; and the existing structure is in a state of disrepair requiring substantial renovations. The Applicant further alleged that she would face practical difficulties absent relief because repair and renovation of the structure is not financially feasible unless the Applicant is able to add a third unit to the existing flat.

OP Report. By memorandum dated April 21, 2015, OP stated that it did not recommend approval of the application. Although OP found that subject property exhibited an exceptional condition as a result of its state of disrepair, OP concluded that the Applicant had not demonstrated that this circumstance resulted in a practical difficulty because a conforming project could have been financially feasible if the Applicant had paid a lower purchase price to acquire the Subject Property. (Exhibit 33.) Following the Board's hearing April 28, 2015, OP submitted a supplemental report on May 12, 2015, stating that it continued to not recommend approval of the application. Notwithstanding additional submissions by the Applicant, OP maintained its position at the Board's July 14, 2015, hearing.

DDOT Report. By memorandum dated April 15, 2015, DDOT indicated no objection to approval of the application. (Exhibit 32.)

ANC Report. By report submitted April 22, 2015, ANC 6E indicated that it discussed the application at its regularly scheduled, properly noticed meeting on April 7, 2015, and with a quorum present, voted 6-0-0 to support the application. The ANC stated that it did not expect any adverse consequences in the neighborhood. (Exhibit 34.)

Persons in opposition. Betsy McDaniel, a former resident of ANC 6E, submitted a letter in opposition to the application, stating that granting the requested relief would set a bad precedent. (Exhibit 36.) Lawrence Smith, the owner of neighboring property at 1544 New Jersey Avenue, N.W., testified in opposition to the application at the Board's hearing on April 28, 2015.

**FINDINGS OF FACT**

1. The Subject Property is a rectangular lot located on the west side of the street at 1546 New Jersey Avenue, N.W., between Q Street, N.W. and Franklin Street, N.W. (Square 510, Lot 50) and is zoned R-4.
2. The Subject Property consists of 2,255 square feet ("sq. ft.") of land area.
3. The Subject Property is improved with a two-story row dwelling that is a flat.

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4. The Applicant proposes to convert the existing structure into a three-story, three-unit apartment building.
5. Subsection 401.3 requires that, for conversion of a structure to an apartment house in an R-4 District, a minimum of 900 sq. ft. shall be provided per dwelling unit. The proposed project would only provide approximately 751 sq. ft. per dwelling unit. Accordingly, a variance is required.
6. The Subject Property is nonconforming as to lot occupancy. The existing lot occupancy of the Subject Property is 65%. Under § 403.2, the maximum lot occupancy allowed as a matter of right for a row dwelling in the R-4 District is 60%. The Applicant proposes to increase lot occupancy to 70%.
7. Subsection 2001.3(a) disallows the expansion of any structure that does not conform to lot occupancy. Because the existing lot occupancy of the Subject Property exceeds that permitted by right, a variance is required to expand the structure and convert it into an apartment building.
8. Subsection 2001.3(b)(2) disallows the expansion of any structure that increases or extends any existing, nonconforming aspect of the structure. Because the Applicant proposes to increase the currently nonconforming lot occupancy from 65% to 70%, a variance is required to expand the structure and convert it into an apartment building.
9. The structure has deteriorated mortar, and cracks in the rear and front wall of the structure, and in the floor and roof joists. Its plumbing and HVAC systems are also in need of repair.
10. These types of problems are commonly fixed in home renovations and small building renovations around Washington.
11. The building is not in danger of collapse.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant requests variance relief under § 3103 of the Zoning Regulations to convert a row dwelling flat to a three-unit apartment building in the R-4 District. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-631.07(g)(3), to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the

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property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (11 DCMR § 3103.2.)

Variations are classified as area variations or use variations. (*Id.* § 3103.3.) An area variation is a request to deviate from an area requirement applicable to the zone district in which the property is located. (*Id.* § 3103.4.) The Applicant seeks an area variation because she requests a deviation from applicable lot area requirements and the “prohibition against certain enlargements and additions to nonconforming structures as stated at § 2001.3.” (*Id.* § 3103.3.)

The Court of Appeals has interpreted the Zoning Act and Regulations as imposing a three-part test for granting an area variation. The Applicant “must show that (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 560 (D.C. 2011) (quoting *Wash. Canoe Club v. District of Columbia Zoning Comm’n*, 779 A.2d 995, 1000 (D.C. 2005)).

Here, the Board finds that the Applicant has not met her burden to show that the Subject Property is affected by an exceptional condition. The repairs needed for the Subject Property - which include work on deteriorated mortar, cracks in the rear and front wall of the structure, and the floor and roof joists - are common in properties throughout the city. Such repairs are commonly fixed in home renovations and small building renovations around Washington. The building itself is in no danger of collapse. The Applicant also asserted that the Subject Property is nonconforming as to lot occupancy, but this, by itself, does not constitute an exceptional situation. With respect to the Applicant’s claim that the Subject Property is surrounded by multi-family dwellings, this also is not exceptional. Because there is no extraordinary condition affecting the Subject Property, the Board need not reach the other two prongs of the variation test in order to deny the relief requested.

The Board must also give “great weight” to the issues and concerns that the affected ANC raises in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10. In this case, the ANC voted unanimously to support the application. The ANC did not elaborate on its vote, except to state that it did not anticipate that the project would produce any adverse consequences in the neighborhood. Because the Board finds that the Applicant has not demonstrated an exceptional condition affecting the Subject Property, the ANC’s views concerning potential adverse impacts to the neighborhood is not legally relevant to this decision.

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In deciding to grant or deny applications for zoning relief, the Board is required to give “great weight” to OP’s recommendation. (D.C. Official Code § 6-623.04.) Pursuant to this statutory duty, the Board must demonstrate in its findings that it considered OP’s views and must provide a reasoned basis for any disagreement with it. *Glenbrook Rd. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted). Here, OP concluded the Applicant had demonstrated an exceptional situation based upon the disrepair of the structure. The report did not explain why the specific repairs needed were in any way exceptional and for the reasons stated above, the Board concluded that they were not. The remainder of the OP analysis, which concerned compliance with the second and third prongs of the variance test, is not legally relevant and therefore will not be discussed.

Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE:**       **3-0-2** (Lloyd J. Jordan, Peter G. May, and Jeffrey L. Hinkle to Deny; Marnique Y. Heath and Frederick L. Hill not present, not voting).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 12, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19070 of David and Sheila Hoxie**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3104.1, for a variance from the use requirements under § 330.5, to establish an inn with five (5) rooms and accessory central area for transient food consumption that includes alcohol in the R-4 District at premises 1207 Kenyon Street, N.W. (Square 2844, Lot 49).

**HEARING DATES:** September 29 and November 17, 2015  
**DECISION DATE:** November 17, 2015

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

On June 22, 2015, the Applicant filed a request for relief, accompanied by a memorandum, dated March 2, 2015, from the Zoning Administrator (“ZA”), which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a special exception pursuant to 11 DCMR §§ 3104.1 and 330.6 to use the subject premises as a rooming house in the R-4 District. (Exhibit 9.) After the public hearing on September 29, 2015, the Applicant submitted a revised memorandum from the ZA indicating that a variance from the use requirements of § 330.5 is required to establish an inn. (Exhibit 34.)

After consultation with Office of Planning (“OP”), the ZA determined that the appropriate relief for this application would be a use variance, pursuant to 11 DCMR §§ 3103.2 and 330.5, to establish an inn in the R-4 District. The Applicant submitted a revised memorandum from the ZA to the record, (Exhibit 34,) and subsequently amended its request for relief to a use variance from § 330.5. At the Board’s request, the Applicant posted revised signage on the property to give notice of its amended request for relief. (Exhibit 36.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (“ANC”) 1A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application.

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<sup>1</sup> The Applicant’s original request was accompanied by a memorandum from the Zoning Administrator (“ZA”), stating that a special exception pursuant to § 3104.1 and 330.6 is required. (Exhibit 9.) After the public hearing on September 29, 2015, the Applicant submitted a revised memorandum from the ZA indicating that a variance from the use requirements of § 330.5 is required to establish an inn. (Exhibit 34.) At the public hearing on November 17, 2015, the Applicant also corrected for the record that the proposed inn would have five rooms, and that the original request for four rooms was in error. The caption has been revised accordingly.

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ANC 1A submitted a report indicating that at its regularly scheduled and properly noticed public meeting of September 9, 2015, at which a quorum was in attendance, it considered the Applicant's amended request for use variance relief to establish an inn. At its meeting, the ANC voted 12-0-0 in support of application. (Exhibit 32.)

OP submitted a timely report recommending denial of the requested variance. (Exhibit 31.) At the Board's public hearing on September 29, 2015, the Board continued the hearing to allow the Applicant additional time to work with OP. The Applicant submitted additional information to the record to support its request, (Exhibits 35 and 35A,) and based on this information, OP testified in support of the application at the November 17, 2015 public hearing. At the Board's request, OP worked with the Applicant to propose three conditions that would restrict the Applicant's service of alcohol within the inn. The Board adopted these conditions as part of this Order.

The District Department of Transportation ("DDOT") filed a report expressing no objection to the approval of the application. (Exhibit 28.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variances under § 3103.2, from the strict application of the use requirements under § 330.5, to allow an inn with five (5) rooms and accessory central area for transient food consumption that includes alcohol in the R-4 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3103.2 and 330.5, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Alcoholic beverages shall only be ordered at the time of reservation.

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2. Alcoholic beverages ordered at the time of reservation shall be limited to a maximum of two bottles of champagne, two bottles of wines, and a six-pack of beer per room, per day. Beverages shall be delivered daily if required.
3. Alcoholic beverages shall be consumed only on-site.

**VOTE:** 3-0-2 (Marnique Y. Heath, Frederick L. Hill, and Michael G. Turnbull to APPROVE; Jeffrey L. Hinkle not participating, and one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 19, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS



**BZA APPLICATION NO. 19070**  
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PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19089 of Nezam Yousefi**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the construction of a new five-story mixed use building containing 13 units in the C-3-C District at premises 8 P Street N.E. (Square 668, Lot 14).

**HEARING DATE:** November 10, 2015

**DECISION DATE:** November 10, 2015

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

On July 20, 2015, the Applicant filed a request for relief, accompanied by a memorandum, dated March 31, 2015, from the Zoning Administrator (“ZA”), which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a variance pursuant to 11 DCMR §§ 3103.2 and 2101.1 for nonconformance to the required residential parking spaces in the C-3-C District. (Exhibit 9.)<sup>1</sup>

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC did not submit a written report to the record. At the public hearing, the Applicant and the persons testifying in opposition indicated that the ANC voted to oppose the application after hearing the Applicant’s presentation at its public meeting on October 20, 2015. As ANC 5E did not submit its written report to the record, the Board could not afford great weight to its recommendation.

The Office of Planning (“OP”) submitted a timely report on November 3, 2015, recommending approval of the application, (Exhibit 39) and testified in support of the application at the hearing. The District Department of Transportation (“DDOT”) submitted a timely report on November 3, 2015, indicating that it had no objection to the Applicant's request for variance relief, provided that the Applicant install a minimum of one short-term bicycle rack in public space in front of the site. (Exhibit 40.) The Board did not adopt this condition as part of this order.

At the public hearing, Reverend Doctors Charles and Judy Farmer testified in opposition, raising concerns about the Applicant’s failure to communicate his plans to neighbors, the height of the

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<sup>1</sup> The Applicant also submitted an incomplete self-certification form to the record, noting that three parking spaces are required and no parking spaces will be provided. (Exhibits 5 and 15.)

**BZA APPLICATION NO. 19089**  
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proposed development, the potential for damage during construction, and the Applicant's proposal to provide no off-street parking. Drs. Charles and Judy Farmer also submitted two letters in opposition to the record noting similar issues with the Applicant's proposal and indicating that the ANC voted to oppose the application. (Exhibits 31 and 38.) The Board acknowledged these concerns, but noted that the variance sought by the Applicant is for parking relief, therefore all other concerns raised are outside the Board's scope of review for this application. Further, the Board indicated that the Applicant proposes a robust Transportation Demand Management plan and noted that the Applicant has shown that DDOT would not support a curb cut that would be necessary to provide parking on-site.

In addition, the Applicant testified that he also presented before the Eckington Civic Association on October 28, 2015, and that the response was generally supportive;<sup>2</sup> however, Eckington Civic Association did not submit a letter to the record regarding this application.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the off-street parking requirements under § 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2101.1, the Applicant has met the burden of proving under § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 32 AND 33.**

**VOTE:**       **3-0-2** (Marnique Y. Heath, Frederick L. Hill and Peter G. May to Approve; Jeffrey L. Hinkle, not participating or voting; the third Mayoral appointee vacant.)

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<sup>2</sup> The Applicant's testimony referred to the association as the "Eckington ANC," however, the adjacent property owners' submission under Exhibit 38 clarifies that this meeting was of the Eckington Civic Association and not of an ANC.

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**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 16, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19093 of Warder LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the open court requirements under § 406 and for a special exception from the use requirements under § 336, to renovate and convert a vacant one-family semi-detached building into a three-unit apartment house in the R-4 District at premises 2708 Sherman Avenue N.W. (Square 2858, Lot 53).

**HEARING DATES:** October 27, 2015 and November 10, 2015  
**DECISION DATE:** November 17, 2015

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) The application was amended by the Applicant in its pre-hearing statement to add variance relief from open court (§ 406). (Exhibit 27.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted two reports of support for the application. The first ANC report is dated October 3, 2015 and indicates that at a duly noticed and regularly scheduled public meeting on October 1, 2015, at which a quorum was in attendance, the ANC voted 10-0-0 in support of the application for special exception. (Exhibit 24.) The second ANC report is dated November 5, 2015 and states that at a duly noticed and scheduled public meeting on November 5, 2015, at which a quorum was in attendance, the ANC voted 8-0 to support the application, as amended, including variance relief from the open court requirements under § 406. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report dated October 20, 2015, recommending approval of the application (Exhibit 26) and testified in support of the application at the hearing. In its report OP recommended approval of both special exception relief under § 336 and variance relief under § 406 as well as four conditions. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 23.)

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<sup>1</sup> The application was amended by the Applicant to add variance relief from open court (§ 406) at the Office of Planning's recommendation. (Exhibit 27.) The caption has been revised accordingly.

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At the public hearing on November 10, the adjacent neighbor, Mr. Suleiman, testified in opposition, raising concerns about structural damage during construction and his inability to rent out his apartments based on the state of the Applicant's property. The Board asked the Applicant to respond to these issues, but noted that they are outside of the Board's considerations for the relief requested by the Applicant. The Board also asked the Applicant to submit revised plans for the front façade, which the Applicant provided under Exhibit 34.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for an area variance from the open court requirements under § 406, to renovate and convert a vacant one-family semi-detached building into a three-unit apartment house in the R-4 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 406, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception from the use requirements under § 336, to renovate and convert a vacant one-family semi-detached building into a three-unit apartment house in the R-4 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 336 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

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It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28, AS MODIFIED BY THE FRONT FAÇADE PLAN AT EXHIBIT 34, AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall use brick material on the court, similar to the south façade of the building.
2. The Applicant shall include windows on the east façade.
3. The Applicant shall restore the building's former front porch.
4. The Applicant shall submit dimensioned plans consistent with the Board's approval, to facilitate permit plan review by the Department of Consumer and Regulatory Affairs (DCRA).

**VOTE:**           **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Peter G. May (by absentee ballot) to APPROVE; Jeffrey L. Hinkle, not present or participating; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 18, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION

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THERE TO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERE TO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19104 of Jacob Joyce**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, the rear yard requirements under § 404, and the non-conforming structure requirements under § 2001.3, to construct a rear spiral staircase to an existing flat in the R-4 District at premises 1617 Gales Street, N.E. (Square 4540, Lot 156).

**HEARING DATE:** November 10, 2015

**DECISION DATE:** November 10, 2015

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

This application was accompanied by a memorandum dated July 31, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 8.)

The Board of Zoning Adjustment (the “Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report dated September 11, 2015, indicating that at a regularly scheduled and properly noticed meeting on September 10, 2015, at which a quorum was in attendance, ANC 6A voted 7-0-0 to support the application. (Exhibit 31.) A letter of support of the application was submitted by a neighbor. (Exhibit 24.) A petition signed by five neighbors, including an adjacent property owner, also was filed in support of the application. (Exhibits 29 and 30.)

The Office of Planning (“OP”) submitted a timely report and testified at the hearing in support of the application. (Exhibit 36.) The District Department of Transportation (“DDOT”) filed a report expressing no objection to the approval of the application. (Exhibit 32.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 403, 404, and 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403, 404, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.

The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in the accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 2.**

**VOTE:**           **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Peter G. May to APPROVE; Jeffrey L. Hinkle not participating, not voting; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 13, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO- YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN

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EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C.OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT). THE DISTRICT OF COLUMBIADOES NOT DISCRIMENATE ON THE BASIS OF ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEXUAL DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, SEXUAL HARASMENT BASE ON THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19105 of Yolanda Garay and Francisco Ruiz**, pursuant to 11 DCMR § 3104.1, for a special exception from the use requirements pursuant to § 320.3, to convert a one-family dwelling into a one-family dwelling with accessory apartment in the R-3 District at premises 2113 Bancroft Place, N.W. (Square 2531, Lot 802).

**HEARING DATE:** November 10, 2015

**DECISION DATE:** November 10, 2015

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.<sup>1</sup> (Exhibit 3.) The application was also accompanied by a memorandum from the Zoning Administrator (“ZA”) certifying the required relief. (Exhibit 8.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 2D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2D, which is automatically a party to this application.

In its report dated October 21, 2015, ANC 2D stated that at a regularly scheduled and properly noticed meeting on October 19, 2015, at which a quorum was present, the ANC voted 2-0 to support the application, with two reservations – one, that the action regarding this property not be precedent-setting; and two, that the Applicant’s assure the stability of the foundations on the two adjacent properties through engineering studies and ongoing inspections of the common walls. (Exhibit 23.) The Board acknowledged the ANC’s support and determined that the two issues raised by the ANC were not properly before this Board.

The Office of Planning (“OP”) submitted a report in support of the application. (Exhibit 24.) The D.C. Department of Transportation filed a report expressing no objection to the application. (Exhibit 25.)

The adjacent neighbor at 2115 Bancroft Place, N.W. testified as a person in opposition, raising concerns regarding how the proposed excavation would affect her property, given that the properties share a party wall. She also voiced concerns about how allowing accessory

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<sup>1</sup> While the application was self-certified, the self-certification form (Form 135, Exhibit 3) did not include a reference to § 320.3 as the basis for the special exception relief. This reference appears in the ZA’s memorandum. (Exhibit 8.)

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apartments would change the character of the neighborhood and worsen street parking issues. The Board noted that the construction issues are not properly before this Board, but should be addressed by officials responsible for implementing the building code. The Board concluded that any impact on parking would be mitigated by the Applicant's provision of two parking spaces on the subject property.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 320.3. The only parties to the application were the Applicant and ANC 2D, which was in support of the relief. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 320.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 - ARCHITECTURAL PLANS & ELEVATIONS.**

**VOTE:**           **3-0-2**           (Marnique Y. Heath, Peter G. May, and Frederick L. Hill to Approve; Jeffrey L. Hinkle not present, not voting; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 16, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE

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PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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